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September 24, 2019

VIA E-MAIL – WCABRules@dir.ca.gov

Workers' Compensation Appeals Board (WCAB)
Attention: Julie Podbereski, Regulations Coordinator
P.O. Box 429459
San Francisco, CA 94142- 9459

Re: Comment Letter to Proposed Rulemaking - WCAB Rules of Practice and Procedure

Dear Ms. Podbereski:

Zenith Insurance Company appreciates the opportunity to provide comment. Zenith supports the modifications being made to the Rules of Practice and Procedure. We are suggesting a few modifications to address issues Zenith sees on a regular basis. The following comments explain Zenith's concerns and propose modifications to address those concerns. New proposed language will be in red and underlined.

Section 10786 [former 10451.1] - Determination of Medical-Legal Expense Dispute

Labor Code §4622(c) states:

> "If the employer denies **all or a portion** of the amount billed for any reason other than the amount to be paid pursuant to the fee schedules in effect on the date of service, the provider may object to the denial within 90 days of the service of the explanation of review."

However, 8 CCR 10786 states:

> (a) Within 60 days of service of a medical-legal provider objection ***to a denial of a portion of the medical-legal provider's billing*** pursuant to Labor Code section 4622(c), the defendant shall file and serve a petition for determination of medical-legal expenses

and a Declaration of Readiness to Proceed. Upon filing of a Declaration of Readiness to Proceed, the medical-legal provider shall be added to the official address record.

This provision should be consistent with Labor Code 4622 and read as follows so that both the Labor Code and Regulations are consistent:

(a) Within 60 days of service of a medical-legal provider objection to a denial of all or a portion of the medical-legal provider's billing pursuant to Labor Code section 4622(c), the defendant shall file and serve a petition for determination of medical-legal expenses and a Declaration of Readiness to Proceed. Upon filing of a Declaration of Readiness to Proceed, the medical-legal provider shall be added to the official address record.

Section 10545 and 10789 - Petition for Costs – Subsection (g) of this rule was removed from the rule with the proposal that the petitions be dealt with on a walk-through basis rather than by requiring a Declaration of Readiness. Allowing parties to perform a walk-through relating to the Petitions for Costs may increase the number of Notices of Intent to allow or disallow the costs sought by the petitioner because the WCJ feels they have no other option but to issue the Notice of Intent. Zenith previously recommended modifying the rule to allow the WCJ the option of placing the issues raised in the Petition for Costs on calendar on the Workers' Compensation Appeals Board own initiative prior to issuing a Notice of intent. Zenith continues to agree with the CWCI's prior comments that the WCAB walk-through process is by its nature ex parte, and usually reserved for non-controversial and undisputed pleading. Petitions for Costs are disputed and should not be the subject of an ex parte walk-through proceeding. We feel strongly that this issue needs to be addressed and therefore are proposing two alternate approaches.

1. The walk-through option should be eliminated for Petitions for Costs. This will help minimize abuse within the system and avoid using the ex parte walk-through approach for contested issues. As noted above, the walk-through approach traditionally addresses uncontested issues.

   Additionally, Proposed Rule10545 §(g)(1) and proposed Rule 10832 create a process that is not clear and could be interpreted as conflicting. We suggest that these two sections be clarified. Currently it appears that 10545(g)(1) gives the WCJ discretion to issue an Order regarding the Petition for Costs, consistent with the Notice of Intention. However, proposed Rule 10832(b) allows a WCJ to issue *(and serve)* a self-destruct Notice of Intention allowing or disallowing a Petition for Costs in the form of an Order. If the judge issues a self-destruct Notice of Intention in the form of an Order in response to a Petition for Costs on a walk-through basis, is a second ordered then necessary to effectuate the self-destruct Notice of Intention that becomes

a final order? Please clarify how these two sections are intended to operate in conjunction with each other.

2. If the walk-through option is retained for Petitions for Costs, then we recommend adding the following provision to Rule 10545 subsection (g) as follows:

   This Rule shall not apply to Petitions for Costs relating to partially paid Interpreting services based solely on a dispute involving market rate.

3. Rule 10789 presents a similar but unique issue in that there currently is no fee schedule for interpreter fees. Interpreter fees are generally paid based on time spend pursuant to 8 CCR §9795.3. However, many interpreters request "market rate" which is subject to proof by the interpreter. It does not appear that an ex parte walk-through process should be applied to this situation since proof of market rate is required and the defendant payor should be given an opportunity to be heard. Therefore, we recommend the following change:

   Rule 10789 subdivision (5): This Rule shall not apply to Petitions for Costs relating to partially paid Interpreting services based solely on a dispute involving market rate.

Section 10629 -Designated Service – This adds a requirement that the party designated to serve any order by the WCAB "shall" file their Proof of Service with the WCAB. In general, when designated to serve Orders, Zenith E-files a copy of Zenith's Proof of Service with the WCAB.

Zenith's concern in making this a mandatory "shall" requirement is that if a party is properly served, but someone forgets to file a copy of the Service of Process with the WCAB, Zenith would not want the Service of Process to be found to be incomplete or improper. Therefore, we suggest that Subsection (c) be modified as follows to show that failure to submit a copy to the WCAB will not invalidate an otherwise valid Service of Process:

Within 10 days from the date on which designated service is ordered, the person designated to make service shall serve the document and shall file the proof of service. Failure to file the proof of service with the WCAB or filing the proof of service with the WCAB after expiration of the 10-day period shall not invalidate an otherwise valid service of process on other parties.

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Rule 10786(f) This section neglected to add the defendant's duty to file both a petition and declaration of readiness as required under Labor Code §4622(c) and Rule 10786(a). For consistency between the code and rules, Zenith recommends the following change:

> (f) A defendant shall be deemed to have waived any objections to a medical-legal provider's billing, other than the amount payable 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 provider submitted a timely objection to the defendant's EOR regarding a dispute other than the amount payable and the defendant failed to file and serve a petition for determination of medical-legal expenses and a Declaration of Readiness as required by Labor Code section 4622 and subdivision (a) of this rule.

Rule 10786(i)(1) – There are situations in which a biller pursues attorney fees and other costs when there is no proof that a valid medical-legal bill at issue. This tactic is used to force an advantageous nuisance value settlement when the payor is disputing the validity of the bill as a medical legal expense. To address these practices, Zenith recommends the following language be added to 10786(i)(1):

> This section shall not apply when the medical-legal provider is unable to establish that the bill is a medical legal expense as defined under 4620 and 4621.

Again, thank you for the opportunity to provide comment on the proposed changes.

Sincerely,

Sharon L. Hulbert

Sharon L. Hulbert
Assistant General Counsel
Vice President, Med-Legal

California Coalition on Workers' Compensation

September 24, 2019

Julie Podbereski
Department of Industrial Relations
Workers' Compensation Appeals Board
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Subject: WCAB Changes to Rules of Practice and Procedure
Title 8, California Code of Regulations Section 10300-10995

Dear Ms. Podbereski,

The California Coalition on Workers' Compensation (CCWC) is an association of California's public and private sector employers that advocates for a balanced workers' compensation system that provides injured workers with fair benefits, while keeping costs low for employers. Our members include not only businesses of every size, but also cities, counties, schools and other public entities.

CCWC appreciates the efforts of the WCAB in their efforts to update their regulations. While we do support several sections of the regulations, we have serious concerns regarding others. Please take note of our comments and concerns.

As noted in the Workers' Compensation Insurance Rating Bureau's 2019 State of the System Report, "Total loss adjustment expenses increased by $0.6 billion since 2013 and comprise almost one quarter of all costs in 2018." Loss adjustment expenses are the highest in the nation and more than double the national median. The proposed changes will only add to this dubious distinction of California's workers' compensation system and do nothing to improve the delivery of benefits to injured workers.

In both SB 899 and SB 863, labor and employers came together with the Legislature to increase benefits to injured employees with a concurrent goal of reducing friction, litigation and loss adjustment expenses. Simultaneously, injured employees received a significant increase in permanent disability and a COLA adjustment for TTD benefits. While there were reductions in medical costs, the anticipated reduction in friction related to loss adjustment expenses was not realized, partly due to the fact that related fee schedules have not been produced.

In the current iteration of the WCAB's proposed regulatory changes, the goal of reducing friction and costs has not been furthered by the WCAB, and in many situations will likely increase costs.

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8 CCR § 10305 (o) (3) (A) and (B) – Lien Claimants

CCWC respectfully requests the definition of lien claimant as a party to a case only in limited circumstances be retained as it currently exists in 10305 (o) (3) (A) and (B).

Reason: In the current WCAB proposal, the definition of lien claimant is being expanded by removing the qualifications in subsections (A) and (B). By making this change in the definition, the WCAB proposes to expand the ability of lien claimants to formally litigate liens (essentially making the lien claimant a party to the claim), which goes against the successful reforms made to the lien environment by SB 863.

In the state's workers' compensation system, the relevant parties to the agreement are employees and employers. Every other stakeholder - providers of medical services and products, lawyers, insurers, and various providers of a range of related services - are service providers contributing goods and services necessary to carry out the agreement between employees and employers. However, they are not direct parties to the agreement and as such, lien claimants are limited to being a party only when case in chief is resolved or the case is not being pursued.

Prior to SB 863 (Chapter 363, Statutes of 2012) the lien environment in California's workers' compensation system was out of control. The workers' compensation courts were overwhelmed by this problem. The WCAB was clogged with lien claims and the lien backlog directly affected the ability of the WCAB to timely issue crucial right to benefits decisions.

This backlog of approximately a million lien claims clogged the workers 'compensation court system. This problem was addressed by the SB 863 reforms. In the SB 863 reform, future opportunities for lien claimants to formally litigate liens was specifically limited. Special teams of WCAB judges, working solely on backlogged lien claims for months on end, were needed to clear the backlog, post SB 863.

CCWC believes that making this change runs directly counter to the reforms enacted by SB 863 and the WCAB will again be forced to devote significant time and resources to deciding lien claims and take away from making case-in-chief decisions regarding benefits for injured workers.

For example, a lien claimant (if made a party to the case in all situations) will have the ability to file a DOR and cause WCAB to set a case for hearing prematurely. CCWC believes this would be a waste of limited WCAB resources.

Moreover, it does not make sense to add lien claimants as parties to the case, yet not require lien claimants to appear at hearings and MSCs. See new Section 10752 (d) which relieves a lien claimant from attendance at MSC or a hearing to the case in chief.

A provider of services on a claim where liability is in dispute should not be permitted to be a lien claimant until the claim adjudication process is complete.

Labor Code § 4610(h) and (l) allows the employer/claims administrator to defer decision on an RFA of a provider in a claim where liability is in dispute until such time as a determination is made that the claim is industrial, either by order of the WCAB or as a decision to accept liability. This, as the WCAB knows, requires the provider rendering services during the disputed period to serve medical reports and RFAs, which the employer can defer until a determination of liability or acceptance is made. At the time that liability or acceptance has been

determined, the employer has 60 days to conduct retrospective utilization review (UR). If UR determines that the treatment is certified as being medically necessary, the claims administrator is required to pay for the service in accordance with Official Medical Fee Schedule (OMFS) or applicable PPO contract within 45 days. If the service is non-certified, an appeal can be made for Independent Medical Review (IMR). If there is a dispute over the payment, an appeal can be made to Independent Bill Review (IBR). In other words, if 60 days after an Order finding liability or an acceptance of liability has issued, and no further action occurs, then the provider may file a lien for services.

Moreover, if a lien claimant is deemed a party, this would require service of medical records on the lien claimant. However, non-medical lien claimants are not entitled to records. This change in the status of the all lien claimants would only add confusion over who is entitled to service of records.

Further, due to the increased service requirement, this proposed regulatory change will increase the total loss adjustment expenses in the system. Loss adjustment expenses have already increased by $600 million since 2013. These costs are already the highest in the nation and despite the intent of Legislature as noted in both SB 899 and SB 863 to reduce costs and friction, they continue to increase unabated. The proposed changes will serve to reinforce California's dubious distinction of the most costly workers' compensation system and do nothing to improve the delivery of benefits to injured workers.

WCAB should also be aware the proposal to make lien claimants party to the case in chief would result in delays in settlement approval. If a lien claimant is a party to a claim, it would follow that all liens must be resolved within a settlement. This would lead to unnecessary delays in the delivery of benefits and settlement funds to the injured employee, by first necessitating resolution of a lien.

Further, It is likely that the proposed change as to who is a party to a workers' compensation claim exceeds of the scope of the WCAB's regulatory authority to determine.

Recommendation: Considering the above reasons, CCWC requests the definition of lien claimant, as a party to a case, be retained as is currently exists in § 10305 (o) (3) (A) and (B).

8 CCR § 10305 (q): Definitions and Section 10325: *En Banc* and Significant Panel Decision

CCWC has serious concerns regarding proposed 8 CCR Sec. 10305, subdivision (q), under "Définitions" and 8 CCR Sec. 10325 relating to "En Banc and Significant Panel Decisions", over the use of panel decisions (whether or not "significant") in the dispute resolution process.

Reason: The definition of a significant panel decision in proposed 8 CCR Sec. 10325 "means a decision of the Appeals Board that has been designated by all members of the Appeals Board as of significant interest and importance to the workers' compensation community."

However, proposed 8 CCR Sec. 10325(b) states: "The Appeals Board may designate a panel decision as "significant" on a majority vote of the commissioners." More important, we strongly urge the Board to reconsider the entire concept of a "significant" panel decision. Whether by a majority vote or with unanimous agreement, there is a majority of the Commissioners who agree with the legal issues addressed in a "significant" panel decision.

This intermediate level of importance is not supported by statute. In fact, Labor Code § 115 states that panel decisions resolve the law of the case, "unless the matter has been reassigned by the chairman on a majority vote of the appeals board to the appeals board as a whole in order to achieve uniformity of decision, or in cases

presenting novel issues." It is difficult to understand how the Board could agree that something is of such interest to the workers' compensation community that it should be labelled "significant" but not so "significant" as to warrant it being uniform and precedential.

Recommendation: WCAB exclude the addition of a Significant Panel decision and instead rely on the authority granted by LC § 115, when appropriate to do so.

8 CCR § 10555 – Petition for Credit

Clarity at Issue: There is significant concern over the clarity of the proposed § 10555 – Petition for Credit and under what circumstances it applies. Is it the WCAB intent that this is limited to third party credits? Does it apply to a mere overpayment of Temporary total disability that can otherwise be resolved by repayment or by agreement of the parties. Does it only involve litigated cases? Has the WCAB considered existing case law in drafting the regulation? Is it the intent of the WCAB to increase friction, litigation and costs by mandating that non-litigated cases be subject to this provision? Does the WCAB intend to have the parties forego resolution by agreement?

Inconsistency with Statute and Case Law: The proposed Petition for Credit regulation, as drafted, is a prime example of the WCAB forcing litigation on the parties without allowing for resolution by agreement and by delaying the application of third-party credits resulting in unjust enrichment/double recovery.

Labor Code § 3858 provides that, "After payment of litigation expenses and attorneys' fees fixed by the court pursuant to Section 3856 and payment of the employer's lien, the employer shall be relieved from the obligation to pay further compensation to or on behalf of the employee under this division up to the entire amount of the balance of the judgment, if satisfied, without any deduction." Labor Code § 3861, "The appeals board is empowered to and shall allow, as a credit to the employer to be applied against his liability for compensation, such amount of any recovery by the employee for his injury, either by settlement or after judgment, as has not theretofore been applied to the payment of expenses or attorneys' fees, pursuant to the provisions of Sections 3856, 3858, and 3860 of this code, or has not been applied to reimburse the employer." *Emphasis added.*

Likewise, current case law SCIF v. Brown, 130 CA3d 933 (1982) allows for automatic credit involving third-party cases, in order to avoid an unjust enrichment and duplicate recovery, which the current draft of this regulation ignores. Currently, in most situations these credits are resolved by agreement, stipulated to by the parties or as part of a third-party Compromise and Release. Clearly, if the parties are unable to reach an agreement, then a Petition for Credit is the proper tool. In either case, the regulation as drafted in not consistent with current statutory or case law. It should instead reflect the right of the employer to assert the credit, to avoid the unjust enrichment, to be followed shortly thereafter by a Stipulated Agreement, Third-Party C&R or failing an agreement a Petition for Credit.

Requirement of Settlement Document Vs. Confidentiality: Further, 10555 (b)(1) requires that the party asserting the credit "shall include…" the settlement or Judgement from the civil case. While judgements, may be obtained as a matter of public record, settlement agreements, "Release of Claims" are between the employee (injured worker) and the third-party they are not available to the employer, a fact not considered in this regulation. Most civil settlement between the employee (injured worker) and the third-party are considered confidential and are thus unavailable to the employer or their claims administrator, despite the holding in Swanson v WCAB (1994), 59 CCC 806, finding that these settlement documents are not Confidential. Absent a the WCAB including in the regulation a determination that these settlements are not confidential as they pertain to issues of credit before the WCAB and absent a rule requiring disclosure of these settlement documents to the employer and their claims

administrator, no employer will be able to satisfy the requirements of the WCAB resulting in universal unjust enrichment and duplicate recovery by the injured workers.

If § 10555 (b) were to continue in the current form employers would be forced to become intervenors in every litigated civil case to avoid any unjust enrichment. While that would increase costs to employers and continue the loss adjustment expense dilemma, it would offer no protection to employers for civil claims that are resolved without litigation.

Non-Litigated Cases: However, this resolution by agreement versus filing of a Petition only involves those cases that have already litigated. These cases only represent a small portion of the claims filed in our state.

There are thousands of other claims that remain un-litigated. Of those there are few that involve a minor overpayment, caused by late notification of a release to work or MMI status. In many of these cases there is and would be no need for litigation. A simple repayment or agreement to waive an overpayment can occur. WCAB would require the filing of a Petition for Credit in these non-litigated cases by requiring the filing of an Application and the Petition for Credit. Absent a ruling on the Petition, a DOR would be necessitated, thus forcing employers to incur increased litigation costs (loss adjustment expenses), both in terms of defense and the potential for attorney fee liability. Even if the applicant still chose not to litigate the matter, employers would be left with the increased cost of securing dismissal of an application on a claim that would otherwise not require any litigation or dispute.

Recommendations: It is with the aforementioned concerns in mind that we therefore request that the WCAB eliminate this section or redraft this section by including the below:

- Resolution by agreement of the parties;
- Permitting repayment of overpayments;
- Exempting non-litigated cases from any action or alternatively, eliminating attorney fees related to petitions for credit and Declarations of Readiness to resolve them;
- Permitting the employers to assert credit immediately consistent with existing case law,
- Permitted the parties to resolve the Credit issues by agreement (Stipulated or Third-Party C&R) or by Petition for Credit if no credit agreement can be reached within 30 days of the employer's assertion of a credit.
- Finding that third-party settlements, whether Judgement, Release of Claims or any other civil claim resolution document are not confidential, consistent with existing statute and case law, as they relate to credit in the injured worker's workers' compensation claim;
- Finding, that it is the duty of the injured worker to fully disclose any and all third-party settlement documents or judgements along with an accounting of disbursements, stemming from a work-related injury, to the employer and/or claims administrator of the workers' compensation claim, no later than 10 days after such any agreement or judgement is finalized.
- Requiring that any objection to a Petition for Credit by an applicant must include a copy of all third-party settlement documents or judgements along with an accounting of disbursements.

8 CCR § 10786 Resolution of Non-IBR medical Legal Disputes

We acknowledge that Labor Code 4622(c) requires defendant to file a Petition for Non-IBR Determination and a Declaration of Readiness to Proceed. Regulation 10451 (enacted 10/23/13) created a remedy for violations of Labor Code 4622(c) that includes costs and sanctions as provided by Labor Code 5813. In the past few years, segments of the medical legal provider community have exploited the provisions for costs and sanctions creating absurd controversies over minimal amounts of monies that may be due, and as a result of the allowance of costs and sanctions, now create consequences involving significant amounts of potential costs for attorney fees.

An example of this practice involves the following scenario:

- Within days of the initial filing of the application the copy service issues subpoenas for the records of the employer and the insurer.
- The claims administrator promptly responds to the subpoena by objecting as having been premature.
- The copy service stops its subpoena efforts but then submits a billing for a cancellation fee of $75.00.
- The claims administrator appropriately objects to the billing and issues an EOR for zero payment.
- The copy service requests a second review.
- The claims administrator disputes all payment in the second area response.
- The copy service objects to the EOR's declaring a non-IBR dispute.
- The claims administrator fails to file the petition and Declaration of Readiness to Proceed required by the statute.
- The copy service then files its own petition for non-IBR Determination and its own Declaration of Readiness to Proceed.
- The controversy that is then heard of the WCAB now revolves around attorney fees that sometimes could exceed $2,000.00 over a dispute regarding a $75.00 charge which was improperly incurred in the first place.

Recommendations: Labor Code 4622(c) clearly does not mandate a remedy for violation of its terms which would allow for the WCAB to enact regulations that include provisions for costs and sanctions but does not require the WCAB to do so. In light of the abuses that have arisen since the enactment of Regulation 10451.1, we believe that the WCAB should remove all reference to costs and sanctions from Regulation 10786 (as it would apply to both payers and providers).

By doing so, the WCAB could hopefully slow down the epidemic of petitions for costs and sanctions that employers are currently facing and still allow the parties and the WCAB to pursue sanctions for bad faith actions and tactics under the general provisions of Labor Code 5813 in those circumstances where either party's actions are truly egregious. By doing so, hopefully, we will no longer see $2,000.00 attorney fees arising from a $75.00 dispute but still allow for potential costs and sanctions if/when either side acts in an egregious manner.

8 CCR § 10325 - En Banc and Significant Panel Decisions: See comments in 10305(q), above.

8 CCR § 10400 - Conduct of Parties, etc.: We support the recommended changes in created section.

8 CCR § 10440 – Contempt: We support.

8 CCR § 10488 – Objection to Venue: We support this change. A timely permissible objection makes mandatory the change of venue. We support the Appeals Board changes here, which should streamline this process.

8 CCR § 10515 - Petition & Answers: We support the changes

8 CCR § 10540 – Petition to Terminate Liability for continuing Temporary Disability:

Regulation in conflict with Statute: This regulation defeats the intent of the statute as it would require the defendant to give notice PRIOR to its intent to terminate temporary total disability (TTD), which at that point in time medical evidence may not exist. Further, the changes herein defeat the intent of the labor code by requiring payment beyond evidence rebutting termination of TTD status and most importantly it is outside of the scope of LC § 4651.1, which clearly allows for termination when evidence supporting termination exists.

Further, this section in conjunction with the proposed changes to 8 CCR § 10555, would only serve to create more litigation, by not only requiring a Petition to Terminate, which is inconsistent with the statute, but also to create a duty to file a Petition for Credit, generated solely by this regulation.

Recommendation: 8 CCR § 10540 must be written in such a way to be consistent with LC § 49651.1.

8 CCR § 10547 - Petitions for LC § 5710 Fees:

Sub-section (g) – permitting Sanctions:

Recommendation: There needs to be similar avenues for costs and sanctions when applicant attorney prematurely files a petition for LC § 5710 fees. A mere dismissal of a petition, as noted in subparagraph (e), is insufficient to address this bad faith behavior or the costs incurred by the defendant and the WCAB district office.

The employer community anxiously awaits the Division of Workers Compensation's LC § 5710 fee recommendations that are over a year past due.

8 CCR § 10610 - Proof of Service:

There is no statutory authority for requiring a Proof of Service on every medical report. Requiring this will create a significant cost burden on all parties associated with the Proof of Service paperwork required.

Medical reports can be easily transmitted by fax or mail within the required time period. By requiring the creation of a proof of service every time a medical report is received, the process of delivery will be delayed and costs for all parties will be increased.

Regulatory Conflict: Further this section is in conflict with the language in 8 CCR §10625 Service.

8 CCR § 10632 (b) – Service on the DWC and DIR:

Recommendation: This section must state which documents have to be served on the Subsequent Injury Fund.

8 CCR § 10670(b)(2) – Evidence:

The section limits submission of evidence to that which is served prior to a Mandatory Settlement Conference. Currently, a party has been permitted to serve a document received at a Mandatory Settlement Conference.

Recommendation: We recommend that instead of 'prior' the section should read 'prior to or at the mandatory settlement conference,…'.

8 CCR § 10700(c) – Approval of Settlements:

We cannot support the changes reflected in this section. When there is a good faith dispute which would otherwise bar the employee from receipt of the Supplemental Job Displacement Voucher Benefit the parties should be in a position to resolve this issue and not to create further litigation of this issue. We therefore recommend the redacted changes be unredacted.

8 CCR § 10752(c) – Appearances Required:

We believe the injured worker MUST face consequences for failure to appear at the Mandatory Settlement Conference (MSC). The Mandatory Settlement Conference loses its value and purpose as a settlement conference if the applicant is not present.

Recommendation: For the above reason, we do not agree with proposed change and recommend 10752 (c) be removed.

8 CCR § 10790 – Interpreters:

Recommendation: Stricken language should be reinstated pending the Administrative Director issuing regulations with an Interpreter Fee Schedule.

8 CCR § 10832(c)(2) - Notice of Intention etc.:

Our concerns in this section focuses on the ability of the WCAB to issue an Order in the face of a valid objection. Due process requires the party objecting the right to be heard.

Recommendation: Therefore, we recommend removal of subsection (c)(2).

8 CCR § 10940(a) and 10955(b) – Petitions for Reconsideration etc. and Petitions for Removal and Answers:

The proposed change removes the opportunity of a party to file Petition for Reconsideration at any district office, in addition to e-filing.

CCWC believes this regulation as drafted does not further the rights of the parties and only serves to increase loss adjustments expenses.

Recommendation: We recommend that the filing a Petition for Reconsideration be permitted at any district office for convenience of parties. Many parties and representatives are not e-filers. Requiring a Reconsideration petition to be filed only at the district office where the matter is pending will be inconvenient, expensive, and serves no valid purpose. A document filed at any district office will electronically load to the file and create a task for the WCJ assigned regardless of the filing location.

Thank you again for the opportunity to submit comments on the proposed regulations.

Respectfully submitted,

Jason Schmelzer
California Coalition on Workers' Compensation

cc: Katherine Zalewski, Chair
Workers' Compensation Appeals Board
PO Box 429459
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September 24, 2019

VIA E-MAIL – WCABRules@dir.ca.gov

Workers' Compensation Appeals Board (WCAB)
Attn: Rachel E. Brill, Industrial Relations Counsel
P.O. Box 429459
San Francisco, CA 94142- 9459

Re: Proposed Amendments to WCAB Rules of Practice and Procedure

Dear Ms. Brill:

These comments on the proposed amendments to the WCAB Rules of Practice and Procedure are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 81% of California's workers' compensation premium, and self-insured employers with $72.1B of annual payroll (31.7% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Alaska National Insurance Company, Allianz Global Corporate and Specialty, AmTrust North America, Berkshire Hathaway, CHUBB, CNA, CompWest Insurance Company, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Insurance, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Adventist Health, Albertsons/Safeway, BETA Healthcare Group, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Los Angeles, City of Pasadena, City of Torrance, Contra Costa County Risk Management, Costco Wholesale, County of Los Angeles, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, East Bay Municipal Utility District, Grimmway Farms, Kaiser Permanente, Marriott International, Inc., North Bay Schools Insurance Authority, Pacific Gas & Electric Company, Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group, Southern California Edison, Special District Risk Management Authority, Sutter Health, United Airlines, University of California, and The Walt Disney Company.

Recommended revisions to the proposed regulation are indicated by underscore and ~~strikeout~~. Comments and discussion by the Institute are identified by *italicized text.*

General Consideration

The Institute urges the Workers' Compensation Appeals Board to reconsider its adoption of a style change that excludes use of the serial comma (also known as "Oxford comma"). The risk of ambiguity that is created by the mandatory exclusion of punctuation is particularly acute in regulatory drafting and interpretation. The Board's attention is directed to the recent court decision in a class action lawsuit about overtime pay for truck drivers ("Lack of Oxford Comma Could Cost Maine Company Millions in Overtime Dispute").

§10305(a)
Recommendation:
(a) "Administrative Director" means the Administrative Director of the Division of Workers' Compensation or ~~their~~ the Administrative Director's designee.

Discussion:
The Institute applauds the WCAB's efforts to use gender-neutral pronouns throughout these Rules. Unfortunately, the use of a third-person plural pronoun does damage to ordinary rules of grammar, syntax, and comprehension, and may result in unintended legal consequences. The better solution is to avoid the use of pronouns altogether ("Gender Neutral Language"). Indeed, the proposed revisions to Rules 10398, 10470, and 10785 are great examples of this solution.

§10305(o) - Defining "Party"
Recommendation:
(3) A lien claimant where either:
(A) The underlying case of the injured employee or the dependent(s) of 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 the case.

Discussion:
The Institute has serious concerns about the proposal to redefine "party" to include lien claimants. Historically, and in every other court system in California, "parties" are strictly defined as the plaintiff and the defendant. In workers' compensation, the grand bargain is between injured workers and their employers; the parties are easily identified as the applicant and the employer/claims administrator. Ancillary participants to the case such as medical providers, copy services, interpreters, etc., are vendors.

Vendors have no valid interest in the case-in-chief, merely in the reimbursement for the goods and services provided during the pendency of the case. While issues of AOE/COE and employment may have a bearing on the rights of such vendors, these service providers do not participate in the adjudication of such disputes. Indeed, the proposed amendments herein even allow for lien claimants to be excused from attending the MSC and trial. Other proposed amendments provide a confusing labyrinth of rules for whether and when medical information may be shared with these "parties."

Since the reforms of SB 863, the WCAB has made tremendous strides in curtailing the out-of-control lien environment that clogged the system and prevented resources from being utilized for the case-in-chief. This proposed amendment would have the effect of nullifying many of these successful efforts by unnecessarily expanding the rights of ancillary participants in the case.

Practitioners at the WCAB are accustomed to the existing, sensible rules defining a lien claimant as distinct from a party to the case-in-chief. Rebranding lien claimants as parties is likely to result in unintended legal consequences. Placing the mantle of "party" upon service providers will create havoc in the orderly proceeding of legal disputes because "parties" have rights of notice and service, as well as participation in discovery, deposition, pre-trial proceedings, trial, and appeal. There is no need to expand the definition of "party" to include vendor service providers, only to then excuse those vendors from major aspects of the case-in-chief.

In light of new §10752(d) (relieving a lien claimant from obligation to appear at MSC or trial of the case-in-chief), and with the repeal of former §§10563.1(c) and (d) (requiring certain lien claimants to appear at MSC or trial of the case-in-chief), the concerns raised in the Initial Statement of Reasons explaining this proposed rule have been rendered moot. The proposed amendment is a solution in search of a problem that does not exist. The definition of lien claimant as a "party" only in limited circumstances should be restored in full.

§10305(q) – "Significant panel decision" defined
and
§10325(b) – En Banc and Significant Panel Decisions
Recommendation:
Delete these proposed regulations.

Discussion:
An expression of the need for a rule, no matter how compelling, cannot fill a gap in legal authority. State Compensation Insurance Fund v. WCAB (Sandhagen) *(2009), 73 CCC 981.*

The Institute is aware of the informal practice of the WCAB in issuing "significant panel decisions." But none of the cited authority (Labor Code §§115, 133, and 5307) actually contemplates the creation of a new level of decisional authority. The Institute is unaware of a pressing need to highlight non-binding panel decisions of general interest. Indeed, the proposal to require a majority vote of the Commissioners prior to application of the designation of a case as "significant" begs the question of why the decision is not simply rendered en banc. The recent case of Pa'u v. Dept. of Forestry *is a perfect example of a case identified by the WCAB as significant that should have been issued en banc. With only a "significant" designation attached to it, future litigants and even WCJs are free to ignore this ruling and the Institute questions the point of the designation.*

At the same time, and despite the effort to emphasize the non-binding nature of these panel decisions, the cases that have already received the "significant" designation are in practice treated as binding by both practitioners and judges alike. The Institute recommends that the confusion here is best avoided by the elimination of the significant panel *designation rather than its confirmation, and the increased utilization of the* en banc *designation in order to achieve uniformity of decision.*

§10465 – Answers
Recommendation:
An Answer to each Application for Adjudication of Claim ~~shall~~ may be filed and served ~~no later than the shorter of either:~~ within 10 days after service of ~~a Declaration of Readiness to Proceed, or 90 days after service of~~ the Application for Adjudication of Claim.

Discussion:
The Institute agrees that 10 days is seldom long enough for a meaningful assessment of a claim and the filing of a useful response. Nevertheless, the Institute recommends that the proposed language correctly reflects the relevant statutory authority. Labor Code §5500 does not require the filing of an Answer, and states only that no pleadings other than an Application or Answer shall be required. Labor Code §5505 does not permit the WCAB to "alter the response timeline" for the filing of an Answer.

§10470 – Labor Code Section 4906(h) Statement.
Recommendation:
(c) If any of the above parties ~~are~~ is not available, cannot be located or ~~are~~ is unwilling to sign the statement required by Labor Code section 4906(h), a declaration under penalty of perjury setting forth in specific detail the reasons that the party is not available, cannot be located or is unwilling to sign, as well as good faith efforts to locate the party, may be filed with the ~~a~~Application for Adjudication of Claim or ~~a~~Answer. If the presiding workers' compensation judge or designee determines from the facts set forth in the declaration that good cause has been established, the presiding workers' compensation judge or designee may accept the ~~a~~Application for Adjudication of Claim or ~~a~~Answer for filing. For the purpose of this rule, a Compromise and Release agreement or Stipulations with Request for Award shall not be treated as an Application for Adjudication of Claim.

Discussion:
Grammatical correction of subject-verb agreement is suggested for the opening clause of the subdivision, which will then also match the subsequent clause. Additional language is recommended for the opening sentence, in order to clarify the distinction between the Labor Code §4906(h) statement and the declaration authorized by this subdivision. Certain capitalizations and expanded titles are recommended for consistency.

§10488 – Objection to Venue Based on an Attorney's Principal Place of Business
Discussion:
The Institute supports this rule providing for an automatic change in venue under certain circumstances.

§10500 – Form Pleadings
(c) 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.
(d) 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.

Discussion:
The proposed deletion of the example in subdivision (c) leaves the subsequent mention of "hard copy" without any frame of reference. Additionally, the Institute suggests splitting the final sentence into its

own subdivision, in order to avoid any question that the language applies to all forms created by the Division, and not just those under subdivision (c)(2).

§10540 – Petition to Terminate Liability for Continuing Temporary Disability
Recommendation:
(a) A petition to terminate liability for temporary total disability indemnity under a findings and award, decision or order of the Workers' Compensation Appeals Board shall be filed ~~at least one week prior to termination of temporary disability~~ within one week of the termination of temporary disability payments and shall conform substantially to the form provided by the Appeals Board and shall include: […]

Discussion:
The proposed regulatory language results in a clear conflict with the enabling statute, Labor Code §4651.1. The statute provides that there is a rebuttable presumption that temporary disability continues for at least one week following the filing of a petition alleging that disability has decreased or terminated. By this language, the statute contemplates that the presumption can be rebutted and that the week following the filing of a petition may be noncompensable. In contrast, the proposed rule requires payment of indemnity for the week following the filing of a petition and thus defeats the rebuttable nature of the statutory presumption.

Under the statute, when a claims administrator receives evidence supporting termination of temporary disability status, payments may be appropriately discontinued at that time (inasmuch as the injured employee is no longer entitled to continuing temporary disability indemnity), subject to the rebuttable presumption.

It should be noted that Labor Code §4651.1 permits the termination of benefits immediately (no one week, no rebuttable presumption) where the injured worker has returned to work. The statute permits the immediate cessation of benefits, and the proposed rule is invalid to the extent that it conflicts with this statutory provision.

§10545 – Petition for Costs
Recommendation:
(g) (1) A petition for costs may be placed on calendar:
(A) On the filing of a declaration of readiness by an employee, a dependent, or a defendant, or a petitioning interpreter that lists the petition as an issue; or
(B) On the Workers' Compensation Appeals Board's own motion.

Discussion:
Please see detailed discussion related to proposed rule 10789.

§10547 – Petition for Labor Code Section 5710 Attorney's Fees
Recommendation:
(d) A petition for attorney's fees ~~pursuant to Labor Code section 5710~~ shall not be filed or served until at least 30 days after a written demand ~~for the fees~~ has been served on the defendant(s), stating with specificity the benefits sought under Labor Code section 5710. The petition shall append:[…]
~~(4) A verification.~~

(e) Failure to comply with subdivisions (c) and (d)(1)-(3)~~(4)~~ of this rule shall constitute a valid ground for dismissing the petition with prejudice.

Discussion:
Because of the varied nature of benefits in addition to attorney's fees available under Labor Code §5710 (e.g., expenses, wages, copy of transcript, interpreting services) and in light of the proposed availability of monetary sanctions, fees, and costs, it is appropriate to require a written request precisely specifying the benefits being sought. Subdivision (c) and (d)(4) appear to be duplicative, so a deletion of the latter is suggested. Adding consequences for the failure to abide by the rules will help to stem misuse of the proposed procedures.

*The Institute applauds efforts to regulate procedures for obtaining fees under Labor Code §5710. Under Labor Code §5710(b)(4), a formal fee schedule for deposition fees was required by July 1, 2018. The Institute continues to await implementation of the formal rulemaking process on this issue, which will provide further context to the proposed procedures under §10547 (*e.g., *whether and under what circumstances reimbursement is required for attorney travel time).*

§10555 – Petition for Credit
Recommendation:
(a) An employer shall not take a credit for any payments or overpayments of benefits pursuant to Labor Code section 4909 unless ~~ordered or awarded~~ approved by the Workers' Compensation Appeals Board. ~~A~~ If filed, a petition for credit shall include: […]
(b) An employer shall not take a credit for an employee's third party recovery pursuant to Labor Code section 3861 unless ~~ordered or awarded~~ approved by the Workers' Compensation Appeals Board. ~~A~~ If filed, a petition for credit shall include~~:~~
~~(1) A copy of the settlement or judgment; and~~
~~(2) A~~an itemization of any credit applied to expenses and attorneys' fees pursuant to Labor Code sections 3856, 3858 and 3860.

Discussion:
As a practical point, the Institute does not dispute the need for WCAB approval of a claimed credit, nor of the invalidity of a credit asserted unilaterally. However, the mandating of a formal Petition and corresponding formal adjudication is completely unnecessary and frankly unworkable. Parties should be permitted to informally agree upon a credit without the need for a formal Petition and WCJ order.

- *It is not unusual for the employer and/or injured worker to initially provide the claims administrator with an incorrect wage statement, resulting in TD overpayments for a period of time.*
- *Frequently, MMI examinations are conducted while TD is being paid and the permanent and stationary reports are received weeks later, resulting in TD overpayments for a period of time and/or support an adjustment to the PD benefit rate.*

The vast majority of claimed credits arise from incidents like these. The routine and informal adjustment of benefit overpayments has not historically required routine judicial intervention, but it is readily available when it is needed. Informal resolution of these credits should be encouraged, requiring only WCAB approval of a negotiated settlement but without a requirement for a formal Petition and adjudication. The regulation as proposed will unnecessarily burden both claims administrators and District Offices.

The Initial Statement of Reasons is partly correct: There is settled case law preventing an employer from unilaterally taking a credit for an alleged overpayment of benefits. But there is no requirement in the code or in case law that the employer "must file a petition for credit with the WCAB to have the issue adjudicated." Informal resolution of these disputes should be permitted and encouraged.

Regarding third-party credit rights, the proposed rule is in conflict with the relevant statutes. Labor Code Section 3858 provides that in civil subrogation "the employer ***shall*** *be relieved from the obligation to pay further compensation to or on behalf of the employee under this division up to the entire amount of the balance of the judgment, if satisfied, without any deduction." And Labor Code Section 3861 mandates that the WCAB "****shall*** *allow, as a credit to the employer to be applied against his liability for compensation, such amount of any recovery by the employee for his injury, either by settlement or after judgment…." Subrogation credit is mandatory in most instances and applies to nearly all species of benefits. Put simply, the employer is entitled to a credit from applicant's net recovery in a third party lawsuit. But the proposed rule requires a Petition and Order in all cases as a prerequisite to the employer's assertion of the credit against ongoing benefits. In practice, the delay of the credit defeats the rights of the employer. In light of the reluctance of most WCJs to set priority trials on credit matters, the result is that the applicant enjoys a double recovery while the mandatory credit rights of the employer are left to wither to dust.*

As a practical matter, compliance with the requirement that a Petition in a third-party credit situation include a copy of the settlement is nearly impossible. The employer simply has no right nor even opportunity to obtain a copy of the (often confidential) settlement agreement to which it is not a party. Until a viable avenue is provided to obtain this information, a requirement to include it here is pointless and would prevent rightful credit.

As currently drafted the proposed rule is invalid ab initio*:*

> *[N]o regulation adopted is valid or effective unless consistent and not in conflict with the statute. Therefore, it has been said that when a statute confers upon a state agency the authority to adopt regulations, the agency's regulations must be consistent, not in conflict with the statute and that a regulation that is inconsistent with the statute it seeks to implement is invalid. No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes.* Mendoza v. WCAB *(2010) 75 CCC 634, 640 (WCAB en banc) (internal citations and quotations omitted).*

There is nothing in Labor Code §4909 that supports the proposition that all claimed benefit overpayments must be formally adjudicated by the WCAB. The Board has no authority to implement proposed rule 10555 as written, and the proposed rule should be altered accordingly.

§10570 – Petition to Enforce an Administrative Director Determination
Recommendation:

(a) A~~n aggrieved~~ party may file a "Petition to Enforce an Administrative Director Determination" after the Workers' Compensation Appeals Board has issued a final order affirming an IBR, IMR, or other determination issued by the administrative director or after the time to appeal the determination to the Workers' Compensation Appeals Board has expired.

Discussion:
A party wishing to enforce a determination from the Administrative Director, after the WCAB has issued its affirmance of the determination, will not be "aggrieved"; rather, that party will have been successful in achieving a desired result and seek only to enforce the ruling.

§10600 –Time for Actions
Discussion:
The new provision regarding computation of time (and excluding Saturdays and Sundays) apparently applies only to Filing and Service of Documents pursuant to Article 9. The Institute's primary concern over computation of time relates to the conflict between Labor Code §4610(i)(1) ("five working days"), and 8 CCR §9792.9.1(c)(3) ("five business days"). The Institute respectfully suggests that the WCAB take this opportunity to affirmatively define (in all contexts) both "business day" and "working day" as any day other than a Saturday, a Sunday, a day declared by the Governor to be an official State holiday, or a day listed at Calhr.ca.gov, which has the added benefit of comporting with the language of recently passed legislation (SB 537), currently pending the Governor's signature with an anticipated effective date of January 1, 2020.

§10620 – Filing Proposed Exhibits
Recommendation:
Delete this proposed regulation.

Discussion:
Current rules require that all trial exhibits must be listed on the pre-trial conference statement, but only certain relevant medical reports need to be filed in advance of trial. "No other…documents shall be filed" prior to trial, unless ordered by the WCJ [8 CCR §10393(b)(1)]. Instead, all other documents "shall be filed at the time of trial." [8 CCR §10393(c)(3)].

The proposed regulation stands in stark contrast to existing rules, and the proposed rule requires the advance filing of all documents to be offered at trial. Even in a case of ordinary complexity, this would likely encompass numerous documents including a claim form, wage statement, denial letter, benefit notice(s), benefit printout, QME waiver, notice of offer of regular/modified work, job description, ergonomic reports, treatment reports, correspondence, and excerpts from subpoenaed records. More complicated cases such as those involving death claims or affirmative defenses -- i.e., cases even more likely to proceed to trial -- would include an exponentially greater number of submitted trial exhibits.

According to the ISOR, practitioners are reminded that the WCJ can always reduce the 20-day requirement. In this regard the Institute notes that Labor Code section 5500.3 requires uniformity among all District Offices and WCJs: "No district office of the appeals board or workers' compensation administrative law judge shall require forms or procedures other than as established by the appeals board." The Institute suggests that the process contemplated by proposed rule 10787(b) ("Unless already filed in EAMS, the parties shall have all proposed exhibits available at trial for review by and filing with the trial workers' compensation judge") *is adequate and appropriate to address trial exhibits.*

§10625 – Service
Recommendation:
(a) Except as otherwise provided by these rules at 10300 et seq., service shall be made on the attorney or agent of record of each ~~affected~~ party unless that party is unrepresented, in which event service shall be made directly on the party.

Discussion:
The Initial Statement of Reasons suggests that the use of "affected party" provide sufficient clarity for a determination of which documents must be served on what parties (particularly, lien claimants now designated as "parties"). The Institute suggests that the use of "affected party" is inadequate for the case participant to determine whether a particular service is required to be made upon a lien claimant. This confusion clearly demonstrates one of the many dangers engendered by the inclusion of lien claimants in the definition of "party." Other serious concerns include the likelihood of service of private or confidential information, including medical information, upon those having no business receiving it, notwithstanding proposed rule 10637.

§10629 – Designated Service
Recommendation:
~~(c) Within 10 days from the date on which designated service is ordered, the person designated to make service shall serve the document and shall file the proof of service.~~

Discussion:
*A requirement for the Appeals Board's designee to not only serve the document but also file the proof of service with the WCAB doubles the administrative burden; the additional 10-day deadline not only for service but also for filing renders this rule practically unworkable. A better solution, while still accomplishing the desired result, would be to require service within 10 days, with the party ordered to maintain the original proof of service until and unless ordered to file it at the WCAB -- if and when a dispute arises. The Initial Statement of Reasons suggests that this proposed solution is unreliable. However, if it is coupled with a negative inference rule (*i.e., *failure to produce a Proof of Service permits an inference that the document was not served as alleged), such solution would serve to encourage reliable record-keeping.*

The numbers contemplated here are staggering. Assuming that the District Offices hold 350,000 hearings annually (not to mention any walk-through hearings), each set of Minutes of Hearing, Orders Approving, interim rulings, and even orders taking off calendar would result in a necessary filing at the WCAB. Sufficient WCAB personnel are simply not available to absorb this increased workload, nor is there a valid basis for parties (almost always defendants) to incur costs associated with such a requirement.

It should be noted that the California Applicants' Attorneys Association has also submitted forum comments objecting to this proposed requirement.

§10670 – Documentary Evidence
Discussion:
The Institute appreciates the updated language clarifying that a WCJ may decline to admit into evidence documents not served either prior to or at the mandatory settlement conference, in compliance with Labor Code §5502(d)(3).

§10700 – Approval of Settlements
Recommendation:
(c) Agreements that provide for the payment of less than the full amount of compensation due or to become due and undertake to release the employer from all future liability will be approved only where it appears that a reasonable doubt exists as to the rights of the parties or that approval is in the best interest of the parties. No agreement shall relieve an employer of liability for provision of supplemental job displacement benefits unless the Workers' Compensation Appeals Board makes a finding that there is a good faith issue which, if resolved against the injured employee, would defeat the employee's right to all workers' compensation benefits.

Discussion:
The Institute supports regulatory sanction of the rule announced in Beltran v. Structural Steel Fabricators*, 2016 Cal. Wrk. Comp. P.D. LEXIS 366, wherein it was held that the prohibition on settlement of Supplemental Job Displacement Benefit voucher in Labor Code §4658.7(g) is analogous to settlement of vocational rehabilitation benefits, and that where parties establish that there is good faith dispute which, if resolved against injured worker, would defeat injured worker's entitlement to all workers' compensation benefits, the injured worker may settle potential right to Supplemental Job Displacement Benefit voucher by way of Compromise and Release.*

§10742 – Declaration of Readiness to Proceed
Discussion:
The Institute applauds the additional language in subdivision (c) requiring a sworn statement of the actual efforts undertaken to resolve disputes prior to the filing of a Declaration of Readiness. The Institute believed that such statement was already required, inasmuch as the current DOR form requires the declarant to list "specific, genuine, good faith efforts to resolve the dispute(s)." Bringing the applicable regulation in line with the existing requirements on the form itself may serve to encourage WCJs to enforce compliance.

§10752 – Appearances Required
Recommendation:
(a) Each applicant and defendant shall appear or have an attorney or non-attorney representative appear at all hearings pertaining to the case-in-chief. Neither a lien conference nor a lien trial is a hearing pertaining to the case-in-chief.
(c) An ~~represented~~ injured employee or dependent shall personally appear at any mandatory settlement conference. Failure to appear shall not alone be a basis for dismissal of the application.
(d) A lien claimant need not appear at any mandatory settlement conference or trial in the case-in-chief…

Discussion:
The representation status of the injured worker is irrelevant to the need for personal appearance at a settlement conference. Indeed, the personal appearance of an unrepresented worker is even more necessary to an effective conference, inasmuch as there is no alternative representative present.

Notably, the differential treatment afforded to lien claimants versus parties in subdivision (d) underscores the senselessness of the proposed definition of lien claimants as parties.

Hyphenation of "case-n-chief" is recommended in accordance with common practice and for consistency with subdivision (a).

§10755 – Failure to Appear at Mandatory Settlement Conference in Case-in-Chief
Recommendation:
(a)(2) Close discovery and set the case-in-chief for trial.
(b)(2) Set the case-in-chief for trial.
(c) Where a required party, after notice, fails to appear at a mandatory settlement conference in the case-in-chief and good cause is shown for failure to appear, the workers' compensation judge may take the case off calendar, ~~or may~~ continue the case to a date certain~~.~~, or order payment of reasonable expenses, including attorney's fees and costs and, in addition, sanctions as provided in Labor Code section 5813. Before such an order is issued, the party or attorney must be given notice and an opportunity to be heard.
(d) This rule shall not apply to lien conferences, which are governed by rule 10875.

Discussion:
Hyphenation of "case-in-chief" is recommended in accordance with common practice and for consistency.

The Institute believes that the purpose of the mandatory settlement conference is best fulfilled by having all signatories to a settlement present at the time of the hearing. A requirement that all parties have settlement authority is valid, but a settlement does not actually occur without parties being physically present and ready to sign a settlement document. Accordingly, attendance must be mandatory and absence strongly disincentivized.

Notably here once again, the differential treatment afforded to lien claimants versus parties in subdivision (d) underscores the senselessness of the proposed definition of lien claimants as parties.

§10756 – Failure to Appear at Trial in Case-in-Chief
(a) Where an applicant served with notice of trial in the case-in-chief fails to appear either in person or by attorney or non-attorney representative at the trial, the workers' compensation judge may:[…]
(b) Where a defendant served with notice of trial in the case-in-chief fails to appear either in person or by attorney or non-attorney representative at the trial, the workers' compensation judge may hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a 10-day notice of intention to submit, make such decision as is just and proper.
(c) Where a required party, after notice, fails to appear at a trial in the case-in-chief and good cause is shown for failure to appear, the workers' compensation judge may take the case off calendar, ~~or may~~ continue the case to a date certain~~.~~, or order payment of reasonable expenses, including attorney's fees and costs and, in addition, sanctions as provided in Labor Code section 5813. Before such an order is issued, the party or attorney must be given notice and an opportunity to be heard.
(d) This rule shall not apply to lien trials, which are governed by rule 10876.

Discussion:
Hyphenation of "case-in-chief" is recommended in accordance with common practice and for consistency.

Failure to appear at trial likely represents the biggest waste of resources of all (both of the WCAB as well as the opposing parties). In addition to losing valuable time and effort and opportunity for other cases to proceed, a trial represents the last possibility of informal settlement. Accordingly, attendance must be mandatory and absence strongly disincentivized.

Notably here yet again, the differential treatment afforded to lien claimants versus parties in subdivision (d) underscores the senselessness of the proposed definition of lien claimants as parties. The differential treatment begs the question of whether and why lien claimants are being granted all of the privileges of a "party" and none of the obligations.

§10786 – Determination of Medical-Legal Expense Dispute
Recommendation:
~~(i) 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 and for sanctions under Labor Code section 5813 and rule 10421. 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 October 23, 2013, the monetary sanctions shall not be less than $500.00. These attorney's fees, costs and monetary sanctions shall be in addition to any penalties and interest that may be payable under Labor Code section 4622 or other applicable provisions of law, and in addition to any lien filing fee, lien activation fee or IBR fee that, by statute, 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 and for sanctions under Labor Code section 5813 and rule 10421. 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 October 23, 2013, the monetary sanctions shall not be less than $500.00.~~

Discussion:
Contrary to the Initial Statement of Reasons, the critical issue of §10451.1 is not difficulty in obtaining payment for services rendered but rather the manipulation of current §10451.1(g) (renumbered here as §10786) by some providers who have taken advantage of the opportunity to submit an improper billing, challenge the timely denial of payment, and then use the rules to create a WCAB dispute that now centers on ***attorney fees*** *-- perhaps in excess of $2000 in a dispute regarding a $75 cancellation fee charge that was improperly incurred in the first place. Rather than taking steps to curtail this business model, the proposed language seems to double down and sanction the abusive practice.*

The rationale as contained in the Initial Statement of Reasons ("Our intent is not to limit the application of sanctions for bad-faith actions by either defendants or medical-legal providers in any way") is simply wrong-headed. The Labor Code already provides ample protection for bad faith tactics, and proposed subdivision (i) should be deleted.

§10788 – Petition for Automatic Reassignment
Recommendation:
(a) An injured worker shall be entitled to one reassignment of a judge for trial or expedited hearing. If the injured worker has not exercised the right to automatic reassignment and one or

more lien claimants have become parties and no testimony has been taken, the lien claimants shall be entitled to one reassignment of judge for a trial, which may be exercised by any of them. The defendants shall be entitled to one reassignment of judge for a trial or expedited hearing, which may be exercised by any of them. ~~The lien claimants shall be entitled to one reassignment of judge for a lien trial, which may be exercised by any of them.~~ This rule is not applicable to conference hearings. In no event shall any motion or petition for reassignment be entertained after the swearing of the first witness at a trial or expedited hearing.

Discussion:
Current rule 8 CCR §10453 allows a lien claimant to petition only if the injured worker has not petitioned. The proposed rule greatly expands the ability of a lien claimant to petition for automatic reassignment. No clear explanation has been provided why a lien claimant should be able to independently disrupt a trial assignment, particularly where the trial judge has already managed multiple hearings and/or approved a settlement of the case-in-chief. The lien claimant's rights are still derivative of the injured worker. [See: Barri v. Workers' Compensation Appeals Board *(2018) 28 Cal.App.5th 428]. The Institute recommends that the original practice be preserved.*

§10789 – Walk-Through Documents
Recommendation:
~~(5) Petitions for Costs pursuant to rule 10545.~~

Discussion:
Proposed rule 10789 (and the deletion of certain provisions in rule 10545) discontinue the requirement that a Petition for Costs be accompanied by a Declaration of Readiness, and instead allow these petitions to be dealt with on a walk-through basis. It appears that the WCAB has failed to recognize the very serious dangers presented by the proposed change.

Petitions for Costs, typically filed for interpreting services, have become a tremendous source of system abuse. The potential for abuse was supposed to be addressed by the implementation of a Fee Schedule, designed to eliminate manipulation and misapplication of the rules and leaving any payment disputes up to the IBR process. Some service providers have taken advantage of the absence of regulation to overcharge for multiple hearings, depositions, and other non-medical events, or even duplication of services. (See, e.g., DWC NEWSLINE*, April 2, 2018, identifying a "reduction in double billing fees for multiple interpretations during the same time slot" as a primary basis for the proposed Fee Schedule.) Unfortunately, despite going through Forum Comments in 2015 and again in 2018, the Interpreter Fee Schedule has never been finalized for implementation.*

WCAB walk-through procedures are by definition ex parte*, and are ordinarily reserved for* ***non-controversial and undisputed pleadings****. But by their very nature, Petitions for Costs are disputed and are entirely unsuitable for resolution on a walk-through basis. Removing the due process protections provided by the requirement to file a DOR with an opportunity to be heard is misguided, and the requirement should be reinstated.*

§10790 – Interpreters
Recommendation:
It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter. Subject to the rules of the Administrative Director, the Workers' Compensation Appeals Board may in any case appoint an interpreter and fix the interpreter's compensation.

Interpreter's fees that are reasonably, actually and necessarily incurred shall be allowed as provided by Labor Code Sections 4600, 5710 and 5811. Interpreter's fees as defined in Labor Code section 4620, that are reasonably, actually and necessarily incurred as provided in Labor Code section 4621, shall be allowed in accordance with the fee schedule set by the Administrative Director.

Discussion:
In the continuing absence of an Interpreter Fee Schedule, the Institute fears that deletion of the only regulatory guideline for payment of interpreter services is dangerous. We suggest that, at a minimum, language be retained providing that only those fees that are reasonably, actually, and necessarily incurred are reimbursable, with the burden on the provider to demonstrate those facts. A sunset provision could be included to account for the Fee Schedule when it is finalized.

§10832 – Notices of Intention and Orders after Notices of Intention
Recommendation:
(c) If an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may:
(1) Sustain the objection; or
(2) ~~Issue an order consistent with the notice of intention together with an opinion on decision; or~~
~~(3)~~ Set the matter for hearing.

Discussion:
The dual purposes of the due process requirements for notice and opportunity to be heard would be effectively thwarted if an order were permitted to be issued over objection and without a hearing. Additionally, requiring that a hearing be held before an objection is overruled helps to ensure that a properly filed objection is actually seen and considered by the judge prior to rendering a decision.

§10873. Lien Claimant Declarations of Readiness to Proceed
Recommendation:
(a) A lien conference shall be set when any party files a Declaration of Readiness to Proceed in accordance with rule 10742 on any issue(s) relating to lien claim other than in the case-in-chief, or by the Workers' Compensation Appeals Board on its own motion at any time. […]
(b) When a party files and serves a Declaration of Readiness to Proceed on an issue relating to a lien claim other than in the case-in-chief, the party shall designate on the Declaration of Readiness to Proceed form that it is requesting a lien conference and shall not designate any other kind of conference. […]

Discussion:
Hyphenation of "case-in-chief" is recommended in accordance with common practice and for consistency.

§10874 – Verification to Filing of Declaration of Readiness to Proceed by or on Behalf of Lien Claimant
Discussion:
There appears to be a typographical error in the Initial Statement of Reasons accompanying proposed rule 10874, in that the reference is to new subdivision (e) but the additional language is in new subdivision (c).

§10875 – Lien Conferences
Recommendation:
~~(e) Any violation of the provisions of this rule may give rise to monetary sanctions, attorney's fees, and costs under Labor Code section 5813 and rule 10421.~~

Discussion:
The unusually broad language ("any violation") will create new incentive for manipulation and abuse. The Labor Code already provides ample protection for bad faith tactics, and proposed subdivision (e) should be deleted.

§10880 – Lien Trials
Recommendation:
~~(e) Any violation of the provisions of this rule may give rise to monetary sanctions, attorney's fees, and costs under Labor Code section 5813 and rule 10421.~~

Discussion:
The unusually broad language ("any violation") will create new incentive for manipulation and abuse. The Labor Code already provides ample protection for bad faith tactics, and proposed subdivision (e) should be deleted.

§10888 – Dismissal of Lien Claims
Recommendation:
(d) ~~A dismissal for failure to comply with the Labor Code or these rules shall only be issued if the lien claimant has failed to comply with a statute or rule that provides that a lien may be dismissed for non-compliance.~~
~~(e)~~

Discussion:
Few (if any) statutes or rules specifically provide for dismissal of lien claims. Particularly if lien claimants are now going to be included as "parties," lien claimants should have to abide by the rules like other parties. There should be no requirement that the lien claim can only be dismissed if specifically provided by the ignored law. The lien claimant's due process rights are adequately protected by the other provisions of this rule.

§10940(a) – Filing and Service of Petitions for Reconsideration, Removal, Disqualification and Answers
Recommendation:
Petitions for reconsideration, removal, or disqualification and answers shall be filed in EAMS, with any district office of the Workers' Compensation Appeals Board, or with the district office having venue in accordance with Labor Code section 5501.5 unless otherwise provided. Petitions for reconsideration of decisions after reconsideration of the Appeals Board shall be filed with the office of the Appeals Board. Petitions filed in EAMS pursuant to this rule must comply with rules 10205.10-10205.14.

Discussion:
One of the promised benefits of the Electronic Adjudication Management System was that it would streamline and simplify filing requirements. The filing of a petition for reconsideration, removal, or

disqualification creates a task for the WCJ in EAMS, and in that manner is brought to the WCJ's attention regardless of the physical District Office in which the petition is filed. While much of EAMS has delivered less than promised, the provision permitting appeals to be filed at any District Office has actually proven useful and convenient to parties who are already constrained by strict time deadlines. Notably, this change from current rule §10840 to new rule §10940(a) is not addressed in the Initial Statement of Reasons. The provision should be restored.

§10945 – Required Contents of Petitions for Reconsideration, Removal, Disqualification and Answers

Recommendation:

(c)(2) A document that is not part of the adjudication file shall not be attached to or filed with a petition for reconsideration or answer unless a ground for the petition for reconsideration is newly discovered evidence, and the document is directly related to the asserted ground.

Discussion:

Additional language is recommended for clarity and strict compliance with this proposed exception.

§10995(b) – Reconsideration of Arbitrator's Decisions or Awards

Recommendation:

(b) A petition for reconsideration from any final order, decision or award filed by an arbitrator under the mandatory or voluntary arbitration provisions of Labor Code sections 5270 through 5275, and any answer, shall be filed in EAMS or with ~~the~~ any district office ~~having venue in accordance with Labor Code section 5501.5.~~ No duplicate copies of petitions shall be filed with any other district office or with the Appeals Board.

Discussion:

One of the promised benefits of the Electronic Adjudication Management System was that it would streamline and simplify filing requirements. The filing of a petition for reconsideration, removal, or disqualification creates a task for the WCJ in EAMS, and in that manner is brought to the WCJ's attention regardless of the physical District Office in which the petition is filed. While much of EAMS has delivered less than promised, the provision permitting appeals to be filed at any District Office has actually proven useful and convenient to parties who are already constrained by strict time deadlines. Notably, this change from current rule §10866 to new rule §10995(b) is not addressed in the Initial Statement of Reasons. The provision should be restored.

Thank you for the opportunity to comment, and please contact us if additional information would be helpful.

Sincerely,

Ellen Sims Langille, General Counsel
ESL/pm

cc: Victoria Hassid, Chief Deputy Director, Department of Industrial Relations
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members

Julie Podbereski
Department of Industrial Relations
Workers' Compensation Appeals Board
455 Golden Gate Avenue, 9th floor
San Francisco, CA 94102

WCABRules@dir.ca.gov

Dear Ms. Podbereski:

The following are my comments related to the current WCAB Rules of Practice and Procedure rulemaking.

There are a number of issues with the proposed changes to the rules regarding the determination of non-IBR medical-legal disputes under new rule 10786.

My specific comment appear under each section in bold italics. At the end are some general comments.

Thank you for the opportunity to comment.

§ 10786. Determination of Medical-Legal Expense Dispute.

(a) Within 60 days of service of a medical-legal provider objection to a denial of ***all or*** a portion of the medical-legal provider's billing pursuant to Labor Code section 4622(c), the defendant shall file and serve a petition for determination of medical-legal expenses and a Declaration of Readiness to Proceed. Upon filing of a Declaration of Readiness to Proceed, the medical-legal provider shall be added to the official address record. ***The defendant shall provide the WCAB with the provider's name and address.***

Just mentioning a portion of the bill is confusing. A Petition and DOR are also required when the entire bill is denied for a non-IBR issue. Additionally, the defendant needs to provide the WCAB with the medical-legal provider's name and address for the official address record, otherwise, there is no mechanism for the addition.

(b) If a defendant has failed to file a ***Petition and a*** Declaration of Readiness in compliance with subdivision (a), a medical-legal provider may file and serve a petition for reimbursement of medical-legal expenses and a Declaration of Readiness to Proceed. Upon filing of a petition for reimbursement of medical-legal expenses and a Declaration of Readiness to Proceed, the medical-legal provider shall be added to the official address record.

There needs to be a reference to the filing of the Petition by the defendant as well as the DOR in this paragraph. There is no reason for the medical provider to file a Petition unless the defendant to failed to file one.

(c) Upon receipt of a Declaration of Readiness in accordance with the provisions of subdivisions (a) and (b) of this rule, the matter shall be set for either a status conference or a mandatory settlement conference, in the discretion of the workers' compensation judge.

By allowing the judge discretion to set the hearing as either a status conference or an MSC just delays the issue. It makes more sense to just have it be an MSC so, if a settlement cannot be achieved, the medical-legal provider can move forward to trial rather than having to go through another hearing. Since costs are an issue, making an additional status conference a possibility just increases the costs.

Also, the way this is written, this section can be interpreted in a manner that returns the medical-legal provider to the situation that existed before the promulgation of 10451.1 originally. If setting the hearing is within the judge's discretion, it could be held off until the case-in-chief is resolved and the provider may have to wait years to have the issue of payment adjudicated. In the meantime, the parties are using the provider's report to resolve the case. It also puts the provider in the position of having to continue to provide medical-legal services; such as supplemental reports, reevaluations and depositions; to a defendant who is refusing to pay. It makes more sense to resolve these disputes as they arise quickly rather than pushing them down the road to the end of the case. In the event of a threshold issue that completely defeats the defendant's liability, as mentioned in the next paragraph, it's appropriate to wait, but not when there is no threshold issue.

This brings up the concept of bifurcating the medical-legal provider's dispute from the case in chief. Because the two are currently linked, judges are reluctant to have a trial on the Non-IBR medical-legal dispute because any appeal could preclude the case in chief from moving forward. If the issues were bifurcated, the medical-legal issue could go forward and not affect the injured worker's case. I propose that this be added to the regulations to make for more expeditious and potentially less costly resolutions of the medical-legal disputes.

(d) Notwithstanding any other provision of this rule, if there is a threshold issue relating to the case-in-chief that would entirely defeat the medical-legal expense claim that must be determined prior to adjudicating the medical-legal expense claim dispute, the Workers' Compensation Appeals Board may defer hearing and determining the medical-legal expense claim dispute until the underlying claim of the employee or dependent has been resolved or abandoned.

(e) A defendant shall be deemed to have waived all objections to a medical-legal provider's billing, other than compliance with Labor Code sections 4620 and 4621, if:

(1) The provider submitted a properly documented billing to the defendant and, within 60 days thereafter, the defendant 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; or

(2) The defendant failed to make payment consistent with an explanation of review (EOR) that complies with Labor Code section 4603.3 and any applicable regulations adopted by the Administrative Director; or

(3) The provider submitted a timely and proper request for a second review to the defendant and, within 14 days thereafter, the defendant failed to serve a final written determination that complies with any applicable regulations adopted by the Administrative Director; or

(4) The defendant failed to make payment consistent with a final written determination that complies with any applicable regulations adopted by the Administrative Director.

(f) A defendant shall be deemed to have waived any objections to a medical-legal provider's billing, other than the amount payable 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 provider submitted a timely objection to the defendant's EOR regarding a dispute other than the amount payable and the defendant failed to file a Declaration of Readiness as required by Labor Code section 4622 and subdivision (a) of this rule.

(g) 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 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 the provider failed to make a timely and proper request for second review in the form prescribed by the Rules of the Administrative Director within 90 days after service of the EOR.

(h) 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, within 14 days after receipt of the provider's request for second review, the defendant issued a timely and proper final written determination and made payment consistent with that determination and the provider failed to request IBR within 30 days after service of this second review determination.

(i) 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 and for sanctions under Labor Code section 5813 and rule 10421. 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 October 23, 2013, the monetary sanctions shall not be less than $500.00. These attorney's fees, costs and monetary sanctions shall be in addition to any penalties and interest that may be payable under Labor Code section 4622 or other applicable provisions of law, and in addition to any lien filing fee, lien activation fee or IBR fee that, by statute, 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 and for sanctions under Labor Code section 5813 and rule 10421. 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 October 23, 2013, the monetary sanctions shall not be less than $500.00.

The proposed language eliminates the list of bad faith actions or tactics in the earlier version. This list is very helpful as it gives both the provider and the defendant information regarding what types of actions are considered to be bad faith for this section. These reasons, along with others such as lack of authorization, the physician not being a part of the MPN or other reasons inapplicable in medical-legal cases are necessary to discourage inappropriate payor behavior.

Other Comments: Missing from the new language is the rule indicating that a medical-legal provider is not required to file a lien in order to have the dispute heard before the WCAB. This language should be restored.

In addition, there should be a term to refer to the medical-legal provider in these disputes, particularly on the DOR. They are not "lien claimants", they are not "treating physicians". The WCAB forms do not have a designation of "petitioner" or "medical-legal provider" which is what these parties actually are. The judges do not know how to characterize them and often there are delays because the medical-legal provider is treated as if he or she is a lien claimant when that is not the case. I recommend the use of "petitioner" and "respondent" for this since

the medical-legal provider is either filing a petition or responding to one filed by the defendant.

Respectfully Submitted,

Suzanne Honor, Esq
Honor System Consulting
suehonor@gmail.com
650-787-3782

September 23, 2019

Workers' Compensation Appeals Board
Attn: Rachel E. Brill, Industrial Relations Counsel
P.O. Box 429459
San Francisco, CA 94142-9459

Via email: WCABRules@dir.ca.gov

Subject: WCAB Proposed Amendment to Rules of Practice and Procedure

State Compensation Insurance Fund appreciates the opportunity to provide input regarding the Division of Workers' Compensation's (DWC) proposed amendments to the rules of Practice and Procedure. State Fund respectfully submits the following comments for your consideration.

Recommended text changes are indicated by underscore for additional language and ~~strikeout~~ for deleted language.

§10555 Petition for Credit:

Text Change

(b) An employer shall not take a credit for an employee's third party recovery pursuant to Labor Code section 3861 unless ordered or awarded by the Workers' Compensation Appeals Board. A petition for credit shall include:

~~(1) A copy of the settlement or judgment; and~~

(1) An employer may take credit against indemnity without an order only if 1) the employer has evidence that the amount of the employee's net third party recovery exceeds the amount of the benefit against which the credit is being asserted; or (2) the employer has a good faith belief that the employee has obtained a net third party recovery that exceeds the amount of the benefit due, and the employer has made a good faith attempt to obtain proof of the amount of the employee's net third party recovery. Additionally, the employer may take credit without a Board order against all benefits in any case in which the employee has stipulated to the credit. In all other cases if the employer seeks credit against other benefits, the employer must file a Petition for Third Party Credit and obtain a Board order.

(2) An itemization of any credit applied to expenses and attorneys' fees pursuant to Labor Code sections 3856, 3858 and 3860.

(3) If the employer asserts the credit without a Board order, the employee is entitled to request a priority conference on the issue of Third Party Credit.

(4) The employer may file a Petition for Third Party Credit based on information and belief that the employee has made a third party case recovery. The employer must attach to the Petition any documents substantiating a third party recovery by the employee, and provide whatever information the employer has supporting a third party recovery by the employee and show that the employer has made a demand on the employee for production of any judgment or release in any third party action as well as any accounting of the employee's net recovery.

(5) The employee shall provide the employer with 1) a copy of any third party judgment within 10 days of issuance; 2) a copy of any release of all claims for any third party claim or action within 10 days of execution by the Applicant and 3) a copy of any accounting for all disbursements from any third party settlement or judgment within 10 days of signature by the employee.

(6) The third party judgment, release of all claims for any third party claim or action, and any accounting for all disbursements from any third party settlement or judgment in the third party case or action are neither privileged nor confidential for purposes Petitions for Credit and shall be produced by employee as provided herein.

(7) The Workers' Compensation Judge shall 1) allow bifurcation of Third Party Credit issues before the determination of the other compensation issues, and, 2) set the Labor Code Section 3861 credit for trial, and not take the issue "off calendar" or "defer" the issue of third party credit until determination of the other issues in the case, except upon request of the employer.

Recommendation:
Pursuant to SCIF v. Brown, 1982) 230 Cal.App.3rd 933, State Fund recommends that the regulations allow the employer to assert third party credit without a Board order when the employer has evidence or a good faith belief that the employee has obtained a net third party recovery in excess of the employer's liability for future indemnity. This provision also comports with the intent of the Legislature and the well-established, equitable principle that the employee is not entitled to double recovery in both workers' compensation and third party settlement funds. If the employee disputes the employer's assertion of credit, the employee would have the right to request a priority conference. In cases in which the parties have reached informal resolution of the credit issue by way of a stipulation, no petition or order should be required prior to assertion of the credit. In all other situations, the employer would be required to file a Petition for Third Party credit.

Delays in obtaining the evidence of the third party recovery force the employer to pay benefits that are not due and raise system costs. The evidence of the third party funds recovered by the employee is in the possession of the employee. The employee should be required to promptly provide to the employer all available evidence of the third party recovery to enable a prompt and efficient determination of the third party credit. The regulations should allow the employer to file a Petition for Third Party Credit with evidence of the employee's third party recovery or with evidence that the employer has made a good faith attempt to obtain evidence of the recovery.

The Legislature has provided for third party credit, but a delay in adjudicating the credit issue frustrates the legislative purpose of specifying what benefits are due and not due. Workers' Compensation Judges should be required to promptly hear credit issues so that a determination of what benefits are payable can be made without undue delay.

We thank the DWC for the opportunity to participate in the proposed rulemaking process and we offer our ongoing support of DWC's revisions to the updated rules of Practice and Procedure.

Sincerely,

Andrea Guzman
Claims Regulatory Director
Claims Medical and Regulatory Division

cc: Elsa Tan, Corporate Claims Technical Officer, Claims Medical and Regulatory Division
Sheila Monson, Claims Operations Manager, Claims Medical and Regulatory Division
Mary Huckabaa, Assistant Chief Counsel

From:	West, Winslow@DIR
To:	wcabrules@hq.dir.ca.gov
Cc:	Brill, Rachel@DIR
Subject:	WCAB Rulemaking August 2019
Date:	Friday, September 20, 2019 2:28:28 PM
Attachments:	image001.png

Dear Ms. Brill:

I am writing you with an urgent plea not to repeal **rule 10631**. I am the QME discipline attorney and I desperately need rule 10631 to stay in order to carry out my functions as the QME discipline attorney. In your initial statement of reasons your argument for the repeal is as follows:

Rule Repealed: 10631 "Specific Finding of Fact–Labor Code Section 139.2(d)(2)."

Statement of Specific Purpose and Reasons for Proposed Repeal of rule 10631.
This rule simply restates the relevant portions of Labor Code section 139.2(d)(2) without significant additions or refinements. Accordingly, we propose repeal because the rule does not provide significant additional information beyond what is in the relevant statute.

Please be advised that this supposition regarding 10631 is not true. 10631 goes beyond simply restating the relevant portions of 139.2(d)(2) and in fact does add significant refinement. If you look at the entirety of Labor Code
§ 139.2(d)(2) it states in relevant part:

> "…If the workers' compensation administrative law judge or the appeals board rejects the qualified medical evaluator's report on the basis that it fails to meet the **minimum standards** for those reports established by the administrative director or the appeals board, the workers' compensation administrative law judge or the appeals board, as the case may be, shall make a specific finding to that effect …"

However you will notice that the statute does not state what those **minimum standards** are. I assert to you that 10631 specifically states what the minimum standards are that are referred to in the statute.. The last paragraph of 10631 specifically states:

> "Rejection of a qualified medical evaluator's report pursuant to Labor Code section 139.2, subdivision (d)(2) shall occur where the qualified amount medical evaluator's report does not meet the **minimum standards prescribed by the provisions of rule 10606** and the regulations of the Industrial Medical Council"

Nowhere in the statute nor in any other regulation is it specifically stated that failure to meet the minimum standards as specifically prescribed in rule 10606 is a violation under 139.2(d)(2). Without this specificity added by 10631, it is a matter of interpretation as to what "minimum standards" 139.2 is contemplating. This would be

a bone of contention and an argument made at trial if I tried to deny reappointment to a QME because of a violation of 139.2(d)(2). Therefore, I am respectfully requesting that you leave rule 10631 intact. The only changes in the rule that I would request would be to change the reference to 10606 to the new rule 10682; and change “Industrial Medical Council” to the “Division of Worker’s Compensation”.

I hope you will take these requests under advisement as they will significantly impact my ability to utilize the provisions of labor code 139.2(d))(2) in the QME program. I am sorry for the lateness of this request. I only noticed that you are intending to repeal 10631 when I was working on a form for the judges to use as an order rejecting defective QME reports. Please be advised the Draft order actually refers to 10606 and 10631.

Winslow F. West
DIR/DWC Legal Unit Counsel
1515 Clay Street, 18th Fl.
Oakland, CA 94612
(510) 286-7108 | (510) 286-0687 Fax

September 21, 2019

Honorable Katherine Zalewski, Deidra E. Lowe, Marguerite Sweeney, José H. Razo,
Juan Pedro Gaffney, Katherine Dodd, Craig Snellings
Chair and Commissioners
Workers' Compensation Appeals Board
WCABRules@dir.ca.gov

Dear Commissioners:

The California Lawyers Association (CLA), Workers' Compensation Section, by its Legislation and Practice and Ethics Subcommittees, submits the following comments concerning the WCAB's proposed new Rules of Practice and Procedure. At the outset, CLA commends and thanks the WCAB for undertaking this rules update and modernization project, which undoubtedly has been a daunting and time-consuming task. The WCAB may be aware of a similar project that the CLA Workers' Compensation section Legislation Subcommittee currently pursues, consisting of a non-substantive clean-up of all Labor Code sections that pertain to workers' compensation law.

CLA's comments are both general and specific in nature, and focus on some key issues. They do not constitute a comprehensive analysis of each and every section due to time constraints that made such review impractical.

This letter contains general comments and the attachment has rule-specific comments made using Microsoft Word for Mac, version 16.29.1 with tracking turned on.

In general, CLA objects strongly to the proposed requirement that all proofs of service be filed with the WCAB. Such a requirement would dramatically impact both the workload of district offices and of litigants. Please see additional comments appended directly to proposed Rule 10629.

CLA also objects to the renumbering of current Rule 10500, pertaining to designated service. While the new number may be consistent with the overall organization of the proposed new rules, changing it will have significant impact both on the district offices and on parties.

CLA noted some inconsistencies within the document that vary among articles. They are:

- Within individual rules, sometimes the full name "Workers' Compensation Appeals Board" appears consistently even if used more than once in a given rule; other times, the initial reference is the full name followed by "Appeals Board." For consistency, CLA

believes the usage should be consistent and suggests that "Workers' Compensation Appeals Board" be used throughout.

- In a commendable effort to make rules non-gender specific in accordance with "Assembly Concurrent Resolution No. 260-Relative to gender-neutral language," sometimes a singular noun is simply repeated again in place of previously gender specific or binary pronouns, and other times replaced by the pronoun "their." CLA believes that current proper grammar usage rules make the latter method incorrect because it is a plural pronoun paired with a singular subject or noun. An example, showing the proposed rule with the change proposed underlined, and CLA's suggested correction in italics is:

> **§ ~~10999~~. 10920. Arbitrator Fee and Cost Disputes.**
> Any dispute involving an arbitrator's fee or cost shall be resolved by the presiding workers' compensation judge of the appropriate local office or, in ~~his or her~~ their *the presiding judge's* absence, the acting presiding workers' compensation judge.

CLA appreciates the opportunity to offer comments concerning the proposed new WCAB Rules.

Sincerely,

Kenneth B. Peterson
Chair, Legislation Subcommittee

John Parente
Chair, Practice and Ethics Subcommittee

Attachment: WCAB Rules New MASTER CLA

Chapter 4.5. Division of Workers' Compensation

SUBCHAPTER 2. WORKERS' COMPENSATION APPEALS BOARD – RULES OF PRACTICE AND PROCEDURE

ARTI~~I~~CLE 1
General

§ 10300. Construction of Rules.

(a) 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.

(b) Article and section headings shall not be deemed to limit or modify the meaning or intent of the provisions of any rule hereof.

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

§ 10302. Rulemaking Notices.

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 on those who have filed a written request for notification with the Secretary of the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5307, 5307.4 and 5309, Labor Code.

§ ~~10301~~ 10305. Definitions.

As used in this subchapter:

(a) "Administrative Director" means the Administrative Director of the Division of Workers' Compensation or ~~his or her~~ their 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~~b) "Appeals Board" means the commissioners and deputy commissioners of the Workers' Compensation Appeals Board acting en banc, in panels~~,~~ or individually.

(c) "Appear" means to act on behalf of any party.

~~(d)~~ (d) "Applicant" or "injured employee" or "injured worker" or "dependent" means any person asserting a right to relief under the provisions of Labor Code ~~S~~section 5300.

(e) "Claims administrator" means an entity that reviews or adjusts workers' compensation claims on behalf of either (1) an insurer or (2) an employer that has secured a certificate of consent to self-insure from the Department of Industrial Relations, ~~or is (3) a geally uninsured employer,~~ whether employed directly or as a third party.

Commented [1]: The current definition of "Claims administrator" is: "means a self-administered workers' compensation insurer; a self-administered self-insured employer; a self-administered legally uninsured employer; a self-administered joint powers authority; or a third-party claims administrator for an insurer, a self-insured employer, a legally uninsured employer or a joint powers authority." Why were legally uninsured employer and joint powers authority deleted?

~~(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) "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;~~

~~(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. Except as otherwise provided in section 10451.3, 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~~ h) ~~"Declaration of Readiness to Proceed" or "Declaration of Readiness" means a request for a hearing at a district office.~~

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

(~~k~~)(f) "Defendant" means any person against whom a right to relief is claimed.

~~(l)~~ (g) "Director" means the Director of Industrial Relations or ~~his or her~~ ~~their~~ the Director's designee.

(~~m~~)(h) "District office" means a location of a trial court of the Workers' Compensation Appeals Board and includes a permanently staffed satellite office.

~~(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."~~

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

~~(p) "Document separator sheet" means the form adopted under section 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.~~

(~~q~~ i) "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~~ o) ~~"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.~~

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

~~(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.~~

(j) "En Banc decision" means a decision of the Appeals Board as a whole, issued in order to achieve uniformity of decision or in a case presenting novel issues, that is binding on panels of the Appeals Board and workers' compensation judges as legal precedent under the principle of stare decisis.

(k) "Entity" means a corporation, limited liability company, limited partnership, general partnership, limited liability partnership, sole proprietorship or any other organizational structure.

(~~u~~) (l) "Hearing" means any trial, mandatory settlement conference, ~~rating mandatory settlement conference,~~ status conference, lien conference, lien trial or priority conference at a district office, a remote location 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.~~

(~~x~~ m) "Lien claimant" means any person or entity claiming payment under the provisions of Labor Code section 4903 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.~~

~~(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 their disputes or, if the dispute cannot be resolved, to frame the issues and stipulations and to list witnesses and exhibits in preparation for a trial.~~

~~(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.~~

~~(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.~~

(n) "Non-attorney representative" means a person who is not licensed to practice law by the State of California who acts on behalf of a party in proceedings before the Workers' Compensation Appeals Board as allowed by Labor Code sections 5700 and 4907.

~~(dd)~~(o) "Party" means any person or entity joined in a case, including but not limited to:

(1) An applicant; ~~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) A medical-legal provider involved in a medical-legal dispute not subject to independent bill review;~~

~~(5) An interpreter filing a petition for costs in accordance with section 10451.3;~~ or

(~~6~~3) A lien claimant. ~~where either:~~

~~(A) The underlying case of the injured employee or the dependent(s) of 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.~~

~~(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.~~

~~(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.~~

~~(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.~~

~~(hh) "Regular hearing" means a trial.~~

(~~ii~~ p) "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 incurred in connection with medical treatment. It shall not include any amount payable directly to the injured employee.

~~(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 Administrative Director, to a party, lien claimant, or attorney who is entitled to a copy of the document.~~

(q) "Significant panel decision" means a decision of the Appeals Board that has been designated by all members of the Appeals Board as of significant interest and importance to the workers' compensation community. Although not binding precedent, significant panel decisions are intended to augment the body of binding appellate and en banc decisions by providing further guidance to the workers' compensation community.

(~~kk~~ r) "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.

~~(ll)~~(s)"Submission" means the closing of the record to the receipt of further evidence or argument.

~~(mm)~~(x) ~~"Trial" means a proceeding set for the purpose of receiving evidence.~~

~~(nn)~~ (y) ~~"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.~~

(t) "Walk-through document" means a document that is presented to a workers' compensation judge for immediate action where no notice of hearing has issued.

(~~oo~~ u) "Workers' Compensation Appeals Board" means the ~~Appeals Board,~~ commissioners~~,~~ and deputy commissioners of the Appeals Board, presiding workers' compensation judges and workers' compensation judges.

(v) "Workers' Compensation Judge" means "workers' compensation administrative law judge" (formerly, "referee") and includes pro tempore judges appointed pursuant to section 10350.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 20, 110(a), 5300, 5307, 5309, 5500, 5500.3, 5501, 5501.5, 5501.6, 5502, 5700 and 5701, Labor Code.

ARTICLE 2
Powers, Duties~~,~~ and Responsibilities

§ ~~10340~~10320. Appeals Board Decisions and Orders.

~~In accordance with Labor Code Section 115, t~~The following orders, decisions and awards shall be issued only by ~~the~~ a panel of the Appeals Board or the Appeals Board acting en banc:

(a) Any order, including a final, interim~~,~~ or interlocutory order, made more than 15 days after a petition for reconsideration is filed unless allowed by rule 10861.

(b)~~(a)~~ All orders dismissing, denying ~~and~~ or granting petitions for reconsideration. ~~and decisions thereon.~~

(c)~~(b)~~ All decisions after reconsideration that terminate proceedings on reconsideration, including, but not limited to, findings, orders, awards, orders approving or disapproving a ~~c~~Compromise and ~~r~~Release, orders allowing or disallowing a lien~~,~~ and orders for dismissal.

(d) All orders dismissing, denying or granting petitions for removal and all orders pertaining to removal.

(e) ~~(d) Except for sanctions and contempt, orders in disciplinary proceedings against attorneys or other agents.~~ All orders in disciplinary proceedings pursuant to Labor Code section 4907.

(f)~~(e)~~ Decisions on remittitur.

(g)~~(f)~~ Orders disqualifying a workers' compensation judge under Labor Code ~~S~~section 5311.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 115, 4907 and 5311, Labor Code.

Commented [2]: There is no Rule 10861. This appears to refer to the ability of a WCJ to rescind an F&A within 15 days of the filing of a petition for reconsideration. That rule has been renumbered 10961 in this document. Either this rule is in error and should refer to rule 10961, or the renumbered 10961 was an error and should be 10861.

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Commented [3]: This is ambiguous. It talks about decisions after reconsideration, but it is really referring to decisions made while a petition for reconsideration is pending. It should be amended to say "All decisions after a petition for reconsideration has been filed…" This language also conflicts with the current practice by the WCAB of remanding a case to a trial judge to consider a case or issue resolving document. Why?

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§ ~~10341~~10325. En Banc and Significant Panel Decisions.

(a) En banc decisions of the Appeals Board are assigned by the chairperson on a majority vote of the commissioners and are binding on panels of the Appeals Board and workers' compensation judges as legal precedent under the principle of *stare decisis*.

(b) Significant panel decisions of the Appeals Board involve an issue of general interest to the workers' compensation community but are not binding precedent. The Appeals Board may designate a panel decision as "significant" on a majority vote of the commissioners.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 115, Labor Code.

§ ~~10348~~ 10330. Authority of Workers' Compensation Judges.

In any case that has been regularly assigned to a workers' compensation judge, the judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case, including the fixing of the amount of the bond required in Labor Code section 3715. Orders, findings, decisions and awards issued by a workers' compensation judge shall be the orders, findings, decisions and awards of the Workers' Compensation Appeals Board unless reconsideration *or removal* is granted.

~~A workers' compensation judge or a deputy commissioner may issue writs or summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for direct and hybrid contempt in a like manner and to the same extent as courts of record.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 3715, 5309 and 5310, Labor Code.

Commented [4]: Added "removal" to comply with existing practice.

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§ ~~10342~~ 10338. ~~Appeals Board, Member Orders.~~ Authority of Commissioners of the Appeals Board.

The following orders may be issued only by ~~the Appeals Board or a member~~ a commissioner ~~thereof~~:

(a) Approving undertakings on stays of proceedings on reconsideration and petitions for writ of review; and

(b) Directing exhumation or autopsy.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 115, 5706, 5707 and 6002, Labor Code.

Commented [5]: There should be an expedited procedure to request an order of autopsy or exhumation as those often require prompt action before the body starts to decay. It could be done as a walk-through petition before a WCJ by delegation from the WCAB, as no such procedure currently exists for the WCAB. Alternatively, the WCAB may wish to consider creating such a procedure for itself to avoid possible conflict with Labor Code section 5707.

§ 10344. ~~Appeals Board,~~ Authority of Commissioners, Deputy Commissioners and Presiding Workers' Compensation Judges. ~~Orders.~~

The following orders may be issued only by the Appeals Board, a commissioner, a deputy commissioner or a presiding workers' compensation judge:

(a) Orders issuing certified copies of orders, decisions or awards except that a certified copy may be issued by a presiding workers' compensation judge only if the time for seeking reconsideration and judicial review has expired, and no proceedings are pending on reconsideration or judicial review;

(b) Orders staying, quashing and recalling writs of execution and fixing and approving undertaking thereon;

(c) Orders directing entry of satisfaction of judgment; and

(d) Orders issuing, recalling, quashing, discharging and staying writs of attachment and fixing and approving undertakings thereon.

Authority: Sections 133, 5307, Labor Code.
Reference: Sections 115, 5706, 5707 and 6002, Labor Code.

§ 10346. ~~Assignment or Transfer of Cases.~~ Authority of Presiding Workers' Compensation Judge to Assign or Transfer Cases.

(a) The presiding workers' compensation judge has full responsibility for the assignment of cases to the workers' compensation judges of each office and~~. The presiding workers' compensation judge~~ may utilize EAMS to assign cases~~. The presiding workers' compensation judge~~

(b) ~~Shall transfer to another workers' compensation judge the proceedings on any case in~~ In the event of the death, extended absence, unavailability~~,~~ retirement, or disqualification of the workers' compensation judge, the presiding workers' compensation judge may reassign a case to another workers' compensation judge. Where testimony has been received, the new workers' compensation judge shall recommence the proceeding unless the parties agree to waive the requirements of Labor Code section 5700. ~~to whom it has been assigned, and may otherwise reassign those cases if no oral testimony has been received therein, or if the requirements of Labor Code Section 5700 have been waived.~~

(c) To the extent practicable and fair, supplemental proceedings shall be assigned to the workers' compensation judge who heard the original proceedings.

~~(b)~~(d) Any conflict that may arise between presiding workers' compensation judges of different offices respecting assignment of a case, venue~~,~~ or priority of hearing where there is conflict in calendar settings will be resolved by a deputy commissioner of the Appeals Board.

~~(c)~~(e) If a ~~c~~Compromise and ~~r~~Release or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award have not been approved, disapproved~~,~~ or noticed for trial on the issue of adequacy and other disputed issues within 45 days after filing, the file shall be transferred to the presiding judge for review.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5309, 5310 and 5700, Labor Code.

§ 10355. Appointment and Authority of Pro Tempore Workers' Compensation Judges.

A presiding workers' compensation judge may appoint a pro tempore workers' compensation judge to any conference hearing calendar including mandatory settlement conferences or status conferences.

(a) A pro tempore workers' compensation judge shall have the same power as a workers' compensation judge and shall be bound by the Rules of Practice and Procedure of the Workers' Compensation Appeals Board.

(b) Any order, decision or award filed by a pro tempore workers' compensation judge shall be subject to reconsideration or removal in the same manner as any order, decision, or award filed by a workers' compensation judge.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 121, 123.7, 5309, 5310 and 5900-5911, Labor Code.

§ ~~10593~~10360. Testimony of Judicial or Quasi-Judicial Officers.

(a) No judicial or quasi-judicial officer of the Workers' Compensation Appeals Board or of the Division of Workers' Compensation may be subpoenaed or ordered to testify regarding either:

(1) The reasons for or basis of any decision or ruling ~~he or she has~~ they have made; or

(2) ~~His or her~~ Their opinion regarding any statements, conduct~~,~~ or events occurring in proceedings before them ~~him or her~~, except ~~as follows~~:

(A) The judicial or quasi-judicial officer may be ordered to testify where ~~his or her~~ their testimony is necessary on an issue of disqualification under Labor Code section 5311 and Code of Civil Procedure section 641.

(B) The judicial or quasi-judicial officer may be ordered to testify where ~~his or her~~ their testimony is necessary on an issue of an alleged ex parte communication.

(C) The judicial or quasi-judicial officer may be subpoenaed or ordered to testify as a percipient witness to statements, conduct~~,~~ or events that occurred in the proceedings before them ~~him or her~~, to the same extent as any other percipient witness.

(b) The testimony of a judicial or quasi-judicial officer shall be given only on the terms and conditions ordered by the presiding workers' compensation judge of the district office having venue, or by the Appeals Board, after the filing of a "Petition to Compel the Testimony of a Judicial or Quasi-Judicial Officer."

(1) The petition to compel shall set forth with specificity the facts (or alleged facts) and law that support the petition.

(2) The petition to compel shall be verified under penalty of perjury.

(3) The petition to compel shall be served on all other parties, on all lien claimants whose liens are presently pending in issue in the underlying claim to which the petition relates~~,~~ and on the Legal Unit of the Division of Workers' Compensation (DWC-Legal Unit), together with a proof of service. ~~[As of the effective date of this rule, the street address of the DWC-Legal Unit is 1515 Clay Street, 18th Floor, Oakland, CA 94612-1402 and the Post Office Box of the DWC-Legal Unit is P.O. Box 420603, San Francisco, CA 94142. However, current information regarding the street address and Post Office Box of the DWC-Legal Unit may be obtained by calling the Headquarters of the Division of Workers' Compensation, whose number, as of the effective date of this rule, is (510) 286-7100.]~~

(4) A petition to compel that does not meet all of the foregoing requirements may be summarily dismissed or denied.

(c) The other parties, lien claimants, and the DWC-Legal Unit shall have 15 days within which to file any objection to the petition to compel.

(d) The petition to compel shall be determined:

(1) By the presiding workers' compensation judge of the district office having venue; or

(2) By a ~~D~~deputy ~~C~~commissioner of the Appeals Board, if the petition to compel relates to the presiding workers' compensation judge of the district office having venue; or

(3) By the Appeals Board, if the petition to compel relates to a ~~pending or impending~~ petition for reconsideration, removal or disqualification. ~~The petition may be determined on the pleadings submitted or, in the discretion of the presiding workers' compensation judge or the Appeals Board, the petition may be set for a hearing.~~

(e) The petition may be determined on the pleadings submitted or, in the discretion of the presiding workers' compensation judge, the deputy commissioner or the Appeals Board, the petition may be set for a hearing. In determining whether to grant the petition to compel, ~~(and, if granted, in determining the terms and conditions upon which the testimony of the judicial or quasi-judicial officer may be given),~~ the presiding workers' compensation judge, the deputy commissioner or the Appeals Board may consider, among other things:

(1) Whether the testimony of the judicial or quasi-judicial officer is reasonably necessary, taking into consideration:

(A) Whether statements in the judicial or quasi-judicial officer's opinion on decision, report on reconsideration, removal~~,~~ or disqualification, or other similar statements are sufficient to resolve any allegation by a party ~~or lien claimant~~; and

(B) If not, whether the judicial or quasi-judicial officer's factual statements may be fairly provided by an affidavit or declaration under penalty of perjury.

(2) Whether the testimony of the judicial or quasi-judicial officer under the "percipient witness" exception would be cumulative to the testimony of other percipient witnesses.

(f) For purposes of this ~~section~~ rule, the term "judicial or quasi-judicial officer of the Workers' Compensation Appeals Board or of the Division of Workers' Compensation" shall include, but shall not be limited to:

(1) Any ~~C~~commissioner;

(2) Any ~~D~~deputy ~~C~~commissioner;

(3) Any presiding workers' compensation judge or workers' compensation judge;

(4) Any pro tempore workers' compensation judge;

(5) Any special master appointed by the Workers' Compensation Appeals Board;

(6) The Administrative Director and ~~his or her~~ the Administrative Director's designee;

(7) Any workers' compensation consultant of the Retraining and Return to Work Unit; and

(8) Any arbitrator or mediator; and

(9) The Director of Industrial Relations and ~~his or her~~ the Director of Industrial Relations' designee.

(g) For the purposes of this ~~section~~ rule, the term "testify" shall include testimony in either oral or written form (e.g., affidavits, declarations~~,~~ or interrogatories) and shall include all testimony, whether given at a deposition or a hearing.

(h) This ~~section~~ rule shall apply solely to testimony sought in connection with a matter within the jurisdiction of the Workers' Compensation Appeals Board, and it shall not apply to testimony sought pursuant to the authority of any other forum.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5300, 5301, 5309, 5311, 5700, 5701 and 5708, Labor Code; Section 641, Code of Civil Procedure; and Section 703.5, Evidence Code.

§ 10370. Extensions Of Time During Public Emergencies.

(a) Notwithstanding rule 10390 or any other rule in this title, in the event of a public emergency, including but not limited to an earthquake, fire or the destruction of or danger to a district office, the Chief Workers' Compensation Judge, the designee of the Chief Workers' Compensation Judge or the Appeals Board may:

(1) extend by no more than 14 additional days the time to perform any act required or permitted under these rules, except for those acts subject to a statute of limitations or a jurisdictional time limitation, including but not limited to the filing of Petitions for Reconsideration or Removal, Petitions to Reopen, Applications for Adjudication of Claim or lien claim forms; or

(2) authorize the Presiding Workers' Compensation Judge of a specific district office, or the Presiding Workers' Compensation Judge's designee, to extend by no more than 30 additional days the time to perform any act required or permitted under these rules, except for those acts subject to a statute of limitations or a jurisdictional time limitation, including but not limited to the filing of Petitions for Reconsideration or Removal, Petitions to Reopen, Applications for Adjudication of Claim or lien claim forms; or

(3) authorize any district office to accept for filing, including by fax, those documents required by statute or regulation to be filed in a district office that is closed due to a public emergency.

(b) Any order under (a)(1), (a)(2) or (a)(3) must specify the nature of the emergency and the district office or offices to which it applies. Any order under (a)(2) must also specify the length of the authorized extension and the reason for the extension.

(c) If made necessary by the nature or extent of the public emergency, the Chief Workers' Compensation Judge, the designee of the Chief Workers' Compensation Judge or the Appeals Board may extend or renew an order issued under (a)(1) or (a)(2) for no more than 30 days.

Authority: Sections 133, 5307 and 5309, Labor Code.
Reference: Section 10390, title 8, Code of Regulations.

ARTICLE 3
Parties, Joinder and Consolidation

§ ~~10360~~10380. Necessary Parties.

Any applicant other than the injured employee shall join the injured employee as a party. In such instances the Application for Adjudication of Claim shall include the injured employee's address ~~if known~~ or, if not known, a statement of that fact.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 126, 5307.5 and 5503, Labor Code.

§ 10382. Joinder of Parties.

The Appeals Board or a workers' compensation judge may order the joinder of additional parties not named in the Application for Adjudication of Claim, whose presence is necessary for the full adjudication of the case. A party shall not be joined until 10 days after service of either a petition for joinder by a party or a notice of intention to order joinder issued by a workers' compensation judge, unless the party to be joined waives its right to this notice period. The Workers' Compensation Appeals Board may designate the party or parties who are to make service.

(a) Any person in whom any right to relief is alleged to exist may appear, or be joined, as an applicant in any case or controversy before the Workers' Compensation Appeals Board.

(b) Any person against whom any right to relief is alleged to exist may be joined as a defendant.

(c) In death cases, all persons who may be dependents shall either join or be joined as applicants so that the entire liability of the employer or the insurer may be determined in one proceeding.

(d) If an objection is received within 10 days of service of a petition for joinder or a notice of intention to order joinder, the workers' compensation judge shall consider the objection before joining the party and, if requested in the objection, shall provide the objector the opportunity to be heard before ordering joinder.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5300, 5303, 5307.5, 5316, 5500 and 5503, Labor Code.

§ ~~10550~~ 10390. Proper Identification of ~~the~~ Parties ~~and Lien Claimants~~.

~~Whenever a~~Any party that appears at a hearing or files a pleading, document or lien shall: ~~or lien claimant (or any attorney or other representative for a party or lien claimant) either~~

~~(i) Files any Application for Adjudication, Answer, stipulated Findings and Award, Compromise and Release, lien claim, petition or other pleading with the Workers' Compensation Appeals Board or~~

~~(ii) States its appearance on the record at any hearing before the Workers' Compensation Appeals Board (including but not limited to stating its appearance on any pretrial conference statement, appearance sheet, or minutes of hearing), or lien claimant, the party or its attorney or other representative, shall comply with the following requirements:~~

(a) ~~Each party or lien claimant shall set forth its full legal name and each attorney or other representative shall set forth the full legal name(s) of the party or parties he, she, or it is representing;~~ Set forth the party's full legal name on the record of proceedings, pleading, document or lien;

(b) ~~If an adjusting agent or third-party claims administrator is appearing, it shall disclose:~~

~~(1) Whether it is appearing on behalf of an employer, an insurance carrier, or both;~~

~~(2) The identity or identities of the party or parties it is representing; and~~

~~(3) If it is representing an insurance carrier, whether the policy includes a high self-insured retention, a large deductible, or any other provision that affects the identity of the entity or entities actually liable for the payment of compensation;~~ File a notice of representation if a party is represented and the attorney or non-attorney representative has not previously filed a notice of representation or an Application for Adjudication of Claim; and

(c) ~~If an insurance carrier is appearing, it shall disclose:~~

~~(1) Whether it is appearing solely on its behalf, or also on behalf the insured employer.~~; and

~~(2) Whether its policy includes a high self-insured retention, a large deductible, or any other provision that affects the identity of the entity actually liable for the payment of compensation; and~~ Identify the insurer and/or employer as the party or parties and not identify a third party administrator as a party. The third party administrator shall be included on the official address record and case caption if identified as such.

~~(d) If a lien claim is being filed or amended, or if a lien claimant is appearing, the lien claimant shall state whether it is the original owner of the alleged debt or whether it has purchased the alleged debt from the original owner or some subsequent purchaser~~.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 3755-3759, 4903.1(c), 5001, 5002, 5003, 5004, 5500, 5502, 5503, 5505, 5702 and 5709, Labor Code.

§ ~~10589.~~10396. Consolidation of Cases.

(a) Consolidation of two or more related cases, involving either the same injured employee or multiple injured employees, rests in the sound discretion of the Workers' Compensation Appeals Board. In exercising that discretion, the Workers' Compensation Appeals Board shall take into consideration any relevant factors, including but not limited to the following:

(1) Whether there are common issues of fact or law;

(2) The complexity of the issues involved;

(3) The potential prejudice to any party, including but not limited to whether granting consolidation would significantly delay the trial of any of the cases involved;

(4) The avoidance of duplicate or inconsistent orders; and

(5) The efficient utilization of judicial resources.

Consolidation may be ordered for limited purposes or for all purposes.

(b) Consolidation may be ordered by the Workers' Compensation Appeals Board on its own motion, or may be ordered based upon a petition filed by one of the parties. A petition to consolidate shall:

(1) List all named parties in each case;

(2) Contain the adjudication case numbers of all the cases sought to be consolidated, with the lowest numbered case shown first;

(3) Be filed in each case sought to be consolidated; and

(4) Be served on all attorneys or ~~other~~ non-attorney representatives of record and on all non-represented parties in each case sought to be consolidated.

(c) Any order regarding consolidation shall be filed in each case to which the order relates.

(d) If consolidation is ordered, the Workers' Compensation Appeals Board, in its discretion, may designate one case as the master file for exhibits and pleadings. If a master file is designated, any subsequent exhibits and pleadings filed by the parties and lien claimants during the period of consolidation shall be filed only in the master case~~,~~. ~~h~~However, all pleadings and exhibit cover sheets filed shall include the caption and case number of the master file case, followed by the case numbers of all of the other consolidated cases.

(e) ~~If a master file has been designated and the consolidated cases are tried, a~~All relevant documentary evidence previously received in an individual case shall be deemed admitted in

evidence in the consolidated proceedings ~~under the master file~~ and shall be deemed part of the record of each of the several consolidated cases. ~~Evidence received subsequent to the designation of the master file shall be similarly received with like force and effect.~~

(f) When cases are consolidated, joint minutes of hearing, summaries of evidence, opinions, decisions, orders, findings~~,~~ or awards may be used~~,~~; however, copies shall be filed in the record of proceedings of each case.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5300, 5301, 5303 and 5708, Labor Code.

§ ~~10592~~ 10398. Assignment of Consolidated Cases.

(a) Any request or petition to consolidate cases that are assigned to different workers' compensation 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 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 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 judges of the district offices to which the cases are assigned. If the presiding workers' compensation judges are unable to agree on where the cases will be assigned for hearing, the conflict shall be resolved by the Chief Judge of the Division of Workers' Compensation or by the Chief Judge's ~~his or her~~ designee upon referral by one of the presiding workers' compensation judges.

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

(d) In resolving any request or petition to consolidate cases under subdivision (b) or (c), the Chief Judge or the Chief Judge's ~~his or her~~ designee shall set the request or petition for a conference regarding the place of hearing. At or after the conference, the Chief Judge or the Chief Judge's ~~his or her~~ designee shall determine the place of hearing and may determine the workers' compensation judge to whom the cases will be assigned, giving consideration to the factors set forth in ~~section~~ rule ~~10589~~ 10396. In reaching any determination, the Chief Judge or the Chief Judge's ~~his or her~~ designee may assign a workers' compensation judge to hear any discovery motions and disputes ~~relevant to discovery~~ in the action and to report their findings and recommendations to the Chief Judge or the Chief Judge's ~~his or her~~ designee.

(e) Any party aggrieved by the determination of the Chief Judge or the Chief Judge's ~~his or her~~ designee may request proceedings pursuant to Labor Code section 5310, except that an assignment to a particular workers' compensation judge shall be challenged only in accordance with the provisions of ~~sections 10452 and 10453~~ rules 10788 and 10960.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5300, 5301, 5303, 5310 and 5708, Labor Code; and Sections 10396, 10788 and 10960, title 8, California Code of Regulations.

ARTICLE 4
Conduct of Parties, Attorneys~~,~~ and Non-Attorney Representatives

§ 10400. Attorney Representatives.

(a) An attorney representative shall file and serve a notice of representation before filing a document or appearing on behalf of a party unless the information required to be included in the notice of representation is set forth on an opening document.

(b) The notice of representation or opening document shall comply with rule 10390 and shall include:

(1) The name of the represented party;

(2) The legal name and State Bar number of the attorney;

(3) The name, address, and telephone number of the law firm or other entity's agent for service of process;

(c) The name of the attorney representative and law firm or other entity shall be set forth on the record of proceedings at all appearances and on any pleading, document or lien prepared or filed by an attorney representative.

(d) Attorney representatives of lien claimants shall also comply with the requirements set forth in rule 10868.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 3755-3759, 4903.1(c), 5001, 5002, 5003, 5004, 5500, 5502, 5503, 5505, 5702 and 5709, Labor Code.

§ 10401. Non-Attorney Representatives.

(a) Except as prohibited by rule 10445, a non-attorney representative may act on behalf of a party in proceedings before the Workers' Compensation Appeals Board if the party has been informed that the non-attorney representative is not licensed to practice law by the State of California.

(b) A non-attorney representative shall be held to the same professional standards of conduct as an attorney.

(c) A non-attorney representative shall file and serve a notice of representation before filing a document or appearing on behalf of a party unless the information required to be included in the notice of representation is set forth on an opening document.

(1) If the non-attorney representative is appearing pursuant to an agreement between a law firm or other entity that provides non-attorney representatives and a party, the notice of representation shall include:

(A) The name of the represented party;

(B) The legal name, address, telephone number and form of the law firm or other entity;

(C) The name and address of the law firm or other entity's agent for service of process;

(D) The name of the person who entered into an agreement on behalf of the law firm or other entity with the party to provide non-attorney representatives; and

(E) The name of the non-attorney representative responsible for assuring that appearances are made on behalf of the party.

(2) If a non-attorney representative is appearing as an individual pursuant to an agreement between the non-attorney representative and a party, the notice of representation shall include the name of the represented party and the non-attorney representative's name, address and telephone number.

(d) The name of the non-attorney representative and any entity responsible for providing a party with the non-attorney representative shall be set forth on the record of proceedings at all appearances and on any pleading, document or lien prepared or filed by a non-attorney representative.

(e) If an attorney is responsible for supervising a non-attorney representative, the attorney shall be identified in all documents. The supervising attorney's specific written authorization must be included with all Compromise and Release agreements and Stipulations with Request for Award.

Commented [6]: This is ambiguous. What is the authorization supposed to say?

(f) A non-attorney representative whose name is not on the notice of representation must file a notice of appearance as provided in rule 10751 before appearing before the Workers' Compensation Appeals Board.

(g) Non-attorney representatives of lien claimants shall also comply with the requirements set forth in rule 10868.

Authority: Sections 133, 5307, 5700 Labor Code.
Reference: Section 4907, Labor Code; and Section 6126, Business and Professions Code.

§ ~~10774~~ 10402. Substitution or Dismissal of Attorneys and Non-Attorney Representatives.

(a) Substitution or dismissal of attorneys must be made in the manner provided by Code of Civil Procedure ~~S~~sections 284, 285 and 286. ~~Dismissal of agents may shall be made by serving and filing a statement of dismissal~~.

(b) A non-attorney representative or entity providing non-attorney representatives pursuant to an agreement with a party shall continue to provide representation until the party consents to termination of representation or withdrawal is permitted by the Workers' Compensation Appeals Board.

(1) A party that consents to termination of representation shall serve and file a fully executed "Substitution of Non-attorney Representative" that includes the information required for a notice of representation filed pursuant to rules 10400 and 10401 or that identifies the party as self-represented and the name, address, telephone number and signature of the person authorized to consent to the substitution on behalf of the party.

(2) If a party does not consent to termination of representation, representation shall continue until the Appeals Board or the worker's compensation judge issues an order allowing withdrawal for good cause.

(c) Any changes in representation of lien claimants shall also comply with the requirements set forth in rule 10868.

Authority: Sections 133, 5307, Labor Code.
Reference: Sections 4903, 4906, Labor Code; and Sections 284, 285, and 286, Code of Civil Procedure.

§ 10403. Complaints Regarding Violations of Labor Code Section 4907.

(a) Any person may submit to the Secretary of the Appeals Board a written complaint that a non-attorney representative has violated the provisions of Labor Code section 4907. The complaint shall not be filed at any district office or in EAMS.

(b) The complaint shall be made under penalty of perjury and shall state in detail the acts and omissions of the non-attorney representative alleged to be in violation of the provisions of Labor Code section 4907, and shall identify relevant case numbers and documents.

(c) Upon receipt of a complaint, the Secretary shall review it for form and content.

(d) The non-attorney representative shall be served with notice of the complaint as part of any investigation by the Secretary and shall be provided with an opportunity to respond.

(e) Upon the conclusion of any investigation, the Secretary shall serve the complainant and the non-attorney representative with a written Notice of Determination.

(f) Nothing in this rule shall preclude the Appeals Board from initiating proceedings under Labor Code section 4907 in the absence of a complaint.

(g) Information gathered as part of any investigation under this rule and records of deliberation generated as part of any investigation under this rule shall be confidential and not subject to public disclosure under any law of this state pending the issuance of a Notice of Determination.

Authority: Sections 4907, 5307, Labor Code.
Reference: Section 4907, Labor Code.

§ 10404. Suspension and Removal of a Non-Attorney Representative's Privilege to Appear before the Workers' Compensation Appeals Board under Labor Code Section 4907.

(a) Upon motion of the Appeals Board, a non-attorney representative may have the privilege to appear before the Workers' Compensation Appeals Board removed or suspended for good cause after a hearing.

(b) Good cause includes, but is not limited to, serious or repeated violations of these rules, failure to comply with rule 10400 or failure to pay a final order of sanctions, attorney's fees or costs issued under Labor Code section 5813 within 60 days.

(c) The Appeals Board shall designate a hearing officer to conduct the hearing and make initial rulings on all issues and objections. The hearing officer is subject to disqualification as provided in Labor Code section 5311 and rule 9721.12. A Petition for Disqualification of a Hearing Officer shall be filed with the Appeals Board as provided in rule 10960.

(d) The Appeals Board shall initiate proceedings by issuing a Notice of Proposed Action setting forth:

(1) the acts or omissions that constitute good cause for removal or suspension and any statutes and rules that the non-attorney representative is alleged to have violated;

(2) the intended action, whether removal or suspension, and the length of time of any proposed suspension;

(3) the date on which the hearing regarding suspension or removal of the non-attorney representative's privilege to appear will take place and the identity of the hearing officer; and

(4) the right to submit a written response to the Notice of Proposed Action within the time specified in the Notice of Proposed Action.

(e) The Appeals Board shall serve the non-attorney representative with the Notice of Proposed Action and copies of materials relied upon.

(f) Any pleadings, response, correspondence, requests and other documents shall be submitted in writing only to the Appeals Board and not filed at any district office or in EAMS.

(g) All hearings regarding the removal or suspension of a non-attorney representative's privilege to appear shall be held at the office of the Appeals Board, or at a District Office of the Workers' Compensation Appeals Board as designated by the Appeals Board.

(h) If the non-attorney representative does not testify on their own behalf, their testimony may be taken as if under cross-examination.

(i) After considering the evidence and any response submitted by the non-attorney representative, the hearing officer shall issue a recommended decision and findings of fact addressing all issues

Commented [7]: Should there be a time limit within which the hearing is set?

Commented [8]: Should there be a requirement that such hearings shall require a court or hearing reporter?

and objections and setting forth the recommended action to be taken. The recommended decision shall be submitted to the Appeals Board.

(j) The Appeals Board, acting en banc, may (1) adopt and incorporate the recommended decision of the hearing officer as its own in whole or in part; (2) review the record and increase or decrease the recommended action; or (3) take further or other action, including directing the conduct of a new hearing on one or more of the issues presented, as deemed just and appropriate. The Appeals Board shall serve the non-attorney representative and hearing officer with copies of its final decision as well as the hearing officer's recommended decision.

Commented [9]: Is there any right of appeal from the final decision?

(k) Once the Appeals Board has served its final decision, any person may request a copy of all or a portion of the record, subject to any assertions of privilege, protective orders or provisions of law prohibiting disclosure. The complete record includes the pleadings, all notices and orders issued by the Appeals Board, any proposed decision by the hearing officer, the final decision, all exhibits whether admitted or rejected, the written evidence and any other papers in the case, except as provided by law.

(l) A non-attorney representative whose privilege to appear has been removed or suspended may petition the Appeals Board for reinstatement of the privilege after a period of not less than one year has elapsed from the date on which the decision of the Appeals Board took effect, or from the date of the denial of a similar petition.

Authority: Sections 4907, 5307, Labor Code.
Reference: Sections 4907, 5311, Labor Code. Section 9721.12, title 8, California Code of Regulations.

§ ~~10324.~~ 10410. Ex Parte Communications.

(a) No document, including letters or other writings, shall be filed by a party ~~or lien claimant~~ with the Workers' Compensation Appeals Board unless service of a copy thereof is made on all parties together with the filing of a proof of service as provided for in ~~R~~rule ~~10505~~ 10625.

(b) When the Appeals Board or a workers' compensation judge receives an ex parte letter or other document from any party ~~or lien claimant~~ in a case pending before the Appeals Board or the workers' compensation judge, the Appeals Board or the workers' compensation judge ~~he, she, or it~~ shall serve copies of the letter or document on all other parties to the case with a cover letter explaining that the letter or document was received ex parte in violation of this rule.

(c) No party ~~or lien claimant~~ shall discuss with the Appeals Board or a workers' compensation judge the merits of any case pending before the Appeals Board or that judge without the presence of all necessary parties to the proceeding, except when submitting a walk-through document in accordance with rule 10789. ~~as provided by these rules~~.

(d) All correspondence concerning the examination by and the reports of a physician appointed by a workers' compensation judge or the Appeals Board pursuant to Labor Code sections 5701, 5703.5, 5706~~,~~ or 5906 shall be made, respectively, through the workers' compensation judge or the Appeals Board, and no party, attorney or non-attorney representative shall communicate with that physician regarding the merits of the case unless ordered to do so.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5701, 5703.5, 5706, 5708 and 5906, Labor Code; and Sections 10625 and 10789, title 8, California Code of Regulations.

§ ~~10561~~ 10421. Sanctions.

(a) On its own motion or upon the filing of a petition pursuant to ~~R~~rule ~~10450~~ 10510, the Workers' Compensation Appeals Board may order payment of reasonable expenses, including attorney's fees and costs and, in addition, sanctions as provided in Labor Code section 5813. Before issuing such an order, the alleged offending party or attorney must be given notice and an opportunity to be heard. In no event shall the Workers' Compensation Appeals Board impose a monetary sanction pursuant to Labor Code section 5813 where the one subject to the sanction acted with reasonable justification or other circumstances make imposition of the sanction unjust.

(b) Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit. Violations subject to the provisions of Labor Code section 5813 shall include but are not limited to the following:

(1) Failure to appear or appearing late at a conference or trial where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct.

(2) Filing a pleading, petition or legal document unless there is some reasonable justification for filing the document.

(3) Failure to timely serve documents (including but not limited to medical reports and medical-legal reports) as required by the rules of the Workers' Compensation Appeals Board, or the Administrative Director, where the documents are within the party's ~~or lien claimant's~~ possession or control, unless that failure resulted from mistake, inadvertence or excusable neglect.

(4) Failing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure, with the regulations of the Administrative Director, or with any award or order of the Workers' Compensation Appeals Board, including an order of discovery, which is not pending on reconsideration, removal or appellate review and which is not subject to a timely petition for reconsideration, removal or appellate review, unless that failure results from mistake, inadvertence, surprise or excusable neglect.

(5) Executing a declaration or verification to any petition, pleading or other document filed with the Workers' Compensation Appeals Board:

(A) That:

(i) Contains false or substantially false statements of fact;

(ii) Contains statements of fact that are substantially misleading;

(iii) Contains substantial misrepresentations of fact;

(iv) Contains statements of fact that are made without any reasonable basis or with reckless indifference as to their truth or falsity;

(v) Contains statements of fact that are literally true, but are intentionally presented in a manner reasonably calculated to deceive; and/or

(vi) Conceals or substantially conceals material facts; and

(B) Where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(6) Bringing a claim, conducting a defense~~,~~ or asserting a position:

(A) That is:

(i) Indisputably without merit~~,~~;

(ii) Done solely or primarily for the purpose of harassing or maliciously injuring any person~~,~~; and/or

(iii) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation; and

(B) Where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law -- unless it can be supported by a non-frivolous argument for an extension, modification or reversal of the existing law or for the establishment of new law -- and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct. In determining whether a claim, defense, issue or argument is warranted under existing law, or if there is a reasonable excuse for it, consideration shall be given to:

(A) Whether there are reasonable ambiguities or conflicts in the existing statutory, regulatory~~,~~ or case law, taking into consideration the extent to which a litigant has researched the issues and found some support for its theories; and

(B) Whether the claim, defense, issue or argument is reasonably being asserted to preserve it for reconsideration or appellate review.

This subdivision is specifically intended not to have a "chilling effect" on a party's~~ or lien claimant's~~ ability to raise and pursue legal arguments that reasonably can be regarded as not settled.

Commented [10]: This is dangerously close to stifling legal argument. How is such intent determined and defined?

Commented [11]: A party might not know of an obligation to offer an excuse unless the WCJ makes an inquiry.

(8) Asserting a position that misstates or substantially misstates the law, and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(9) Using any language or gesture at or in connection with any hearing, or using any language in any pleading or other document:

(A) Where the language or gesture:

(i) Is directed to the Workers' Compensation Appeals Board, to any of its officials or staff~~,~~ or to any party ~~or lien claimant~~ (or the attorney or ~~other~~ non-attorney representative for a party ~~or lien claimant~~); and

(ii) Is patently insulting, offensive, insolent, intemperate, foul, vulgar, obscene, abusive or disrespectful; or

(B) Where the language or gesture impugns the integrity of the Workers' Compensation Appeals Board or its ~~C~~commissioners, judges or staff.

~~(e)(c) Notwithstanding any other provision of these rules, for purposes of this rule and Labor Code section 5813:~~

~~(1) A lien claimant may be deemed a "party" at any stage of the proceedings before the Workers' Compensation Appeals Board; and~~

~~(2) An "attorney" includes a lay representative of a party or lien claimant.~~

~~(f) This rule shall apply only to applications filed on or after January 1, 1994.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5701, 5703.5, 5706, 5708, 5813 and 5906, Labor Code; and Section 10510, title 8, California Code of Regulations.

§ ~~10782.~~ 10430. Vexatious Litigants.

(a) For purposes of this rule, "vexatious litigant" means:

(1) A party ~~or lien claimant~~ who, while acting in propria persona ~~(i.e., while representing himself or herself)~~ in proceedings before the Workers' Compensation Appeals Board, repeatedly relitigates, or attempts to relitigate, an issue of law or fact that has been finally determined against that party ~~or lien claimant~~ by the Workers' Compensation Appeals Board or by an appellate court;

(2) A party ~~or lien claimant~~ who, while acting in propria persona in proceedings before the Workers' Compensation Appeals Board, repeatedly files unmeritorious motions, pleadings~~,~~ or other papers, repeatedly conducts or attempts to conduct unnecessary discovery, or repeatedly engages in other tactics that are in bad faith, are frivolous~~,~~ or are solely intended to cause harassment or unnecessary delay; or

(3) A party ~~or lien claimant~~ who has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction(s)~~,~~ or occurrence(s) that are the subject, in whole or in substantial part, of the party's ~~or lien claimant's~~ workers' compensation case.

For purposes of this rule, the phrase "finally determined" shall mean:

(i) That all appeals have been exhausted or the time for seeking appellate review has expired; and

(ii) The time for reopening under Labor Code sections 5410 or 5803 and 5804 has passed or, although the time for reopening under those sections has not passed, there is no good faith and non-frivolous basis for reopening.

(b) Upon the petition of a party ~~or lien claimant~~, or upon the motion of any workers' compensation judge or the Appeals Board, a presiding workers' compensation judge of any district office having venue or the Appeals Board may declare a party ~~or lien claimant as~~ to be a vexatious litigant.

(c) No party ~~or lien claimant~~ shall be declared a vexatious litigant without being given notice and an opportunity to be heard. If a hearing is requested, the presiding workers' compensation judge or the Appeals Board, in ~~his, her or its~~ their discretion, either may take and consider both oral and documentary evidence or may take and consider solely documentary evidence, including affidavits or other written declarations of fact made under penalty of perjury.

(d) If a party ~~or lien claimant~~ is declared to be a vexatious litigant, a presiding workers' compensation judge or the Appeals Board may enter a "prefiling order," i.e., an order which prohibits the vexatious litigant from filing, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness to Proceed, petition~~,~~ or other request for action by the Workers' Compensation Appeals Board without first obtaining leave of the presiding workers' compensation judge of the district office where the request for action is proposed to be filed or, if the matter is pending before the Appeals Board on a petition for reconsideration, removal or disqualification,

without first obtaining leave from the Appeals Board. For purposes of this rule, a "petition" shall include, but not be limited to, a petition to reopen under Labor Code sections 5410, 5803 and 5804, a petition to enforce a medical treatment award, a penalty petition~~,~~ or any other petition seeking to enforce or expand the vexatious litigant's previously determined rights.

(e) If a vexatious litigant proposes to file, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness to Proceed, petition~~,~~ or other request for action by the Workers' Compensation Appeals Board, the request for action shall be conditionally filed. Thereafter, the presiding workers' compensation judge, or the Appeals Board if the petition is for reconsideration, removal~~,~~ or disqualification, shall deem the request for action to have been properly filed only if it appears that the request for action has not been filed in violation of subdivision (a). In determining whether the vexatious litigant's request for action has not been filed in violation of subdivision (a), the presiding workers' compensation judge, or the Appeals Board, shall consider the contents of the request for action and the Workers' Compensation Appeals Board's existing record of proceedings, as well as any other documentation that, in its discretion, the presiding workers' compensation judge or the Appeals Board asks to be submitted. Among the factors that the presiding workers' compensation judge or the Appeals Board may consider is whether there has been a significant change in circumstances (such as new or newly discovered evidence or a change in the law) that might materially affect an issue of fact or law that was previously finally determined against the vexatious litigant.

(f) If any in propria persona Application for Adjudication of Claim, Declaration of Readiness to proceed, petition or other request for action by the Workers' Compensation Appeals Board from a vexatious litigant subject to a prefiling order is inadvertently accepted for filing (other than conditional filing in accordance with subdivision (e)~~,~~ above), then any other party ~~or lien claimant~~ may file (and shall concurrently serve on the vexatious litigant and any other affected parties ~~or lien claimants~~) a notice stating that the request for action is being submitted by a vexatious litigant subject to a prefiling order as set forth in subdivision (d). The filing of the notice shall automatically stay the request for action until it is determined, in accordance with subdivision (e), whether the request for action should be deemed to have been properly filed.

(g) A copy of any prefiling order issued by a presiding workers' compensation judge or by the Appeals Board shall be submitted to the Secretary of the Appeals Board, who shall maintain a record of vexatious litigants subject to those prefiling orders and who shall annually disseminate a list of those persons to all presiding workers' compensation judges.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Article XIV, section 4, California Constitution; Sections 5410, 5803 and 5804, Labor Code; and Sections 391, 391.2 and 391.7, Code of Civil Procedure.

§10440. Contempt.

(a) A workers' compensation judge or a deputy commissioner may issue writs or summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for direct and hybrid contempt as defined by Labor Code section 5309(c) in a like manner and to the same extent as courts of record.

(b) The Appeals Board may issue writs or summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for direct, hybrid, or indirect contempt in a like manner and to the same extent as the courts of record.

Authority: Sections 133, 134 and 5307, Labor Code.
Reference: Sections 4550, 4551, 4552, 4553, and 4553.1 and 5309(c), Labor Code; Sections 1209-1222, Code of Civil Procedure.

§ ~~10779.~~ 10445. Disbarred and Suspended Attorneys.

An attorney who has been disbarred or suspended by the Supreme Court for reasons other than nonpayment of State Bar fees, or who has been placed on involuntary inactive enrollment status by the State Bar or who has resigned while disciplinary action is pending shall be deemed unfit to appear as a non-attorney representative of any party before the Workers' Compensation Appeals Board during the time that the attorney is precluded from practicing law in this state.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 4907, Labor Code; and Section 6126, Business and Professions Code.

ARTICLE 5
Applications and Answers

§ 10450. Invoking the Jurisdiction of the Workers' Compensation Appeals Board.

(a) Except as provided by rules 10990 and 10590, proceedings for the adjudication of rights and liabilities before the Workers' Compensation Appeals Board shall be initiated and jurisdiction of the Workers' Compensation Appeals Board invoked by the filing of an Application for Adjudication of Claim, a case opening Compromise and Release Agreement, a case opening Stipulations with Request for Award or a Request for Findings of Fact under rule 10460.

(b) Until an application or other case opening document has been filed, the Workers' Compensation Appeals Board may not conduct hearings, issue orders or authorize the commencement of formal, compelled discovery, including the use of subpoenas to obtain records or sworn testimony.

(c) The pre-application assignment of a non-adjudication EAMS case number by any ancillary unit of the Division of Workers' Compensation (e.g., the Disability Evaluation Unit, the Information and Assistance Office):

(1) Does not establish the jurisdiction of the Workers' Compensation Appeals Board and, therefore, does not permit it to conduct any hearings or to issue any orders;

(2) Does not toll the statute of limitations (except as provided in Labor Code section 5454 for submissions to the Information and Assistance Unit); and

(3) Does not authorize the commencement of formal, compelled discovery.

Nothing in this rule shall be construed to preclude any non-compelled pre-application medical evaluations or investigations.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5300, 5301, 5316, 5454, 5500 and 5501, Labor Code; Sections 10460, 10590 and 10990, title 8, California Code of Regulations.

§ 10455. Applications.

A separate Application for Adjudication of Claim shall be filed for each separate injury for which benefits are claimed. All applications shall conform to the following requirements:

(a) Only one application shall be filed for each injury. Duplicative applications are subject to summary dismissal.

(b) Upon filing an Application for Adjudication of Claim, the filing party shall concurrently serve a copy of the application and any accompanying documents on all other parties.

(c) When filing an amended application, the applicant shall indicate on the box set forth on the application form that it is an amended application.

(d) If the applicant is a minor or incompetent, the Application for Adjudication of Claim shall be accompanied by a Petition for Appointment of ~~a~~ Guardian ad Litem and Trustee.

(e) An applicant is not required to disclose their social security number. If an applicant discloses their Social Security number on the application, the Social Security number will be used solely for identification and verification purposes in order to administer the workers' compensation system except with the consent of the applicant, or as permitted or required by statute, regulation~~,~~ or judicial order.

(f) Upon the filing of an initial application, the Workers' Compensation Appeals Board shall assign an adjudication case number and a venue. The case number and venue shall be indicated on a conformed copy of the application.

(1) If the party filing the application is unrepresented, the Workers' Compensation Appeals Board shall serve a conformed copy of the application on all parties and lien claimants on the proof of service to the application.

(2) If the party filing the application is represented, the Workers' Compensation Appeals Board shall serve a conformed copy of the application on the filing party or lien claimant. Upon receipt of the conformed copy of the application, the filing party shall forthwith serve a copy of the conformed application on all other parties and lien claimants.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 3208.2, 5307.5, 5316, 5500 and 5501, Labor Code.

§ ~~10405.~~ 10460. Request for Findings of Fact.

A request for findings of fact under Government Code sections 21164, 21166, 21537, 21538, 21540 or 21540.5 or under Labor Code sections 4800.5(d), 4801, 4804.2, 4807 or 4851 is a proceeding separate from a claim for workers' compensation benefits even though it arises out of the same incident, injury or exposure. The request for findings of fact shall be filed separately and a separate file folder and record of the proceeding will be maintained, but the request for findings of fact may be consolidated for hearing with a claim for workers' compensation benefits ~~under the provisions of Section 10590 of these Rules~~.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 21164, 21166, 21537, 21538, 21540 and 21540.5, Government Code; Sections 4800.5(d), 4801, 4804.2, 4807 and 4851, Labor Code.

§ 10462. Subsequent Injuries Benefits Trust Fund Application.

(a) All claims against the Subsequent Injuries Benefits Trust Fund shall be by an application in writing setting forth the date and nature of the industrial injury, together with all factors of disability alleged to have pre-existed the injury.

(b) All such applications shall be filed with the Workers' Compensation Appeals Board district office having venue or in EAMS, and a copy shall be served by mail on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund, in accordance with rules 10530 and 10540. Where joinder of the Subsequent Injuries Benefits Trust Fund has been ordered, the applicant shall forthwith file and serve an application as provided herein.

(c) After such an application is filed, any party who has previously filed medical reports shall ~~forthwith~~ serve copies on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund no later than 30 days prior to the mandatory settlement conference or other hearing, unless service is waived by the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund.

Authority: Sections 133 and 5307, 5309 and 5708, Labor Code.
Reference: Sections 4750, 4751, 4753, 4753.5 and 4754.5, Labor Code; Sections 10530 and 10540, title 8, California Code of Regulations.

§ 10465. Answers.

An Answer to each Application for Adjudication of Claim shall be filed and served no later than the shorter of either: 10 days after service of a Declaration of Readiness to Proceed, or 90 days after service of the Application for Adjudication of Claim.

(a) The Answer used by the parties shall conform to a form prescribed and approved by the Appeals Board. Additional matters may be pleaded as deemed necessary by the answering party. A general denial is not an answer within this rule.

(b) The Answer shall be accompanied by a proof of service upon the opposing parties.

(c) Evidence upon matters and affirmative defenses not pleaded by Answer will be allowed only upon such terms and conditions as the Appeals Board or workers' compensation judge may impose in the exercise of sound discretion.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5500 and 5505, Labor Code.

Commented [12]: Labor Code section 5505 specifies that a party "may" file an answer based upon disagreement with some aspect of the application. This appears arguably to require an answer ("shall be filed") in all cases. What is the statutory requirement to require an answer when there are no disputed issues?

§ ~~10404.~~ 10470. Labor Code Section 4906~~(g)~~(h) Statement.

(a) The employee, insurer, employer and the attorneys for each party shall comply with Labor Code section 4906~~(g)~~(h). ~~by filing a statement under penalty of perjury wherein it is declared that the party on whose behalf the declaration is made has not violated Labor Code Section 139.3, has not offered, delivered, received, or accepted any unlawful rebate, refund, commission, preference, patronage dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for any referred examination or evaluation by a physician. Except as otherwise provided herein, f~~

(b) Failure to ~~comply with this rule~~ file the statement required by Labor Code section 4906(h) shall result in refusal to file ~~or process~~ that party's Application for Adjudication of Claim or answer.

(c) If any of the above parties are not available, cannot be located or are unwilling to sign a declaration under penalty of perjury setting forth in specific detail the reasons that the party is not available, cannot be located or is unwilling to sign as well as good faith efforts to locate the party may be filed with the application or answer. If the presiding workers' compensation judge or designee determines from the facts set forth in the declaration that good cause has been established, ~~he or she~~ the presiding workers' compensation judge or designee may accept the application or answer for filing. For the purpose of this rule, a ~~c~~Compromise and ~~r~~Release agreement or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award shall not be treated as an ~~a~~Application for ~~a~~Adjudication of Claim.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 4906(g), Labor Code.

Commented [13]: Is section (a) necessary? Isn't compliance with all sections of the Labor Code inherently required? Couldn't the rule begin with what is now subsection (b)?

ARTICLE 6
Venue

§ ~~10409~~ 10480. Venue.

~~(a) The person or entity filing an initial Application for Adjudication (or other case opening document)~~ When filing a case opening document, the filer shall designate venue and shall specify the basis for venue in accordance with Labor Code section 5501.5. ~~whether venue is based upon: (1) the place of the employee or dependent's residence at the time of filing (Lab. Code, § 5501.5(a)(1) or (d)); (2) the place where the injury allegedly occurred or, for cumulative trauma or industrial disease claims, where the last alleged injurious exposure occurred (Lab. Code, § 5501.5(a)(2) or (d)); or (3) the place where the employee's attorney maintains his or her principal place of business (Lab. Code, § 5501.5(a)(3)).~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5500 and 5501.5, Labor Code.

§ ~~10409~~ 10482. Venue When Applicant is Employee of Division of Workers' Compensation.

~~(~~b~~)~~ When a Division of Workers' Compensation employee files ~~his or her own~~ an Application for Adjudication of Claim or other case opening document~~, the following provisions shall apply:~~

~~(1) R~~regardless of the venue designated by the employee, venue shall be determined as follows:

(~~A~~a) The parties may agree on a venue, subject to the approval of the presiding workers' compensation judge of the agreed-upon venue.

(~~B~~b) If the parties are unable to agree on a suitable venue, or for any other good cause shown, the presiding workers' compensation judge of the district office designated on the application or other case opening document shall consult with the Secretary or other ~~D~~deputy ~~C~~commissioner of the Appeals Board to determine the appropriate venue, with the secretary or other deputy commissioner issuing the appropriate venue order.

(~~2~~c) The S~~s~~ecretary or other deputy commissioner of the Appeals Board shall assign the case to a workers' compensation judge unfamiliar with the employee. When appropriate, a workers' compensation judge from a region other than the employee's region shall be assigned.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5500 and 5501.5, Labor Code.

§ ~~10410.~~ 10488. Objection to Venue Based on an Attorney's Principal Place of Business. ~~Under Labor Code Section 5501.5(c).~~

Pursuant to Labor Code section 5501.5(c), any employer or insurance carrier listed on an initial Application for Adjudication of Claim may file an objection to a venue selection, based on the employee's attorney's principal place of business under Labor Code section 5501.5(a)(3), within 30 days after notice of the adjudication case number and venue is received by the employer or insurance carrier. The objecting employer or insurance carrier shall state under penalty of perjury the date when the notice of the adjudication case number and venue was received. A timely objection shall result in venue being assigned in accordance with Labor Code section 5501.5(a)(1) or (a)(2).

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5501.5, Labor Code.

Commented [14]: What if there is no appeals board (district) office in the county where the injured worker resides or where the injury occurred? There is no mention of 5501.5(d), which applies to that circumstance.

§ ~~10411.~~ 10490. Petition for Change of Venue for Good Cause. ~~Under Labor Code Section 5501.6.~~

A petition for change of venue pursuant to Labor Code section 5501.6 shall be filed at the district office or permanently staffed satellite office ~~with~~ having venue. Any objection to a petition for a change of venue shall be filed within 10 days of the filing of the petition. The presiding workers' compensation judge of the district office having venue, or the judge of the permanently staffed satellite office having venue, or ~~his or her~~ their designee, shall grant or deny the petition for change of venue, or serve notice of a status conference concerning the petition, within 30 days of the filing of the petition.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5501.6, Labor Code.

ARTICLE 7
Petitions, Pleadings, and Forms

§ ~~10408.~~10500. ~~Application for Adjudication of Claim Form and Other Forms~~ Form Pleadings.

(a) 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.

(b) Each of the following documents shall be on a form prescribed and approved by the Appeals Board:

(1) An ~~a~~Application for ~~a~~Adjudication of ~~c~~Claim for compensation benefits or death benefits;

(2) A lien;

(3) A ~~d~~Declaration of ~~r~~Readiness to Proceed ~~(including for an expedited hearing)~~;

(4) A ~~p~~Pre-~~t~~Trial ~~c~~Conference ~~s~~Statement ~~(including for a lien conference)~~;

(5) Minutes of Hearing ~~(~~except Minutes of Hearing prepared by a court reporter~~)~~;

(6) A ~~c~~Compromise and ~~r~~Release ~~(including for dependency and third-party claims)~~;

(7) Stipulations with ~~r~~Request for ~~a~~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.

(c) 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.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 3716, 4903.5, 5500, 5500.3, 5501.5 and 5502, Labor Code.

§ ~~10450~~.10510. Petitions and Answers to Petitions.

(a) After jurisdiction of the Workers' Compensation Appeals Board is invoked pursuant to rule 10450, ~~A~~ a request for action by the Workers' Compensation Appeals Board, other than a rule 10500 form pleading, ~~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) All petitions and answers shall be filed in accordance with rule 10615 and served on all parties in accordance with rule 10625. ~~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.

(c) ~~Unless otherwise provided by statute or rule, a~~An answer may be filed within 10 days after the ~~filing~~ service of a petition unless otherwise provided. ~~Unless otherwise provided by statute or rule, t~~The time limit for filing any ~~petition or any~~ answer shall be extended in accordance with ~~sections~~ rule 10605 unless otherwise provided.

(d) 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.

(e) 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.

(f) Any previously filed document shall not be attached to a petition or answer; any such document attached to a petition or answer may be discarded.

~~(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; Sections 10450, 10500, 10605, 10615 and 10625, title 8, California Code of Regulations.

§ ~~10490.~~10515. Demurrer, Judgment on the Pleadings~~,~~ and Summary Judgment Not Permitted.~~; Unintelligible Pleadings~~

Demurrers, petitions for judgment on the pleadings~~,~~ and petitions for summary judgment are not permitted. ~~A continuance may be granted upon timely request and upon such terms as may be reasonable under the circumstances or may be ordered by the Workers' Compensation Appeals Board on its own motion if: (a) a pleading is so uncertain, unintelligible or ambiguous as to render it impossible for the Workers' Compensation Appeals Board to understand or act upon it; or (b) any party is prejudiced by omission or ambiguity of necessary allegations sufficient to prevent that party from adequately presenting a cause of action or defense.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5500 and 5708, Labor Code.

§ ~~10492.~~10517. When Pleadings Deemed Amended.

~~The p~~ Pleadings shall be deemed amended to conform to the stipulations and statement of issues agreed to by the parties on the record. Pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5702, Labor Code.

§ ~~10498~~ 10520. Special Requirements for Pleadings Filed or Served by Representatives. ~~Attorneys or by Non-Attorney Employees of an Attorney or Law Firm.~~

(a) 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.

(b) 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 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.~~

(c) If a non-attorney representative who is not an 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 representative's name followed by the words "Hearing Representative" or "Non-Attorney Representative," the name of the entity, if any, that employs the non-attorney representative, business address and business telephone number.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5000, 5501, 5505 and 5900 et seq., Labor Code; 10205.12, title 8, California Code of Regulations; and Rules 2.111(1) and 8.204(b)(10)(D), California Rules of Court.

§ 10525. Petition for Increased or Decreased Compensation -- Serious and Willful Misconduct.

(a) Any claim(s) that an injury was caused by either the serious and willful misconduct of the employee or of the employer must be separately pleaded and must set out in sufficient detail the specific basis upon which a claim is founded. When a claim of serious and willful misconduct is based on more than one theory, the petition shall set forth each theory separately.

(b) Whenever a claim of serious and willful misconduct is predicated upon the violation of a particular safety order, the petition shall set forth the correct citation or reference and all of the particulars required by Labor Code section 4553.1.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4550, 4551, 4552, 4553 and 4553.1, Labor Code.

§ ~~10447.~~10528. ~~Pleadings —~~ Petition for Increased Compensation –Discrimination under Labor Code Section 132a.

Any person seeking to initiate proceedings under Labor Code section 132a other than prosecution for misdemeanor must file a petition ~~therefor~~ setting forth specifically and in detail the nature of each violation alleged, ~~and~~ facts relied upon, ~~to show the same~~ and the relief sought. Each alleged violation must be separately pleaded. ~~so that the adverse party or parties and the Workers' Compensation Appeals Board may be fully advised of the specific basis upon which the charge is founded.~~

The Workers' Compensation Appeals Board may refer, or any worker may complain of, suspected violations of the criminal misdemeanor provisions of Labor Code section 132a to the Division of Labor Standards Enforcement or directly to the Office of the Public Prosecutor.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 132a, Labor Code.

§ ~~10470.~~10530. Emergency Petition for Stay.

(a) A party may present to the presiding workers' compensation judge of the district office having venue or the judge of the permanently staffed satellite office having venue a petition to stay an action by another party pending a hearing. Each district office will have a designee of the presiding judge available to assign petitions for stay from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. on court days.

(b) A party who walks through a petition to stay an action shall provide notice by fax or e-mail to the opposing party or parties no later than 10:00 a.m. of the immediately preceding court day. This notice shall state with specificity the nature of the relief to be requested by the petition to stay and the date, time and place that the petition to stay will be presented. A copy of the petition to stay shall be attached to the notice. If notice by fax or e-mail fails, or if an opposing party's fax number or e-mail address are unknown, notice shall be given in the manner best calculated to expeditiously provide the party or parties with notice including notice by phone or by overnight mail or delivery service. First-class mail shall not be utilized for notice of a petition to stay an action.

(c) A petition to stay an action shall be accompanied by a declaration regarding notice stating under penalty of perjury:

(1) The notice given, including the date, time, manner and name of the party informed;

(2) the relief sought; and

(3) whether opposition is expected. In addition, if the petitioner was unable to give timely notice to the opposing party, the declaration under penalty of perjury ~~also~~ shall state that the petitioner in good faith attempted to inform the opposing party but was unable to do so, ~~specifying~~ and shall specify the efforts made to inform the opposing party.

(d) A petition to stay an action shall be accompanied by a declaration regarding notice stating under penalty of perjury:

(1) The notice given, including the date, time, manner~~,~~ and name of the party informed;

(2) The relief sought; and

(3) Whether opposition is expected. In addition, if the petitioner was unable to give timely notice to the opposing party, the declaration under penalty of perjury also shall state that the petitioner in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party.

(e) Upon the receipt of a proper petition to stay an action, the presiding judge or ~~his or her~~ the presiding judge's designee shall, in ~~his or her~~ their discretion, either:

(1) Deny the petition;

(2) Grant a temporary stay and set the petition for a ~~formal~~ hearing; or

(3) Set the petition for a ~~formal~~ hearing, without either denying the petition or granting a temporary stay.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4053, 4054, 4902, 5001, 5002, 5702 and 5710, Labor Code.

§~~10455.~~10534. Petition to Reopen.

Petitions invoking the continuing jurisdiction of the Workers' Compensation Appeals Board under Labor Code section 5803 shall set forth specifically and in detail the facts relied upon to establish good cause for reopening.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5803, Labor Code.

§ ~~10458.~~10536. Petition for New and Further Disability.

The jurisdiction of the Workers' Compensation Appeals Board under Labor Code section 5410 shall be invoked by a petition setting forth specifically and in detail the facts relied upon to establish new and further disability.

If no prior Application for Adjudication of Claim has been filed, jurisdiction shall be invoked by the filing of an original Application for Adjudication of Claim.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5803, Labor Code.

§ 10540. Petition to Terminate Liability for Continuing Temporary Disability.

(a) A petition to terminate liability for temporary total disability indemnity under a findings and award, decision or order of the Workers' Compensation Appeals Board shall be filed at least one week prior to termination of temporary disability and shall conform substantially to the form provided by the Appeals Board and shall include:

(1) A statement, in capital letters, that an order terminating liability for temporary total disability indemnity may issue unless objection thereto is served and filed on behalf of the employee within 14 days after service and filing of the petition, and

(2) All medical reports in the possession of the petitioner relevant to the issue of continuing liability for disability that have not previously been served and filed;

(b) If written objection to the petition to terminate is not served and filed within 14 days of the petition's service and filing, the Workers' Compensation Appeals Board may order temporary disability compensation terminated, in accordance with the facts as stated in the petition or in such other manner as may appear appropriate on the record. If the petition to terminate is not properly completed or executed in accordance with this rule, the Workers' Compensation Appeals Board may summarily deny or dismiss the petition.

(c) Written objection to the petition by the employee shall be served and filed within 14 days of service and filing of the petition, and shall state the facts in support of the employee's contention that the petition should be denied, and shall be accompanied by a Declaration of Readiness to Proceed to Expedited Hearing. All supporting medical reports shall be attached to the objection. The objection shall also show that service of the objection and the reports attached thereto has been made upon petitioner or counsel and a proof of service showing service of the objection upon petitioner.

Commented [15]: Shouldn't the "or" be changed to read "and counsel, if represented" to avoid service only on the employer or insurer in a represented case?

(d) Upon the filing of a timely objection, where it appears that the employee is not or may not be working and is not or may not be receiving disability indemnity, the petition to terminate shall be set for expedited hearing not less than 10 nor more than 30 days from the date of the receipt of the objection.

(e) If complete disposition of the petition to terminate cannot be made at the hearing, the workers' compensation judge assigned thereto, based on the record, including the allegations of the petition, the objection thereto and the evidence (if any) at said hearing, shall forthwith issue an interim order directing whether temporary disability indemnity shall or shall not continue during the pendency of proceedings on the petition to terminate. Said interim order shall not be considered a final order, and will not preclude a complete adjudication of the petition to terminate or the issue of temporary disability or any other issue after full hearing of the issues.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4650 and 4651.1, Labor Code.

§ ~~10451.3.~~10545. Petition for Costs.

(a) A petition for costs is a petition seeking reimbursement of an expense or payment for service that is not allowable as a lien against compensation under Labor Code section 4903. A petition for costs may be filed only by:

(1) An employee or the dependent of a deceased employee~~,~~ ;

(2) A defendant~~,~~ ; or

(3) An interpreter for services other than those rendered at a medical treatment appointment or medical-legal examination.

(b) The caption of the petition shall identify it as a "Petition for Costs."

(c) A petition for costs filed by an employee or a dependent may include, but is not limited to, a claim for reimbursement of payment(s) previously made directly to a provider for medical-legal goods or services, subject to any applicable official fee schedule.

(d) A petition for costs filed by an interpreter shall contain, in addition to the general factual allegations of the petition:

(1) A statement of the name(s) of any interpreter(s) who performed the services;

(2) A statement that the services were actually performed; and

(3) 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 ~~R~~rules of the Administrative Director.

(e) A petition for costs shall not be filed or served until at least 60 days after a written demand for the costs has been 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 response, if any. A petition that fails to comply with these provisions may be dismissed.

(f) A petition for costs submitted by any person or entity not listed in subdivision (a) shall be deemed dismissed by operation of law and shall not toll or extend any statute of limitations.

(g) ~~(1) A petition for costs may be placed on calendar:~~

~~(A) On the filing of a declaration of readiness by an employee, a dependent, or a defendant, or a petitioning interpreter that lists the petition as an issue; or~~

~~(B) On the Workers' Compensation Appeals Board's own motion.~~

~~(2) Notwithstanding subdivision (g)(1), t~~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 15 calendar days to file written 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~~ 1) Issue an order regarding the petition for costs, consistent with the notice of intention; or

(~~B~~ 2) Set the matter for hearing.

(h) 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~~rule 10421. 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~~ rule, the monetary sanctions shall not be less than $ 500.00.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4600, 4903 et seq., 5710, 5811 and 5813, Labor Code.

Commented [16]: Section 5813 references fees and costs that were "incurred by … [a] … party as a result …[,]" That section requires that the fees and costs must be actually incurred in addition to being reasonable. CLA suggests adding the word "incurred" after costs in line 4 of the proposed rule.

§ 10547. Petition for Labor Code Section 5710 Attorney's Fees.

(a) A petition for attorney's fees pursuant to Labor Code section 5710 is a petition seeking attorney fees for representation of the applicant at a deposition allowable under Labor Code section 5710(b) as well as any other benefits listed under Labor Code section 5710(b)(1)-(5).

(b) The caption of the petition shall identify it as a "Petition for Attorney's Fees Pursuant to Labor Code Section 5710."

(c) A petition for attorney's fees pursuant to Labor Code section 5710 shall be verified upon oath in the manner required for verified pleadings in courts of record.

(d) A petition for attorney's fees pursuant to Labor Code section 5710 shall not be filed or served until at least 30 days after a written demand for the fees has been served on the defendant(s) and the petitioner has made at least one subsequent attempt to meet and confer following the expiration of the 30 days without payment. The petition shall append:

(1) A copy of the written demand, together with a copy of the proof of service;

(2) A copy of the response, if any;

(3) A proof of service showing service on the injured worker and the defendant alleged to be liable for paying the fees; and

(4) A verification, including a statement regarding attempt(s) to meet and confer.

(e) Failure to comply with subdivisions (c) and (d)(1)-(4) of this rule shall constitute a valid ground for dismissing the petition.

(f) The petition shall contain the name of the attorney who attended the deposition along with the attorney's State Bar number.

Commented [17]: Should consideration be given to adding hearing representative in addition to attorney to account for the industry practice of hearing representatives sometimes appearing at depositions in lieu of an attorney?

(g) 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 under Labor Code section 5813 and rule 10421. 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 rule, the monetary sanctions shall not be less than $500.00.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4600, 4903 et seq., 5710, 5811 and 5813, Labor Code; and Section 10421, title 8, California Code of Regulations.

§ ~~10582~~ 10550. Petition to Dismiss Inactive Case.

(a) Unless a case is activated for hearing within one year after the filing of the Application for Adjudication of Claim or the entry of an order taking off calendar, the case may be dismissed after notice and opportunity to be heard. Such dismissals may be entered at the request of an interested party or upon the Workers' Compensation Appeals Board's own motion for lack of prosecution.

(b) At least ~~thirty (~~30~~)~~ days before filing a petition to dismiss, the defendant seeking to dismiss the case shall send a letter to the applicant, and, if represented, to the applicant's attorney or non-attorney representative, stating the defendant's intention to file a "Petition to Dismiss Inactive Case" ~~thirty (~~30~~)~~ days after the date of that letter, unless the applicant or ~~his~~ applicant's attorney or non-attorney representative objects in writing, demonstrating good cause for not dismissing the case.

(c) A petition to dismiss shall be filed with the district office having venue or in EAMS and the petition shall be served on all parties and lien claimants pursuant to rule ~~10530~~ 10625.

(d) A petition to dismiss shall be captioned "Petition to Dismiss Inactive Case [assigned ADJ number]."

(e) The following documents shall be filed with a petition to dismiss:

(1) A copy of the letter required by subdivision (a) of this rule; and

(2) Any reply to the letter required by subdivision (a) of this rule.

(f) A case may be dismissed after issuance of a ~~ten (~~10~~)~~ day notice of intention to dismiss and an opportunity to be heard, but not by an order with a clause rendering the order null and void if an objection showing good cause is filed.

~~This rule applies to injuries occurring before January 1, 1990 and on or after January 1, 1994. An Application for Adjudication filed without an accompanying Declaration of Readiness to Proceed will be placed in inactive status.~~

~~Cases set for hearing may be removed from the active calendar by an order taking off calendar. Cases in off calendar status may be restored to the active calendar upon the filing and serving of a properly executed Declaration of Readiness to Proceed.~~

~~Unless a case is activated for hearing within one year after the filing of the Application for Adjudication or the entry of an order taking off calendar, the case may be dismissed after notice and opportunity to be heard. Such dismissals may be entered at the request of an interested party or upon the Workers' Compensation Appeals Board's own motion for lack of prosecution. A case may be dismissed after issuance of a ten day notice of intention to dismiss and an opportunity to be heard, but not by an order with a clause rendering the order null and void if an objection showing good cause is filed~~.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5405 and 5406, Labor Code; Section 10625, title 8, California Code of Regulations.

§ 10555. Petition for Credit.

(a) An employer shall not take a credit for any payments or overpayments of benefits pursuant to Labor Code section 4909 unless ordered or awarded by the Workers' Compensation Appeals Board. A petition for credit shall include:

(1) A description of the payments made by the employer;

(2) A description of the benefits against which the employer seeks a credit; and

(3) The amount of the claimed credit.

(b) *When liability for compensation exceeds the value of a third party credit*, an employer shall not take a credit for an employee's third party recovery pursuant to Labor Code section 3861 unless ordered or awarded by the Workers' Compensation Appeals Board. A petition for credit shall include:

(1) A copy of the settlement or judgment; and

(2) An itemization of any credit applied to expenses and attorneys' fees pursuant to Labor Code sections 3856, 3858 and 3860.

(c) An employee shall promptly disclose to the employer the fact of any third party settlement or judgment and shall promptly provide the employer with a copy of the settlement or judgment. The failure to promptly make such disclosure and/or promptly make such provision to the employer shall be deemed a bad faith action or tactic and the Workers' Compensation Appeals Board may impose monetary sanctions and allow reasonable attorney's fees and costs actually incurred under Labor Code section 5813 and rule 10421. 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 rule, the monetary sanctions shall not be less than $500.00.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 3856, 3858, 3860, 3861 and 4909, Labor Code.

Commented [18]: This is a suggested addition to comport with case law that precludes an employer from unilaterally asserting a credit only when the credit will be insufficient to cover the full amount of the compensation due. (*SCIF v. WCAB (Brown)* (1982) 130 Cal.App.3d 933, 47 Cal. Comp. Cases 358 and *Superior Nat'l (CIGA) v. WCAB (Stephenson)* (2001) 66 Cal.Comp.Cases 1076 (writ denied).)

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Commented [19]: If the employer is entirely precluded from filing a petition for third party credit absent the third party settlement/judgment document, should the failure to timely provide the requisite document be deemed a tactic subject to sanctions?

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ARTICLE 8
Petitions Related to Administrative Orders

§ 10560. Petitions Related to Orders Issued by the Division of Workers' Compensation Administrative Director or the Director of Industrial Relations.

(a) Where the Labor Code provides that the Workers' Compensation Appeals Board has jurisdiction over appeals from or enforcement of an order, any aggrieved party may appeal or seek to enforce an order issued by the Division of Workers' Compensation Administrative Director or the Director of Industrial Relations by filing a petition, and an Application for Adjudication of Claim if one has not already been filed.

(b) Any petition that fails to comply with any of the following requirements may be subject to summary dismissal:

(1) The petition must be timely filed with the Workers' Compensation Appeals Board within the timeframe set forth in the applicable statutes and rules.

(2) The petition shall be filed in accordance with rule 10615.

(3) The petition shall be served on all adverse parties, the employee and the Administrative Director or the Director as specified in the relevant rule.

(c) 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 Administrative Director or the Director to be unjust or unlawful, and every issue to be considered. The petitioner shall be deemed to have finally waived all objections, irregularities and illegalities concerning the determination other than those set forth in the petition.

(d) The petition~~s~~ 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 and trial.

(e) Where a workers' compensation judge has issued a final decision, order or award, any aggrieved party may file a petition for reconsideration with the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 129, 4603, 4604, 5300, 5301 and 5302, Labor Code.

§ 10565. Petition Appealing Denial of Return-to-Work Supplement.

(a) An injured worker may file a "Petition Appealing Denial of Return-to-Work Supplement" with the district office having venue or in EAMS.

(b) The petition shall be filed within 20 days of service of the decision denying the return-to-work supplement, in accordance with rule 17309 and rule 10615.

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(c) The petition and any additional documents or pleadings related to the petition shall be served on the Department of Industrial Relations Return-to-Work Supplement Program in accordance with rule 10632.

(d) The petition shall be captioned "Petition Appealing Denial of Return-to-Work Supplement" and shall include the assigned ADJ number.

(e) The petition shall be based upon one or more of the grounds as prescribed for petitions for reconsideration in Labor Code section 5903.

(f) The Director may file an answer to the petition within 20 days of the date of service of the petition. A document cover sheet and a document separator sheet shall be filed with the answer, and "Return-to-Work Supplement Program Answer to Appeal" shall be entered into the document title field of the document separator sheet.

(g) The petition shall not be placed on calendar unless a Declaration of Readiness to Proceed is filed. The Declaration of Readiness to Proceed may not be filed until 30 days have elapsed from the service of the petition.

(h) If the Director of Industrial Relations acts under rule 17309 to amend, modify or rescind the decision being appealed, the resulting order by the Director shall be served on the parties within 15 days following the date the appeal was filed and shall be filed with the district office having venue or in EAMS.

Authority: Sections 133, 139.48, 5307, 5309 and 5708, Labor Code.
Reference: Section 5903, Labor Code; and Sections 10615, 10632 and 17309, title 8, California Code of Regulations.

§ ~~10957.~~ 10567. 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~~ rule, 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) Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal:

(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 incorrect, 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.

~~(b)~~(c) The petition shall be filed in accordance with rule 10615 ~~with the Workers' Compensation Appeals Board~~ no later than 20 days after service of the IBR determination. ~~An untimely petition may be summarily dismissed.~~

(d) In addition to service as required by rule 10625 the petition and any additional documents or pleadings related to the petition shall be served on the IBR Unit in accordance with ~~Workers'~~ rule 10632.

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~~(c)~~(e) The ~~caption of the~~ petition shall be captioned ~~identify it as a~~ "Petition Appealing Administrative Director's Independent Bill Review Determination~~.~~" and shall include the assigned ADJ number and the IBR case number assigned by the Administrative Director.

~~(d) 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.~~

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

~~(f) The petition shall comply with each of the following provisions~~ Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal.

~~(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 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) 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:~~

~~(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).~~

~~(h)~~(g) 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.

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~~(i)~~(h) The petition shall not be placed on calendar unless a ~~d~~Declaration of ~~r~~Readiness to Proceed is filed and served on the Administrative Director, all adverse parties and the applicant. ~~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) 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) 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)~~(i) If the IBR determination is ~~reversed~~ not affirmed by the workers' compensation judge or the Appeals Board, ~~the dispute~~ it shall be ~~remanded~~ rescinded and the dispute returned to the ~~AD~~Administrative Director with an order specifying the basis for the rescission, and an order to resubmit the dispute to IBR in accordance with Labor Code section 4603.6(g).

~~(m)~~(j) If a final decision of the Workers' Compensation Appeals Board affirms the Administrative Director's IBR determination and 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~~ rule 10570.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4603.6, 5500, 5501, 5502, 5700 et seq., 5800 et seq. and 5900 et seq., Labor Code; and Sections 10570, 10615, 10625 and 10632, title 8, California Code of Regulations.

§ ~~10451.4.~~ 10570. Petition to Enforce an Administrative Director Determination. ~~Independent Bill Review Determination.~~

(a) An aggrieved party may file a "Petition to Enforce an Administrative Director Determination" after the Workers' Compensation Appeals Board has issued a final order affirming an IBR, IMR, or other determination issued by the administrative director or after the time to appeal the determination to the Workers' Compensation Appeals Board has expired. ~~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) may be filed 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 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 any penalties and interest payable under Labor Code section 4622(a) and/or 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 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)~~(b) The ~~caption of the~~ petition shall ~~identify~~ be captioned ~~it~~ as a "Petition to Enforce ~~IBR~~ an Administrative Director Determination~~.~~" and shall include the assigned ADJ number and

~~(d) The petition~~ shall append a copy of *the* 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~~.

~~(e) 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) and/or section 4622(a). 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."~~

(c) The petition shall be served on all parties in accordance with rule 10628.

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~~(g)~~(d) 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~~ fewer than 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; and Section 10628, title 8, California Code of Regulations.

§ ~~10957.1.~~ 10575. 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)~~(a) An aggrieved party may file a petition appealing the ~~AD's~~ Administrative Director's independent medical review (IMR) determination. For purposes of this ~~section~~ rule, a "determination" includes a decision regarding medical necessity and/or a decision that a dispute is not ~~subject to~~ eligible for independent medical review.

(b) 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 incorrect, 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. Any petition that fails to comply with any of the following requirements may be subject to summary dismissal.

(c) The petition shall be filed in accordance with rule 10615 ~~with the Workers' Compensation Appeals Board~~ no later than 30 days after service ~~by mail~~ of the IMR determination. ~~An untimely petition may be summarily dismissed.~~

(d) The petition and any additional documents or pleadings related to the petition shall be served on the IMR Unit in accordance with rule 10632.

~~(d)~~(e) The ~~caption of the~~ petition shall ~~identify it as a~~ be captioned "Petition Appealing Administrative Director's Independent Medical Review Determination~~.~~" and shall include the assigned ADJ number and the IMR case number assigned by *the* Administrative Director.

~~(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 IMR dispute;~~

~~(3) The case number assigned by the AD to the IMR determination; and~~

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

~~(g) The petition shall comply with each of the following provisions. Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal.~~

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

~~(h) 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~~).

~~(i)~~(g) Upon receiving notice of the petition, the IMR Unit may download the record of the independent medical 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.

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~~(j)~~(h)(1) The petition shall not be placed on calendar unless a ~~d~~Declaration of ~~r~~Readiness to Proceed 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 ~~d~~Declaration of ~~r~~Readiness to Proceed, 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) 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) 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)~~(i) If the IMR determination is ~~reversed~~ rescinded by the workers' compensation judge or the Appeals Board, ~~the dispute shall be remanded~~ ~~rescinded and~~ the medical treatment dispute shall be returned to the Administrative Director with an order specifying the basis for the rescission and an order to submit the dispute to IMR ~~for a new IMR~~ in accordance with Labor Code section 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. and 5900 et seq., Labor Code; and Sections 10205, 10615, 10632, title 8, California Code of Regulations.

~~§ 10959.~~ 10580. 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 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 relating to an MPN.

(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 Administrative Director's determination. An untimely petition may be summarily dismissed.

(2) Notwithstanding any other provision of these rules or of Administrative Director ~~R~~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 Workers' Compensation 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 D~~d~~istrict O~~o~~ffice, 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 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 Administrative Director to the MPN determination.

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

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

(1) The petition may appeal the Administrative Director's determination upon one or more of the following grounds and no other:

(A) The determination was without or in excess of the Administrative Director's powers;

(B) The determination was procured by fraud;

(C) The evidence does not justify the determination;

(D) The petitioner has discovered new material evidence ~~material to him or her~~, which ~~he or she~~ the petitioner could not, with reasonable diligence, have discovered and presented to the Administrative Director prior to the determination; and/or

(E) The Administrative Director'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 Administrative Director 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 Administrative Director's determination other than those set forth in the petition appealing.

(3) The petition shall comply with the requirements of ~~sections~~ rules ~~10842~~10945(a) ~~&~~ and (c), ~~10846,~~ and 10972 ~~and 10852~~. It shall also comply with the provisions of ~~section 10845~~rule 10940, including but not limited to the 25-page restriction.

(4) 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).

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

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

(1) One or more ~~C~~commissioners of the Appeals Board; or

(2) A workers' compensation judge appointed under Labor Code section 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) 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) ~~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~~ Where a timely request to the ~~AD~~ Administrative Director for a re-evaluation of an initial MPN determination is filed ~~to re-evaluate that initial determination~~ in accordance with ~~Administrative Director~~ rules 9767.8(f), 9767.13(c)~~,~~ and 9767.14(c) or any similar current or future regulation or statute~~.~~, the following procedures shall apply:

(1) If a request for re-evaluation is made to the Administrative Director 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 Administrative Director files and serves a decision and order regarding the request for re-evaluation.

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(2) If a request for re-evaluation is made to the ~~AD~~ Administrative Director after a petition appealing the Administrative Director'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), 5309 and 5900 et seq., Labor Code; and Sections 9767.8, 9767.13, 9767.14. 10945, 10972 and 10940, title 8, California Code of Regulations.

§ ~~10953.~~ 10590. Petition Appealing Audit Penalty Assessment–Labor Code Section 129.5(g).

(a) An insurer, self-insured employer~~,~~ or third-party administrator may appeal a civil penalty assessment issued pursuant to subdivision (g) of Labor Code section 129.5 by filing a petition only with the Office of the Commissioners of the Workers' Compensation Appeals Board ~~with any district office or with the Appeals Board in San Francisco,~~ in the same time and manner as ~~provided by the Labor Code and the Rule 10840 et seq. for the filing of~~ a petition for reconsideration, except that a copy of the petition ~~also~~ shall be served on the Administrative Director. The petition shall be accompanied by a completed document cover sheet.

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(b) The Administrative Director may answer the petition in the same time and manner provided for the filing of an answer to a petition for reconsideration.

(c) After the filing of a petition appealing a civil penalty assessment issued pursuant to Labor Code section 129.5(g), an adjudication case will be created and an adjudication case number will be assigned. The adjudication case number will be served by the Appeals Board on the Administrative Director and on the parties and attorneys listed on the proof of service to the petition.

(d) Within 15 days after the Administrative Director receives a copy of petition appealing a civil penalty assessment issued pursuant to Labor Code section 129.5(g), the Administrative Director shall submit to the Appeals Board ~~in San Francisco~~ a certified copy of the complete record of proceedings created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, § 10113 et seq.) The certified copy of the record shall include, but shall not necessarily be limited to:

(1) The Order to Show Cause Re: Assessment of Civil Penalty and Notice of Hearing;

(2) The ~~A~~answer to the Order to Show Cause;

(3) Any amended complaint or supplemental Order to Show Cause that may have been issued, and any Amended Answer filed in response thereto;

(4) Any pre-hearing written statement filed by the claims administrator;

(5) Any pre-hearing Minutes and pre-hearing Orders;

(6) The Minutes of any Hearing, a transcript or summary of any oral testimony offered at the hearing, any documentary evidence or affidavits offered at the hearing; and

(7) The Administrative Director's written Determination and statement of the basis for the Determination. The original record of the proceedings conducted pursuant to Labor Code section 129.5(g) shall not be filed.

(e) The Appeals Board may scan the appeal, any answer, and the photocopied record of the Administrative Director's proceedings into the adjudication file within EAMS. Upon scanning, the paper documents may be destroyed.

(f) The Appeals Board shall determine the appeal using the record created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, § 10113 et seq.). The Administrative Director's record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 129.5(g), Labor Code; and Sections 10113 et seq., title 8, California Code of Regulations.

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ARTICLE 9
Filing and Service of Documents.

§ ~~10508.~~ 10600. ~~Extension of Time for Weekends and Holidays~~ Time for Actions.

(a) The time in which any act provided by these rules is to be performed is computed by excluding the first day and including the last.

(b) Unless otherwise provided by law, ~~I~~if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5316, Labor Code; Sections 6700, 6701 and 6707, Government Code; and Sections 10, 12, 12a, 12b, 13 and 135, Code of Civil Procedure**.**

§ ~~10507~~10605. Time Within Which to Act When a Document is Served by Mail, Fax~~,~~ or E-Mail.

(a) ~~If a~~ When any document is served by mail, fax, e-mail~~,~~ or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by:

(1) Five calendar days from the date of service, if the ~~physical address~~ place of address and the place of mailing of the party~~, lien claimant~~, attorney~~,~~ or other agent of record being served is within California;

(2) Ten calendar days from the date of service, if the ~~physical address~~ place of address and the place of mailing of the party~~, lien claimant~~, attorney~~,~~ or other agent of record being served is outside of California but within the United States; and

(3) Twenty calendar days from the date of service, if the ~~physical address~~ place of address and the place of mailing of the party, ~~lien claimant~~, attorney~~,~~ or other agent of record being served is outside the United States.

(b) For purposes of this ~~section~~ rule, ~~"physical address"~~ "place of address and the place of mailing" means the street address or Post Office Box of the party~~, lien claimant~~, attorney~~,~~ or other agent of record being served, as reflected in the Official Address Record at the time of service, even if the method of service actually used was fax, e-mail~~,~~ or other agreed-upon method of service.

~~(c) This rule applies whether service is made by the Workers' Compensation Appeals Board, a party, a lien claimant, or an attorney or other agent of record.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5316, Labor Code.

§ 10610. Filing and Service of Documents.

Unless a statute or rule provides for a different method for filing or service, a requirement to "file and serve" a document means that a copy of the document must be served on the attorney or non-attorney representative for each party separately represented, on each self-represented party and on any other person or entity when required by statute, rule or court order, and that the document and a proof of service of the document must be filed with the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5500.3, Labor Code.

§ 10615. Filing of Documents.

Except as otherwise provided by these rules or ordered by the Workers' Compensation Appeals Board, after the filing and processing of an initial Application for Adjudication of Claim or other case opening document, all documents required or permitted to be filed under the rules of the Workers' Compensation Appeals Board shall be filed only in EAMS or with the district office having venue.

(a) Except as provided by rule 10677(a), no "original" business records, medical records or other documentary evidence shall be filed with the Workers' Compensation Appeals Board. Only a photocopy or other reproduction of an original document shall be filed. All paper documents that are scanned into EAMS are destroyed after filing pursuant to rule 10205.10.

(b) A document is deemed filed on the date it is received, if received prior to 5:00 p.m. on a court day (i.e., Monday through Friday, except designated State holidays). An electronically transmitted document shall be deemed to have been received by EAMS when the electronic transmission of the document into EAMS is complete. A document received after 5:00 p.m. of a court day shall be deemed filed as of the next court day.

(c) When a paper document is filed by mail or by personal service, the Workers' Compensation Appeals Board shall affix on it an appropriate endorsement as evidence of receipt. The endorsement may be made by handwriting, hand-stamp, electronic date stamp or by other means. The endorsement shall serve as confirmation of successful filing unless the Administrative Director returns the document to the filer and notifies the filer, through the service of a Notice of Document Discrepancy, that the document has not been accepted for filing and the filer fails to correct the discrepancy within 15 days.

Commented [28]: Shouldn't this be district office, and not the AD? Document discrepancy notices are normally generated by the district office. See also 10617(b) and (d), where the same reference to the AD is made regarding document discrepancy notices.

(d) When a document is filed electronically, confirmation of successful filing shall be made in the manner described by rule 10206.3.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5500.3, 5501.5 and 5501.6, Labor Code; and Sections 10205.10, 10206.3 and 10677, title 8, California Code of Regulations.

§ ~~10397~~. 10617. Restrictions on the Rejection for Filing of Documents Subject to a Statute of Limitations or a Jurisdictional Time Limitation.

(a) An ~~a~~Application for ~~a~~Adjudication of ~~c~~Claim, a petition for reconsideration, a petition to reopen, or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation shall not be rejected for filing solely on the basis that:

(1) The document is not filed in the proper office of the Workers' Compensation Appeals Board;

(2) The document has been submitted without the proper form, or it has been submitted with a form that is either incomplete or contains inaccurate information; or

(3) The document has not been submitted with the required document cover sheet and/or document separator sheet(s), or it has been submitted with a document cover sheet and/or document separator sheet(s) not containing all of the required information.

(b) A document that is subject to a statute of limitations or a jurisdictional time limitation may be rejected for filing if it does not contain a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file. If a document is rejected in accordance with this subdivision, the Administrative Director shall return the document to the filer and shall notify the filer, through the service of a Notice of Document Discrepancy, that the document has not been accepted for filing. The Notice of Document Discrepancy shall specify the nature of the discrepancy(ies) and the date of the attempted filing, and it shall state that the filer shall have 15 days from the service of the Notice within which to correct the discrepancy(ies) and resubmit the document for filing. If the document is corrected and resubmitted for filing within 15 days, or at a later date upon a showing of good cause, it shall be deemed filed as of the original date the document was submitted.

(c) Nothing in this ~~section~~ rule shall preclude the discretionary or conditional acceptance for the filing of a document that is subject to a statute of limitations or a jurisdictional time limitation, even if it does not contain a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file.

(d) Where a document that is subject to a statute of limitations or a jurisdictional time limitation has been accepted for filing in accordance with this rule, but the document nevertheless cannot be processed by EAMS, the Administrative Director may serve a copy of the filed document on the filing party ~~or lien claimant~~ , together with a Notice of Document Discrepancy. The notice may specify the nature of the discrepancy(ies) and request that the party correct the discrepancy(ies) within 15 days after service of the Notice, however, a failure to timely correct the discrepancy(ies) shall not nullify the acceptance of the document for filing.

(e) Nothing in this ~~section~~ rule shall be deemed to excuse non-compliance with any of other provisions of the rules of the Workers' Compensation Appeals Board or non-compliance with the rules of the Administrative Director. Any such non-compliance may still ~~be a basis for the imposition of~~ give rise to monetary sanctions, attorney's fees and costs under Labor Code section 5813 and ~~R~~rule ~~10561~~ 10421.

Authority: Article XIV, Section 4, California Constitution; and Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5316, 5500, 5501 and 5813, Labor Code.

§ 10620. Filing Proposed Exhibits.

Any document that a party proposes to offer into evidence at a trial shall be filed with the Workers' Compensation Appeals Board at least 20 days prior to the trial unless otherwise ordered by the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5316, 5500, 5501 and 5813, Labor Code.

Commented [29]: Most PWCJs oppose this, contending that the requirement would unnecessarily flood the district offices with documents that would have to be scanned in or that are not electronically filed correctly so that they can be properly identified in the record. Some offices require the hard copy filing of proposed exhibits 7-10 days prior to trial and do not require electronic filing. If the case settles, documents can be returned to the filing party. If the case proceeds to trial, the exhibits can be scanned in after trial.

§ 10625. Service.

(a) Except as otherwise provided by these rules at 10300 et seq., service shall be made on the attorney or agent of record of each affected party unless that party is unrepresented, in which event service shall be made directly on the party.

(b) A document may be served using the following methods:

(1) Personal service;

(2) First class mail; or

(3) An alternative method that will effect service that is equivalent to or more expeditious than first class mail, limited to either:

(~~I~~ A) The use of express (overnight) or priority mail; or

(~~ii~~ B) The use of a bona fide commercial delivery service or attorney service promising delivery within two business days, as shown on the service's invoice or receipt; or

(4) A party's preferred method of service if a method has been designated in accordance with rule 10205.6; or

(5) Another method if the serving and receiving parties have previously agreed to some other method of service.

(c) "Proof of service" means a dated and verified declaration identifying the document(s) served, the parties who were served and stating that service has been made. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served ~~is representing~~ *represents*.

(d) Where a party receives notification that the service to one or more parties failed, the server shall promptly re-serve the document on the intended recipient(s) and execute a new proof of service.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Article XIV, Section 4, California Constitution; Sections 4906, 5307.9 and 5316, Labor Code; Section 250, Evidence Code; and Sections 10205.6 and 10300 et seq., title 8, California Code of Regulations.

Commented [30]: The specific proofs of service for email service and fax service set forth in the current rule 10505 are not included and this more generic version is apparently intended to cover all forms of service. For clarity, the proof of service should also state the form of service used for each person/entity served. Italicized edit corrects unnecessary and non-parallel use of passive voice.

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§ 10628. Service by the Workers' Compensation Appeals Board.

(a) The Workers' Compensation Appeals Board shall serve the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented, and all parties of record with any final order, decision or award issued by it on a disputed issue after submission. The Workers' Compensation Appeals Board shall not designate a party, or their attorney or agent of record, to serve any final order, decision, or award relating to a submitted issue.

(b) If the Workers' Compensation Appeals Board effects personal service of a document at a hearing or at a walk-through proceeding, the proof of personal service shall be made by endorsement on the document, setting forth legibly the name(s) of the person(s) served, the date of service and the fact of personal service. The endorsement shall bear the legibly printed name and signature of the person making the service.

(c) If the Workers' Compensation Appeals Board serves a document by mail, the proof of mail service shall be made by endorsement on the document, setting forth the fact of mail service on the persons or entities listed on the Official Address Record who have not designated e-mail or fax as their preferred method of service. The endorsement shall state the date of mail service and it shall bear the legibly printed name and the signature of the person making the service.

(d) If the Workers' Compensation Appeals Board electronically serves a document through EAMS on persons or entities listed on the official address record who have designated e-mail or fax as their preferred method of service, the proof of e-mail or fax service shall be made by endorsement on the document, setting forth the fact of e-mail or fax service on the persons or entities listed.

(e) Where a district office of the Workers' Compensation Appeals Board maintains mailboxes for outgoing documents and allows consenting parties, lien claimants and attorneys to obtain their documents from their mailboxes, documents so obtained shall be deemed to have been served on the party, lien claimant or attorney by mail on the date of service specified on the document.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5316 and 5504, Labor Code.

§10629. Designated Service.

(a) The Workers' Compensation Appeals Board may, in its discretion, designate a party or ~~their~~ *the party's* attorney or agent of record, to serve any order that is not required to be served by the Workers' Compensation Appeals Board in accordance with rule 10628.

(b) In addition to the service required by rule 10615, service shall also be made on the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented.

(c) Within 10 days from the date on which designated service is ordered, the person designated to make service shall serve the document and shall file the proof of service.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5316 and 5504, Labor Code; and Sections 10615 and 10628, title 8, California Code of Regulations.

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Commented [31]: This was current rule 10500, which is very familiar to parties and WCJs, easy to remember, and used on a myriad of pre-printed forms. The proposed renumbering will cause considerable waste of existing pre-printed forms. The existing number should be retained. The italicized edit avoids pairing a plural pronoun with a singular noun.

Commented [32]: This change will negatively impact the district offices, which will have to scan in the proofs of service (POS). DWC estimates the proposed rule could add an additional annual burden to EAMS of as much as 1 million new filings, which could lead to backups and a need for substantial additional clerical staffing. It will also impose a significant additional clerical workload burden on parties, increasing system costs. Current 10500(a) states that the designated server shall not file the POS unless ordered to by the WCAB. CLA believes this proposed change is unnecessary, while recognizing the motivation for the rule, given the many specific and short time limitations inherent in current law. Perhaps a better approach would be to require POS filing together with a declaration under penalty of perjury in the event of a dispute among parties involving receipt or timeliness.

§ 10632. Service on the Division of Workers' Compensation and the Director of Industrial Relations.

(a) When an Application for Adjudication of Claim, Stipulations with Request for Award or Compromise and Release is filed in a death case in which there is a bona fide issue as to partial or total dependency, the filing party shall serve copies of the documents on the Department of Industrial Relations, Death Without Dependents Unit.

(b) Service of all documents on the Subsequent Injuries Benefits Trust Fund shall be made on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund.

(c) Service of documents on the Uninsured Employers Benefits Trust Fund shall be made as follows:

(1) Service shall be made on the Division of Workers' Compensation, Uninsured Employers Benefits Trust Fund – Oakland if the employee's case is venued in one of the following District Offices: Bakersfield, Eureka, Fresno, Oakland, Oxnard, Redding, Riverside, Sacramento, Salinas, San Diego, San Francisco, San Jose, San Luis Obispo, Santa Ana, Santa Rosa, Stockton or Van Nuys.

(2) Service shall be made on the Division of Workers' Compensation, Uninsured Employers Benefits Trust Fund – Los Angeles if the employee's case is venued in one of the following District Offices: Anaheim, Los Angeles, Long Beach, Marina del Rey, Pomona or San Bernardino.

(d) Service of all documents on the Return-to-Work Supplement Program shall be made on the Director of Industrial Relations, Return-to-Work Supplement Program.

(e) Service of all documents on the Independent Bill Review Unit shall be made on the Division of Workers' Compensation, Independent Bill Review Unit.

(f) Service of all documents on the Independent Medical Review Unit shall be made on the Division of Workers' Compensation, Independent Medical Review Unit.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4706.5 and 5501.5, Labor Code.

§ 10635. Duty to Serve Documents.

(a) Where documents, including electronic media, are to be offered into evidence, copies shall be served on all adverse parties no later than the mandatory settlement conference, unless good cause is shown.

(b) If a party requests that a defendant provide a computer printout of benefits paid, the defendant shall provide the requesting party with a current computer printout of benefits paid within 20 days. The printout shall include the date and amount of each payment of temporary disability indemnity, permanent disability indemnity, the period covered by each payment, and the date, payee and amount of each payment for medical treatment. After receipt of a printout of benefits, another such request may not be made more frequently than once in a 120-day period unless there is a change in indemnity payments or a new dispute requiring updated payment periods.

(c) During the continuing jurisdiction of the Workers' Compensation Appeals Board, the parties have an ongoing duty to serve within 10 calendar days of receipt:

(1) Each other with any medical reports received; and

(2) A lien claimant who has requested service of medical reports with any medical reports received unless the lien claimant is not defined as a "physician" by Labor Code section 3209.3 and is not an entity described in Labor Code sections 4903.05(c)(7) and 4903.06(b); and

(3) Any written communication from a physician containing information listed in rule ~~10606~~ 10682 that is maintained in the employer's capacity as an employer. Records from an employee assistance program are not required to be filed or served unless ordered by the Workers' Compensation Appeals Board.

Authority: Sections 133, 4903.6(d), 5307, 5309 and 5708, Labor Code.
Reference: Sections 3209.3, 4600, 4903.05, 4903.06. 4903.6(d), 5001, 5502, 5502(e), 5703 and 5708, Labor Code; Sections 56.05 and 56.10, Civil Code; and Section 10682, title 8, California Code of Regulations.

§ 10637. Service of Medical Reports, Medical-Legal Reports, and other Medical Information on a Non-Physician Lien Claimant.

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

(a) If a party 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 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.

(b) 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.

(c) 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.

(d) 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.

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

(1) 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 from whom it is sought may reasonably be expected to identify it; and

(2) 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.

(f) When the petition is filed, a copy shall be concurrently served on the injured employee (or the dependent(s) of a deceased injured employee) and the defendant(s) or, if represented, their attorney or non-attorney of record. 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.

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

Authority: Sections 133, 4903.6(d), 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903.6(d), 5001, 5502, 5703 and 5708, Labor Code; and Sections 56.05 and 56.10, Civil Code.

ARTICLE 10
Subpoenas

§ ~~10530~~. 10640. Subpoenas.

The Workers' Compensation Appeals Board shall issue subpoenas and subpoenas duces tecum upon request in accordance with the provisions of Code of Civil Procedure sections 1985 and 1987.5 and Government Code section 68097.1. Subpoenas and subpoenas duces tecum shall be on forms prescribed and approved by the Workers' Compensation Appeals Board and shall contain an ADJ number.~~, and for injuries occurring on or after January 1, 1990, shall contain, in addition to the requirements of Code of Civil Procedure 1985, an affidavit that a claim form has been duly filed pursuant to Labor Code section 5401, subdivision (c).~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 130 and 5401, Labor Code; Sections 1985 and 1987.5, Code of Civil Procedure; and Section 68097.1, Government Code.

§ ~~10532~~. 10642. Notice to Appear or Produce.

A notice to appear or produce in accordance with Code of Civil Procedure ~~S~~section 1987 is permissible in proceedings before the Workers' Compensation Appeals Board.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 132, Labor Code; and Section 1987, Code of Civil Procedure.

§ ~~10534.~~10644. ~~Microfilm~~ Subpoenas of Electronic Records.

Where records or other documentary evidence have been recorded or reproduced using the methods described in ~~S~~section 1551 of the Evidence Code and the original records destroyed, the film, legible print thereof or electronic recording shall be produced in response to a subpoena duces tecum. A party offering a film or electronic recording in evidence may be required to provide legible prints thereof or reproductions from the electronic recording.

~~The expense of:~~

~~(a) Inspecting reproductions shall be paid by the party making the inspection; and~~

~~(b) Obtaining microfilm prints shall be borne by the party requiring the same.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 130, Labor Code; and Section 1551, Evidence Code.

§ ~~10536.~~ 10647. Witness Fees and Subpoenas.

Medical examiners appointed by the Workers' Compensation Appeals Board or agreed to by the parties when subpoenaed for cross-examination at the Workers' Compensation Appeals Board or deposition shall be paid by the party requiring the attendance of the witness in accordance with the ~~R~~rules of the Administrative Director.

Failure to serve the subpoena and tender the fee in advance based on the estimated time of the trial or deposition may be treated by the Workers' Compensation Appeals Board as a waiver of the right to examine the witness. Service and payment of the fee may be made by mail if the witness so agrees.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 130, 131, 4621 and 5710, Labor Code; and Section 2034.430~~(i)(2)~~, 2034.440 and 2034.450, Code of Civil Procedure.

§ ~~10537~~10650. Subpoena for Medical Witness.

A subpoena requiring the appearance of a medical witness before the Workers' Compensation Appeals Board must be served not ~~less~~ *fewer* than ~~ten~~ ~~(~~10~~)~~ days before the time the witness is required to appear and testify.

Commented [33]: Grammatical Change

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 132, Labor Code.

§ ~~10538~~ 10655. 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~~ rule 10637. ~~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; and Sections 56.05 and 56.10, Civil Code.

§ ~~10618.~~ 10660. X-Rays.

~~On order of the Appeals Board or workers' compensation judge, a party shall forthwith transmit all X-rays to the person designated in the order.~~

~~X-rays shall be subpoenaed only when they are relevant to pending issues and there is a present and bona fide intent to offer them in evidence. X-rays produced in violation of this rule will be ordered returned to their original custodian at the expense of the party causing them to be produced.~~

Upon reasonable request of a party, X-rays in the possession of, or subject to the control of, an adverse party ~~or lien claimant~~ shall be made available for examination by the requesting party or persons designated by that party at a time or place convenient to the persons to make the examination.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4600 and 5708, Labor Code.

ARTICLE 11
Evidence

§ 10670. Documentary Evidence.

The filing of a document does not signify its receipt in evidence and, except for the documents listed in rule 10803, only those documents that have been received in evidence shall be included in the record of proceedings on the case.

(a) Certified copies of reports or records of any governmental agency, division or bureau shall be admissible in evidence in lieu of the original reports or records.

(b) The Workers' Compensation Appeals Board may decline to receive in evidence:

(1) Any document not listed on the Pre-Trial Conference Statement.

(2) Any document not served at or prior to the mandatory settlement conference, unless good cause is shown.

(3) Any document not filed 20 days prior to trial, unless otherwise ordered by a judge or good cause is shown.

(4) Any physician's report that does not comply with Labor Code section 4628 unless good cause has been shown for the failure to comply and, after notice of non-compliance, compliance takes place within a reasonable period of time or within a time prescribed by the workers' compensation judge.

(5) Any report that does not comply with the verification requirements of Labor Code section 5703(a)(2)or 5703(j)(2) .

(c) Where a willful suppression of evidence is shown to exist, it shall be presumed that the evidence would be adverse, if produced.

(d) The remedies in this rule are cumulative to others authorized by law.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 4628, 5316, 5500, 5501, 5703, 5708 and 5813, Labor Code; and Section 10803, title 8, California Code of Regulations.

§ ~~10580.~~ 10672. Evidence Taken Without Notice.

Transcripts or summaries of testimony taken without notice and copies of all reports and other matters added to the record, otherwise than during the course of an open hearing, shall be served upon the parties to the proceeding. Unless it is otherwise expressly provided, the parties shall be allowed 10 days after service of the testimony and reports within which to produce evidence in explanation or rebuttal or to request further proceedings before the case shall be deemed submitted for decision.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5704, Labor Code.

§ ~~10602.~~ 10675. Formal Permanent Disability Rating Determinations.

The Workers' Compensation Appeals Board may request the Disability Evaluation Unit to prepare a formal rating determination on a form prescribed for that purpose by the Administrative Director. The request may refer to an accompanying medical report or chart for the sole purpose of describing measurable physical elements of the condition that are clearly and exactly identifiable. In every instance the request shall describe the factors of disability in full.

The report of the Disability Evaluation Unit in response to the request shall constitute evidence only as to the percentage of the permanent disability based on the factors described, and the report shall not constitute evidence as to the existence of the permanent disability described.

The report of the Disability Evaluation Unit shall be filed and served on the parties and shall include or be accompanied by a notice that the case shall be submitted for decision seven (7) days after service unless written objection is made within that time.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4660 and 5708, Labor Code.

§ ~~10603.~~ 10677. Oversized Exhibits, Diagnostic Imaging, Physical Exhibits~~,~~ and Exhibits on Media.

(a) The following exhibits shall be filed only at the time of trial:

(1) Oversized documents, other than medical reports, that are:

(A) Larger than 11 x 17 inches (e.g., maps, diagrams~~,~~ and schematic drawings); and

(B) Over 25 pages in length;

(2) Diagnostic imaging, including but not limited to any X-ray, computed axial tomography (CAT) scan, magnetic resonance imaging (MRI), nuclear medicine, positron emission tomography (PET) scan, mammography, ultrasound~~,~~ or other similar medical imaging that is stored on digital, film~~,~~ or other non-paper media;

(3) Original business or office records;

(4) Physical objects or other tangible things;

(5) Any CD-ROM, DVD~~,~~ or other digital media, including but not limited to:

(A) Digital photographs;

(B) Digital video recordings; and

(C) Digital audio recordings;

(6) Videotapes, audiotapes, films and other non-digital video and/or audio recordings or images; and

(7) Photographs printed on paper.

(b) Unless otherwise ordered by the Workers' Compensation Appeals Board, any exhibit listed in subdivision (a) that is offered into evidence (whether or not admitted into evidence) shall be retained by the filing party (or an agent of the filing party) until the later of either:

(1) Five years after the filing of the initial ~~a~~Application for ~~a~~Adjudication of Claim (or other case opening document); or

(2) At least six months after all appeals have been exhausted or the time for seeking appellate review has expired with respect to the decision on the issue(s) for which the exhibit was offered in

evidence. After expiration of the later of these two time periods, the party may destroy the exhibit, unless the Workers' Compensation Appeals Board has ordered that the exhibit be preserved for a longer period.

(c) Before and during the period of retention, the filing party shall:

(1) Maintain the exhibit under conditions that will protect it against loss, destruction~~,~~ or tampering, and that will preserve its quality and integrity as far as practicable;

(2) At the request of any other party to the action, promptly permit the party to inspect or view the exhibit; and

(3) At the request of any other party to the action, and if practicable, promptly furnish the party a copy of the exhibit or promptly permit the party to make a copy.

For purposes of subsection (c), the term "exhibit" shall include any item listed in subsection (a), whether or not the party ~~or lien claimant~~ in possession or control of that item intends to offer it in evidence.

(d) Any disputes regarding subdivision (c), including but not limited to issues of timing and costs, may be submitted for determination to the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5309, 5701, 5703, 5704 and 5708, Labor Code

§ ~~10391, 10605.~~ 10680. Reproductions of Documents.

(a) It is presumed a filed photocopy is an accurate representation of the original document. If a party alleges that a filed photocopy is inaccurate or unreliable, the party alleging the document is inaccurate or unreliable shall state the basis for the objection. The filing party must establish that the document is an accurate representation of the original document.

(b) A nonerasable optical image reproduction provided that additions, deletions~~,~~ or changes to the original document are not permitted by the technology, a photostatic, microfilm, microcard, miniature photographic~~,~~ or other photographic copy or reproduction, or an enlargement thereof, of a writing is admissible as the writing itself if the copy or reproduction was made and preserved as a part of the records of a business (as defined by Evidence Code ~~S~~section 1270) in the regular course of that business. The introduction of the copy, reproduction~~,~~ or enlargement does not preclude admission of the original writing if it is still in existence. The Workers' Compensation Appeals Board may require the introduction of a hard copy printout of the document.

(c) A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving by a preponderance of the evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5708, Labor Code; and Section 1270, Evidence Code.

§ ~~10606.~~ 10682. 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 ~~S~~section 5502.5.

(b) Medical reports should include where applicable:

(1) The date of the examination;

(2) The history of the injury;

(3) The patient's complaints;

(4) A listing of all information received in preparation of the report or relied upon for the formulation of the physician's opinion;

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

(6) Findings on examination;

(7) A diagnosis;

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

(9) Cause of the disability;

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

(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;

(12) Apportionment of disability, if any;

(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;

(14) The reasons for the opinion; and

(15) The signature of the physician.

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 ~~S~~section 4628. Except as otherwise provided by the Labor Code, including Labor Code ~~S~~sections 4628 and 5703, and the rules of practice and procedure of the *Workers' Compensation* Appeals Board, failure to comply with the requirements of this ~~section~~ rule will not make the report inadmissible but will be considered in weighing the evidence.

Commented [34]: Changed from "Appeals Board" to "Workers' Compensation Appeals Board" for consistency.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4628, 5502.5, 5703 and 5708, Labor Code.

§ ~~10606.5.~~ 10685. 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 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 non-clerical 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), 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 (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.

ARTICLE 12
Settlements

§ 10700. Approval of Settlements.

(a) When filing a Compromise and Release or a Stipulations with Request for Award, the filing party shall file all agreed medical evaluator reports, qualified medical evaluator reports, treating physician reports, and any other that are relevant to a determination of the adequacy of the Compromise and Release or Stipulations with Request for Award that have not been filed previously.

(b) The Workers' Compensation Appeals Board shall inquire into the adequacy of all Compromise and Release agreements and Stipulations with Request for Award, and may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards.

(c) Agreements that provide for the payment of less than the full amount of compensation due or to become due and undertake to release the employer from all future liability will be approved only where it appears that a reasonable doubt exists as to the rights of the parties or that approval is in the best interest of the parties.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4646, 5001, 5100.6, 5002 and 5702, Labor Code.

§ ~~10886~~. 10702. Service of Settlements on Lien Claimants.

Where a lien claim is on file with the Workers' Compensation Appeals Board, and a ~~c~~Compromise and ~~r~~Release agreement or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award ~~or order~~ is filed, a copy of the ~~c~~Compromise and ~~r~~Release agreement or ~~s~~Stipulations with Request for Award shall be served by the filing party 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.

§ ~~10875.~~ 10705. Procedures—Labor Code Section 3761.

Where the insurer has attached a declaration to the ~~c~~Compromise and ~~r~~Release agreement or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award that it has complied with the provisions of Labor Code ~~S~~sections 3761~~, subdivision~~ (a)~~,~~ and 3761~~, subdivision~~ (b), the Workers' Compensation Appeals Board may approve the ~~c~~Compromise and ~~r~~Release or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award without hearing or further proceedings.

Where a workers' compensation judge or the Appeals Board has approved a ~~c~~Compromise and ~~r~~Release or ~~s~~Stipulations with ~~r~~Request for ~~a~~Award and the insurer has failed to show proof of service pursuant to Labor Code ~~S~~section 3761~~, subdivision~~ (b), the workers' compensation judge or the Appeals Board, after giving notice and an opportunity to be heard to the insurer, shall award expenses as provided in Labor Code ~~S~~section 5813 upon request by the employer.

Any request for relief under Labor Code ~~S~~section 3761~~, subdivision~~ (b)~~,~~ or Labor Code ~~S~~section 3761~~, subdivision~~ (d), shall be made by the filing of a petition pursuant to ~~R~~rule ~~10450~~ 10510, together with a Declaration of Readiness to Proceed.

~~This rule shall apply to injuries on or after January 1, 1994.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 3761, Labor Code; and Section 10510, title 8, California Code of Regulations.

ARTICLE 13
Hearings

§ ~~10414.~~10742. Declaration of Readiness to Proceed.

(a) Except when a hearing is set on the Workers' Compensation Appeals Board's own motion, no matter shall be placed on calendar unless one of the parties has filed and served a ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed in the form prescribed by the *Workers' Compensation* Appeals Board. The ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed shall be served on all parties ~~and lien claimants~~ in accordance with rule 10610.

Commented [35]: Italicized words added for document format consistency.

(b) A lien claimant shall not file a Declaration of Readiness to Proceed unless:

(1) The underlying case of the injured employee or the dependent(s) of a deceased employee has been resolved or

(2) The injured employee or the dependent(s) of a deceased employee choose(s) not to proceed with their case.

~~Where the declaration of readiness is for a lien conference 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 or nonattorney 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).~~

~~(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.~~

(~~d~~c) 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 ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed, and shall state with specificity ~~the same~~ on the ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed the efforts made to resolve those issues. 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 ~~d~~Declaration of ~~r~~Readiness to Proceed.

~~(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.~~

(~~f~~ d) If a party ~~or lien claimant~~ is represented by an attorney or non-attorney representative any ~~d~~Declaration of ~~r~~Readiness to Proceed filed on behalf of the party shall be executed by the attorney or non-attorney representative.

(e) ~~Except for lien claimants listed in section 10205.10(c)(5), i~~If a ~~d~~Declaration of ~~r~~Readiness to Proceed 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 ~~R~~rule ~~10561~~ 10421.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903.05, 4903.06, 5500.3, 5502 and 5813, Labor Code; and Sections 10421 and 10610, title 8, California Code of Regulations.

§ ~~10416.~~ 10744. Objection to Declaration of Readiness to Proceed.

(a) Any objection to a ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed shall be filed and served within ~~ten~~ 10 calendar days after service of the declaration. The objection shall set forth, under penalty of perjury, the specific reason why the case should not be set or why the requested proceedings are inappropriate.

(b) A false declaration or certification filed under this ~~section~~ rule by any party~~, lien claimant~~, petitioner, attorney or non-attorney representative may give rise to proceedings under Labor Code section 134 for contempt or Labor Code section 5813 for sanctions.

(c) If a party is represented by an attorney or non-attorney representative, any objection to the Declaration of Readiness to Proceed shall be executed by the attorney or non-attorney representative. ~~If a party or lien claimant is represented, the attorney or representative shall execute any objection to the declaration of readiness to proceed on behalf of the party. Declarations of readiness to proceed shall be reviewed by the presiding workers' compensation judge or any workers' compensation judge designated by the presiding judge, who will determine on the basis of the facts stated in the declaration whether the objection should be sustained.~~

(d) If a party has received a copy of the ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed and has not filed an objection under this ~~section~~ rule, that party shall be deemed to have waived any and all objections to proceeding on the issues specified in the declaration, absent extraordinary circumstances.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 134, 5500.3, 5502 and 5813, Labor Code.

§ ~~10420.~~ 10745. Setting the Case.

The Workers' Compensation Appeals Board, upon the receipt of a Declaration of Readiness to Proceed, may, in its discretion, set the case for a type of proceeding other than that requested. The Workers' Compensation Appeals Board may on its own motion set any case for conference or trial.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5310, Labor Code.

§ ~~10548~~ 10748. Continuances.

Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are not favored. Continuances will be granted only upon a clear showing of good cause. Where possible, reassignment pursuant to ~~section~~ rule 10346 shall be used to avoid continuances.

Authority: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; Sections 5502 and 5502.5, Labor Code; and Section 10346, title 8, California Code of Regulations.

§ ~~10544.~~ 10750. Notice of Hearing.

The Workers' Compensation Appeals Board shall either serve or, under rule 10629, cause to be served notice on all parties and their attorneys or non-attorney representatives of record of the time and place of each hearing~~s~~ scheduled, whether or not the hearing affects all parties ~~on all parties and lien claimants, and their attorneys or other agents of record~~, as provided in ~~R~~rule ~~10500~~ 10610.

Notice of hearing shall be given at least ~~ten (~~10~~)~~ days before the date of hearing, except where:

(a) Notice is waived;

(b) A different time is expressly agreed to by all parties and concurred in by the Workers' Compensation Appeals Board.~~; or~~

~~(c) The proceedings are governed by Article 19 pertaining to claims against the Subsequent Injuries Benefits Trust Fund.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5504, Labor Code; and Section 10610, title 8, California Code of Regulations.

§ 10751. Appearances by Non-Attorney Representatives Not Identified on Notice of Representation.

(a) A non-attorney representative may appear on a party's behalf if identified on a notice of representation.

(b) A non-attorney representative who has not been identified on a notice of representation shall file a notice of appearance that includes the full legal name of the represented party and the name, address and telephone number of the attorney or non-attorney representative and associated entity, if any.

Authority: Sections 133, 5307, Labor Code.
Reference: Sections 4903, 4903.6 and 4906, Labor Code

§ 10752. Appearances Required.

(a) Each applicant and defendant shall appear or have an attorney or non-attorney representative appear at all hearings pertaining to the case-in-chief. Neither a lien conference nor a lien trial is a hearing pertaining to the case-in-chief.

(b) Each required party shall have a person available with settlement authority at all hearings. This person need not be present if the party's attorney or non-attorney representative is present and can obtain immediate authority.

(c) A represented injured employee or dependent shall personally appear at any mandatory settlement conference. Failure to personally appear shall not be a basis for dismissal of the application.

(d) A lien claimant need not appear at any mandatory settlement conference or trial in the case-in chief, but shall be immediately available by telephone with full settlement authority and shall notify defendant(s) of the telephone number at which the defendant(s) may reach the lien claimant. Failure to comply may give rise to monetary sanctions, attorney's fees and costs under Labor Code section 5813 and rule 10421.

(e) Any appearance required by this rule may be excused by the Workers' Compensation Appeals Board. Any appearance not required by this rule may be ordered by the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5502 and 5700, Labor Code; and Section 10421, title 8, Code of Regulations.

§ 10755. Failure to Appear at Mandatory Settlement Conference in Case in Chief.

(a) Where an applicant served with notice of a mandatory settlement conference fails to appear either in person or by attorney or non-attorney representative at the mandatory settlement conference, the workers' compensation judge may:

(1) Dismiss the application after issuing a 10-day notice of intention to dismiss, or

(2) Close discovery and set the case in chief for trial.

(b) Where a defendant served with notice of a mandatory settlement conference fails to appear either in person or by attorney or non-attorney representative at the mandatory settlement conference, the workers' compensation judge may:

(1) Close discovery and set the case for trial on all issues, or

(2) Set the case in chief for trial.

(c) Where a required party, after notice, fails to appear at a mandatory settlement conference in the case in chief and good cause is shown for failure to appear, the workers' compensation judge may take the case off calendar or may continue the case to a date certain.

(d) This rule shall not apply to lien conferences, which are governed by rule 10875.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; Sections 5502(e) and 5708, Labor Code; and Section 10875, title 8, Code of Regulations.

§ 10756. Failure to Appear at Trial in Case in Chief.

(a) Where an applicant served with notice of trial in the case in chief fails to appear either in person or by attorney or non-attorney representative at the trial, the workers' compensation judge may:

(1) Dismiss the application after issuing a 10-day notice of intention to dismiss, or

(2) Hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a 10-day notice of intention to submit, make such decision as is just and proper.

(b) Where a defendant served with notice of trial in the case in chief fails to appear either in person or by attorney or non-attorney representative at the trial, the workers' compensation judge may hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a 10-day notice of intention to submit, make such decision as is just and proper.

(c) Where a required party, after notice, fails to appear at a trial in the case in chief and good cause is shown for failure to appear, the workers' compensation judge may take the case off calendar or may continue the case to a date certain.

(d) This rule shall not apply to lien trials, which are governed by rule 10876.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; Sections 5502(e) and 5708, Labor Code; and Section 10876, title 8, Code of Regulations.

§ ~~10549.~~10757. Appearances in Settled Cases.

When the parties represent to the workers' compensation judge assigned to the case that a case has been settled, the case ~~shall~~ may be taken off calendar ~~and no appearances shall be required~~.

Authority: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; and Sections 5502 and 5502.5, Labor Code.

§ 10758. Status Conferences.

At the discretion of the workers' compensation judge, any hearing except a trial may be re-designated as a status conference.

Authority: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; and Sections 5502 and 5502.5, Labor Code.

§ 10759. Mandatory Settlement Conferences.

(a) In accordance with Labor Code section 5502 the workers' compensation judge shall have authority to inquire into the adequacy and completeness, including provision for lien claims, of Compromise and Release agreements or Stipulations with Request for Award or orders, and to issue orders approving Compromise and Release agreements or awards or orders based upon approved stipulations. The workers' compensation judge may temporarily adjourn a conference to a time certain to facilitate a specific resolution of the dispute(s) subject to Labor Code section 5502(d)(1).

Subject to the provisions of Labor Code section 5502.5 and rule 10744, upon a showing of good cause, the workers' compensation judge may continue a mandatory settlement conference to a date certain, may continue it to a status conference on a date certain, or may take the case off calendar. In such a case, the workers' compensation judge shall note the reasons for the continuance or order taking off calendar in the minutes. The minutes shall be served on all parties and their representatives.

(b) Absent resolution of the dispute(s), the parties shall file a joint Pre-Trial Conference Statement setting forth the issues and stipulations for trial, witnesses, and a list of exhibits. A defendant that has paid benefits shall have a current computer printout of benefits paid available for inspection at every mandatory settlement conference.

(1) Each exhibit listed must be clearly identified by author/provider, date, and title or type (e.g., "the July 1, 2008 medical report of John Doe, M.D. (3 pages)"). Each medical report, medical-legal report, medical record, or other paper or record having a different author/provider and/or a different date is a separate "document" and must be listed as a separate exhibit, with the exception that the following documents may be listed as a single exhibit, unless otherwise ordered by the Workers' Compensation Appeals Board:

(A) Excerpted portions of physician, hospital or dispensary records, provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates of treatment or other service(s) covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of physician, hospital or dispensary records shall be admitted in evidence;

(B) Excerpted portions of personnel records, wage records and statements, job descriptions, and other business records provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of personnel records, wage records and statements, job descriptions, and other business records shall be admitted in evidence; and

(C) Explanation of Benefits (EOB) letters.

(c) The workers' compensation judge may make orders and rulings regarding admission of evidence and discovery matters, including admission of offers of proof and stipulations of testimony where appropriate and necessary for resolution of the dispute(s) by the workers' compensation judge, and may submit and decide the dispute(s) on the record pursuant to the agreement of the parties.

(d) The joint Pre-Trial Conference Statement, the disposition, and any orders shall be filed by the workers' compensation judge in the record of the proceedings on a form prescribed and approved by the Appeals Board and shall be served on the parties.

Authority: Sections 133, 5307 and 5502, Labor Code.
Reference: Sections 5502 and 5502.5, Labor Code; and Section 10744, title 8, California Code of Regulations.

§ ~~10541.~~ 10761 Submission at Conference.

(a) A workers' compensation judge may receive evidence and submit an issue or issues for decision at a conference hearing if the parties ~~so~~ agree.

(b) If documentary evidence is required to determine the issue or issues being submitted, the parties shall comply with the provisions of ~~R~~rule ~~10629~~ 10759 regarding the listing and filing of exhibits.

(c) After submission at a conference, the workers' compensation judge shall prepare minutes of hearing and a summary of evidence as set forth in rule 10787.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5708 and 5709, Labor Code; and Section 10759, title 8, California Code of Regulations.

§ ~~10552~~. 10782. Expedited Hearings ~~Calendar~~.

(a) Where injury to any part or parts of the body is accepted as compensable by the employer, a party is entitled to an expedited hearing and decision upon the filing of an ~~a~~Application for ~~a~~Adjudication of ~~c~~Claim and a ~~d~~Declaration of ~~r~~Readiness to ~~p~~Proceed pursuant to ~~section 10414~~ rule 10625 establishing a bona fide, good faith dispute pursuant to Labor Code section 5502(b). ~~as to:~~

~~(1) The employee's entitlement to medical treatment pursuant to Labor Code section 4600;~~

~~(2) Whether the employee is required to obtain treatment within a medical provider network;~~

~~(3) A medical treatment appointment or medical-legal examination;~~

~~(4) The employee's entitlement to, or the amount of, temporary disability indemnity payments;~~

~~(5) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves; or~~

~~(6) Any other issue as prescribed in the rules and regulations of the Administrative Director.~~

Commented [36]: Should the issues described in 8 California Code of Regulations, section 31.1, (Administrative Director Rules) be added and specified as appropriate for an expedited hearing?

(b) An expedited hearing may be set upon request where injury to any part or parts of the body is accepted as compensable by the employer and the issues include medical treatment or temporary disability for a disputed body part or parts.

(c) A workers' compensation judge assigned to a case ~~involving a disputed body part or parts~~ may re-designate the expedited hearing as a mandatory settlement conference, receive a ~~p~~Pre-~~t~~Trial ~~c~~Conference ~~s~~Statement pursuant to Labor Code section 5502, close discovery~~,~~ and schedule the case for trial on the issues presented, if the workers' compensation judge determines~~, in consultation with the presiding workers' compensation judge,~~ that the case is not appropriate for expedited determination.

(d) Grounds for the re-designation of an expedited hearing include~~s~~, but ~~is~~ are not limited to, cases where the direct and cross-examination of the applicant will be prolonged, or where there are multiple witnesses who will offer extensive testimony.

(e) The parties are expected to submit for decision all matters properly in issue at a single trial and to produce all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense.

Authority: Sections 133, 5307 and 5502, Labor Code.
Reference: Section 5502, Labor Code; and Section 10625, title 8, California Code of Regulations.

§ ~~10555~~.10785. Priority Conferences. ~~Calendar~~

(a) A priority conference shall be set upon the filing of a ~~d~~Declaration of ~~r~~Readiness to Proceed requesting a priority conference that shows that:

(1) The applicant is represented by an attorney and the issues in dispute include employment and/or injury arising out of and in the course of employment; or

(2) The applicant ~~is or~~ claims ~~he or she was~~ to have been employed by an illegally uninsured employer and the issues in dispute include employment and/or injury arising out of and in the course of employment.

~~(b) Upon a showing of good cause, a workers' compensation judge may continue the matter to a status conference. At each priority or status conference, the parties shall be prepared to set the matter for trial or to provide a plan to complete discovery.~~

~~(c)~~(b) To the extent possible, all priority and status conferences in a case shall be conducted by the same workers' compensation judge. When discovery is complete, or when the workers' compensation judge determines that the parties have had sufficient time to complete reasonable discovery, the case shall be set for trial as expeditiously as possible.

Authority: Sections 133, 5307 and 5502, Labor Code.
Reference: Section 5502, Labor Code.

§ 10786. Determination of Medical-Legal Expense Dispute.

(a) Within 60 days of service of a medical-legal provider objection to a denial of a portion of the medical-legal provider's billing pursuant to Labor Code section 4622(c), the defendant shall file and serve a petition for determination of medical-legal expenses and a Declaration of Readiness to Proceed. Upon filing of a Declaration of Readiness to Proceed, the medical-legal provider shall be added to the official address record.

(b) If a defendant has failed to file a Declaration of Readiness in compliance with subdivision (a), a medical-legal provider may file and serve a petition for reimbursement of medical-legal expenses and a Declaration of Readiness to Proceed. Upon filing of a petition for reimbursement of medical-legal expenses and a Declaration of Readiness to Proceed, the medical-legal provider shall be added to the official address record.

(c) Upon receipt of a Declaration of Readiness in accordance with the provisions of subdivisions (a) and (b) of this rule, the matter shall be set for either a status conference or a mandatory settlement conference, in the discretion of the workers' compensation judge.

(d) Notwithstanding any other provision of this rule, if there is a threshold issue relating to the case-in-chief that would entirely defeat the medical-legal expense claim that must be determined prior to adjudicating the medical-legal expense claim dispute, the Workers' Compensation Appeals Board may defer hearing and determining the medical-legal expense claim dispute until the underlying claim of the employee or dependent has been resolved or abandoned.

(e) A defendant shall be deemed to have waived all objections to a medical-legal provider's billing, other than compliance with Labor Code sections 4620 and 4621, if:

(1) The provider submitted a properly documented billing to the defendant and, within 60 days thereafter, the defendant 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; or

(2) The defendant failed to make payment consistent with an explanation of review (EOR) that complies with Labor Code section 4603.3 and any applicable regulations adopted by the Administrative Director; or

(3) The provider submitted a timely and proper request for a second review to the defendant and, within 14 days thereafter, the defendant failed to serve a final written determination that complies with any applicable regulations adopted by the Administrative Director; or

(4) The defendant failed to make payment consistent with a final written determination that complies with any applicable regulations adopted by the Administrative Director.

(f) A defendant shall be deemed to have waived any objections to a medical-legal provider's billing, other than the amount payable 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 provider submitted a timely objection to the defendant's EOR regarding a dispute other than the amount

payable and the defendant failed to file a Declaration of Readiness as required by Labor Code section 4622 and subdivision (a) of this rule.

(g) 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 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 the provider failed to make a timely and proper request for second review in the form prescribed by the Rules of the Administrative Director within 90 days after service of the EOR.

(h) 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, within 14 days after receipt of the provider's request for second review, the defendant issued a timely and proper final written determination and made payment consistent with that determination and the provider failed to request IBR within 30 days after service of this second review determination.

(i) 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 and for sanctions under Labor Code section 5813 and rule 10421. 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 October 23, 2013, the monetary sanctions shall not be less than $500.00. These attorney's fees, costs and monetary sanctions shall be in addition to any penalties and interest that may be payable under Labor Code section 4622 or other applicable provisions of law, and in addition to any lien filing fee, lien activation fee or IBR fee that, by statute, 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 and for sanctions under Labor Code section 5813 and rule 10421. 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 October 23, 2013, the monetary sanctions shall not be less than $500.00.

Authority: Sections 133, 4622 4627 and 5307, Labor Code.
Reference: Sections 4603.3, 4603.6, 4622 and 5813, Labor Code; and Section 10421, title 8, California Code of Regulations.

§ 10787. Trials.

(a) The parties shall submit for decision all matters properly in issue at a single trial and produce at the trial all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense. However, a workers' compensation judge may order that the issues in a case be bifurcated and tried separately upon a showing of good cause.

(b) Unless already filed in EAMS, the parties shall have all proposed exhibits available at trial for review by and filing with the trial workers' compensation judge.

(c) Minutes of hearing and summary of evidence shall be prepared at the conclusion of each trial and filed in the record of proceedings. They shall include:

(1) The names of the commissioners, deputy commissioner or workers' compensation judge, reporter, the parties present, attorneys or other agents appearing therefor and witnesses sworn;

(2) The place and date of said trial;

(3) The admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence (with the identity of the party offering the same);

(4) The disposition, and if the disposition is an order taking off calendar or a continuance, the reasons for the order which shall include the time and action, if any, required for submission;

(5) A summary of the evidence required by Labor Code section 5313 that shall include a fair and unbiased summary of the testimony given by each witness;

(6) If motion pictures are shown, a brief summary of their contents or a stipulation that parties waive a summary; and

(7) A fair statement of any offers of proof.

(d) Notwithstanding subdivision (c), the summary of evidence need not be filed upon issuance of a stipulated order, decision or award.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5708 and 5313, Labor Code.

§ ~~10453~~. 10788. Petition for Automatic Reassignment of Trial or Expedited Hearing to Another Workers' Compensation Judge.

A party shall be entitled to automatic reassignment of a trial or expedited hearing to another workers' compensation judge in accordance with the provisions of this ~~section~~ rule. Consolidated cases are to be considered as one case within the meaning of this ~~section~~ rule.

(a) An injured worker shall be entitled to one reassignment of a judge for trial or expedited hearing. ~~If the injured worker has not exercised the right to automatic reassignment and one or more lien claimants have become parties and no testimony has been taken, the lien claimants shall be entitled to one reassignment of judge for a trial, which may be exercised by any of them.~~ The defendants shall be entitled to one reassignment of judge for a trial or expedited hearing, which may be exercised by any of them. The lien claimants shall be entitled to one reassignment of judge for a lien trial, which may be exercised by any of them. This ~~section~~ rule is not applicable to conference hearings. In no event shall any motion or petition for reassignment be entertained after the swearing of the first witness at a trial or expedited hearing.

(b) If the parties are first notified of the identity of the workers' compensation judge assigned for trial at a mandatory settlement conference, at a status conference, at a lien conference, at a priority conference, or upon reassignment at the time of trial, to exercise the right to automatic reassignment a party must make an oral motion immediately upon learning the name of the judge to whom the case has been assigned for trial. The motion shall be acted upon immediately by the presiding workers' compensation judge or a person designated by the presiding judge.

(c) If the parties are first notified of the identity of the workers' compensation judge assigned for trial or expedited hearing by a notice of trial served by mail, to exercise the right to automatic reassignment a party must file a petition requesting reassignment not more than five (5) days after ~~the service~~ receipt of the notice of trial or expedited hearing. The presiding judge or a person designated by the presiding judge shall rule on any petition for automatic reassignment.

(d) If a petition for automatic reassignment is granted and results in a new trial date, a new notice of trial or expedited hearing shall be served. Unless required for the convenience of the Workers' Compensation Appeals Board, no continuance shall be granted by reason of a petition or motion under this ~~section~~ rule. If a continuance is granted, another trial or expedited hearing shall be scheduled as early as possible.

(e) If a party files a petition or makes a motion for automatic reassignment and no other workers' compensation judge is available in the office, the assignment shall be made by a deputy commissioner of the Appeals Board.

Authority: Section 5307, Labor Code.
Reference: Section 5310, Labor Code.

§ ~~10417~~. 10789. Walk-Through Documents.

~~(a) A "walk-through" document is a document that is presented to a workers' compensation judge for immediate action. Notwithstanding the provisions of section 10414 (relating to the filing of declarations of readiness) and section 10544 (relating to notices of hearing), the following provisions shall govern walk-through documents.~~

~~(b) Each district office will have a designee of the presiding workers' compensation judge available to assign walk-through cases from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. on court days.~~

(~~c~~a) The following documents may be submitted on a walk-through basis without a party filing a Declaration of Readiness to Proceed or the Workers' Compensation Appeals Board serving a notice of hearing:

(1) Compromise and ~~r~~Releases;

(2) Stipulations with ~~r~~Request for ~~a~~Award;

(3) Petitions for attorney's fees for representation of the applicant at a deposition; and

(4) Petitions to compel attendance at a medical examination or deposition;

(5) Petitions for Costs pursuant to rule 10545.

(~~d~~b) The following procedures shall be followed for filing walk-through documents:

(1) A walk-through settlement document (i.e., a ~~c~~Compromise and ~~r~~Release or a ~~s~~Stipulations with ~~r~~Request for ~~a~~Award), and all supporting medical reports and other supporting documents not previously filed, shall be filed directly with the workers' compensation judge at the date and time of the walk-through. ~~The party presenting the walk-through settlement shall use the appropriate form, document cover sheet, and document separator sheet.~~ Permanent and stationary medical or medical-legal reports shall be indicated as such. In addition, each walk-through settlement document (i.e., a ~~c~~Compromise and ~~r~~Release or a ~~s~~Stipulations with ~~r~~Request for ~~a~~Award) shall be accompanied by a proof of service showing that the settlement document was served on all other parties to the settlement, on any defendant not executing the settlement who may be liable for the payment of additional compensation, and on all lien claimants whose liens have not been resolved. A case opening settlement document being submitted for a walk-through shall be submitted no later than noon (12:00 p.m.) of the court day before any action on the walk-through, and shall be designated as a walk-through document. All documents in support of the settlement document shall be submitted at the walk-through with the assigned judge.

(2) A walk-through petition (i.e., a petition for deposition attorney's fees, a petition for costs or a petition to compel attendance at a medical examination or deposition) and all other documents relating to the walk-through petition, including any supporting documentation shall be filed directly with the workers' compensation judge at the date and time of the walk-through. The party

presenting the walk-through petition shall use the appropriate form, document cover sheet, and document separator sheet. In addition, at the date and time of the walk-through, the party filing the walk-through petition shall file a proof of service directly to the workers' compensation judge, as follows:

(A) For a petition for attorney's fees for representation of the applicant at a deposition, a proof of service showing service on the injured worker and the defendant alleged to be liable for paying the fees.

(B) For a petition to compel attendance at a medical examination or deposition, a proof of service showing service on the injured worker, the injured worker's attorney~~,~~ and all defendants.

(c) Each district office shall have a designee of the presiding workers' compensation judge available to assign walk-through cases from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. on court days.

(~~c~~d) When appearing for the walk-through proceeding, the party filing the walk-through document shall appear before the district office staff person designated by the presiding judge to assign the walk-through document to a workers' compensation judge. The filing party shall then appear before the assigned judge. If the assigned judge is unavailable for any reason, the filing party shall then proceed to the presiding judge for possible reassignment to another judge.

(~~d~~e) A workers' compensation judge who is presented with a walk-through settlement document shall approve it, disapprove it, suspend action on it, or accept it for later review and action. ~~If a workers' compensation judge is presented with so many walk-through settlement documents that review of them will interfere with the cases scheduled before him or her for hearing, the judge may refer the walk-through settlement to the presiding judge for possible reassignment to another judge.~~

(~~e~~f) A walk-through document may be acted on only by a workers' compensation judge at the district office that has venue. If an injured worker has existing cases at two or more district offices that have venue, a walk-through document may be filed at any office having venue over an existing case that is a subject of the walk-through document. An existing case is a case that has been filed and assigned a case number prior to the filing of the walk-through document.

(~~f~~g) A walk-through document may be acted on by any workers' compensation judge except as follows:

(1) If a workers' compensation judge has taken testimony, any walk-through document in that case must be acted on by the judge who took testimony if that judge works at the district office to which the case is assigned, unless the presiding judge allows it to be acted on by another judge.

(2) If a workers' compensation judge has reviewed a document and declined to approve it, a walk-through document in that case must be acted on by the same judge, if that judge works at the district office to which the case is assigned, unless the presiding judge allows it to be acted on by another judge.

(~~i~~h) A workers' compensation judge who is presented with a walk-through petition for attorney's fees petition for costs, or petition to compel attendance shall issue an order in compliance with ~~section~~ rule ~~10349~~ 10832.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4053, 4054, 5001, 5002, 5702 and 5710, Labor Code; and Section 10832, title 8, California Code of Regulations.

§ ~~10564~~. 10790. Interpreters.

It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter. Subject to the ~~R~~rules of the Administrative Director, the Workers' Compensation Appeals Board may in any case appoint an interpreter and fix the interpreter's compensation.

~~For injuries before January 1, 1994, interpreter's fees that are reasonably, actually and necessarily incurred and that are not allowed under Labor Code Section 4600 shall be allowed as costs under Labor Code Section 5811. Recovery shall be allowed in the amount charged by the interpreter unless:~~

~~(1) Proof of unreasonableness is entered by the party contesting the reasonableness of the charge, or~~

~~(2) The charge is manifestly unreasonable.~~

~~For injuries on or after January 1, 1994, interpreter's fees that are reasonably, actually and necessarily incurred shall be allowed as provided by Labor Code Sections 4600, 5710 and 5811 as amended July 16, 1993. Interpreter's fees as defined in Labor Code section 4620, that are reasonably, actually and necessarily incurred as provided in Labor Code section 4621, shall be allowed in accordance with the fee schedule set by the Administrative Director.~~

Authority: Sections 130, 133, 5307, and 5708, Labor Code.
Reference: Sections 4600, 4621, 5710 and 5811, Labor Code.

ARTICLE 14
Record of Proceedings

§ ~~10740~~ 10800. Transcripts.

~~Unless otherwise ordered by a commissioner, a deputy commissioner, or a presiding workers' compensation judge,~~ ~~t~~Testimony taken at hearings ~~in compensation proceedings~~ will not be transcribed except upon the written request of a party accompanied by the fee prescribed in the Rules of the Administrative Director, or unless ordered by a commissioner, a deputy commissioner, or presiding workers' compensation judge. Any written request shall be served on all parties.

~~No person shall make a photographic copy of a certified transcript from the Workers' Compensation Appeals Board file except upon payment prescribed by law for a copy of the certified transcript.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5300, 5301, 5309, 5700, 5701 and 5708, Labor Code; Section 703.5, Evidence Code; and Section 9990, title 8, California Code of Regulations.

§ 10803. Record of Proceedings Maintained in Adjudication File.

(a) The Workers' Compensation Appeals Board's adjudication file shall consist of:

(1) All documents filed by any party, attorney or other agent of record, and as provided in rule 10205.4; and

(2) The record of proceedings, which consists of: the pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

(b) Upon approval of a Compromise and Release or Stipulations with Request for Award, all medical reports that have been filed as of the date of approval shall be deemed admitted in evidence and part of the record of proceedings.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126 and 5708, Labor Code; and Section 10205.4, title 8, California Code of Regulations.

§ 10807. Inspection of Workers' Compensation Appeals Board Records.

(a) The records and files of the Workers' Compensation Appeals Board shall not be taken from its offices on informal request, in response to a subpoena duces tecum, or in response to any order issued by any other court or tribunal.

(b) Except as precluded by Civil Code section 1798.24 or Government Code section 6254, certified copies of portions of the records desired by litigants shall be delivered upon payment of fees as provided in the Rules of the Administrative Director.

(c) Except as provided by rules 10208.6 and 10813, or as ordered by the presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the *Workers' Compensation* Appeals Board, the adjudication case files of the Workers' Compensation Appeals Board may be inspected in accordance with the provisions of rules 10208.5 and 10208.6.

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Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 127, 5811 and 5955, Labor Code; Section 1798.24, Civil Code; Section 6254, Government Code; and Sections 10208.5, 10208.6 and 10813, title 8, California Code of Regulations.

§ ~~10755~~ 10811. Destruction of Records.

Except as otherwise provided by these rules, or as ordered by a workers' compensation judge or the *Workers' Compensation* Appeals Board, the adjudication case files of the Workers' Compensation Appeals Board shall be retained, returned, and destroyed in accordance with the provisions of ~~section 10278.7~~ rule 10208.7.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 135, Labor Code; and Section 10208.7, title 8, California Code of Regulations.

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§ ~~10754~~ 10813. Sealed Documents.

(a) Upon a showing of good cause as set forth in subdivision (c) of this rule, t~~T~~he presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the *Workers' Compensation* Appeals Board may order sealed medical reports, medical records or other documents filed in a case containing references to or discussions of mental or emotional health of any person, sexual habits or practice, use of or addiction to alcohol or other drugs, or other matters of similar character, and information whose release could threaten the safety or *well-being* of the injured worker or others. Sealed documents shall not ~~otherwise~~ be made available for public inspection except by order of ~~a~~ the presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the *Workers' Compensation* Appeals Board upon a showing ~~that~~ of good cause ~~exists to permit the inspection~~.

~~(1) A party may seek to have documents sealed by filing a petition to seal documents with either the presiding judge of the district office having venue, or with the Appeals Board. Any petition to seal must be accompanied by a memorandum of points and authorities and a declaration containing facts sufficient to justify sealing consistent with subdivision (b) of this rule.~~

~~(2) In a case involving an unrepresented injured employee, the presiding judge or the Appeals Board may on his, her, or its own motion seal a document or documents after compliance with subdivision (d). Within twenty court days after the order sealing documents, the presiding judge or the Appeals Board shall allow the injured worker an opportunity to object to the order.~~

(b)~~(1)~~ A party requesting that ~~a document or~~ documents be sealed shall file a petition to seal documents or portions thereof ~~for an order sealing the requested records~~ with either~~.~~

~~(b)(2) The party requesting that a record or records be filed under seal must lodge it with~~ the district office ~~under (d) when the petition is filed~~ having venue, or with the *Workers' Compensation* Appeals Board, if the matter is pending there. ~~if the matter is pending on petition for reconsideration, removal or disqualification, unless good cause exists for not lodging it. Pending the determination of the petition, the lodged records will be conditionally under seal~~.

(1) ~~The~~ Any petition to seal documents ~~must~~ shall demonstrate good cause and shall be accompanied by a ~~memorandum of points and authorities and a~~ declaration containing facts sufficient to justify the sealing consistent with subdivision (c) of this rule.

(2) Documents that have not been filed prior to the petition to seal may be lodged with the Workers' Compensation Appeals Board concurrently with the filing of the petition to seal. A document shall be lodged in a sealed envelope with a coversheet that includes the ADJ number, a general description of the documents and a statement that "the documents are lodged pending the outcome of a petition to seal."

(3) If necessary to prevent disclosure, the petition, any opposition, and any supporting documents shall be filed in a public redacted version and lodged in a complete version conditionally under seal.

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(4) If the presiding worker's compensation judge, the presiding workers' compensation judge's designee, or the *Workers' Compensation* Appeals Board denies the petition to seal, the clerk shall return the lodged record to the submitting party and shall not place it in the adjudication file.

(5) ~~A document filed with the district office or the Appeals Board~~ Subsequently-filed documents shall not disclose material contained in a document previously ~~filed document that is~~ sealed, conditionally ~~under~~ sealed, or subject to a pending petition to seal.

~~(d)~~(c) The presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the *Workers' Compensation* Appeals Board may order that a document be filed under seal or sealed only ~~if he, she, or it~~ after expressly ~~finds~~ finding facts that establish:

(1) There exists an overriding public interest that overcomes the right of public access to the record;

(2) The overriding public interest supports sealing the record;

(3) A substantial probability exists that the overriding public interest will be prejudiced if the record is not sealed;

(4) The proposed sealing is narrowly tailored; and

(5) No less restrictive means exists to achieve the overriding public interest.

(d) Documents may be ordered sealed on the motion of the presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the *Workers' Compensation* Appeals Board if the injured employee is unrepresented or other good cause exists for sealing the documents. All parties shall be given notice and opportunity to be heard. After the issuance of a notice of intention to seal documents, the documents shall be lodged conditionally under seal pending the issuance of an order sealing the documents or an order finding no good cause to seal the documents.

~~(c)(1) The party requesting that a record be filed under seal shall put it in a manila envelope or other appropriate container, seal the envelope or container, and lodge it with the district office or with the Appeals Board if the matter is pending on petition for reconsideration, removal or disqualification.~~

~~(2) The envelope or container lodged with the court must be labeled "CONDITIONALLY UNDER SEAL."~~

~~(3) The party submitting the lodged record shall affix to the envelope or container a cover sheet that:~~

~~(A) Contains a case number and~~

~~(B) States that the enclosed record is subject to a petition to file the record under seal.~~

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~~(4) Upon receipt of a record lodged under this rule, the district office or the Appeals Board shall endorse the affixed cover sheet with the date of its receipt and must retain but not file the record unless ordered to do so.~~

~~(d) The presiding judge or the Appeals Board may order that a document be filed under seal or sealed only if he, she, or it expressly finds facts that establish:~~

~~(1) There exists an overriding public interest that overcomes the right of public access to the record;~~

~~(2) The overriding public interest supports sealing the record;~~

~~(3) A substantial probability exists that the overriding public interest will be prejudiced if the record is not sealed;~~

~~(4) The proposed sealing is narrowly tailored; and~~

~~(5) No less restrictive means exists to achieve the overriding public interest.~~

(e)(1) ~~If~~ An order ~~is made that~~ sealing a document or documents ~~be sealed, the order~~ shall be filed in the record of the proceedings. The order shall set forth the facts that support the findings and direct the sealing of only those documents and pages, or, if practicable, portions of those documents and pages, ~~that~~ containing the material ~~that~~ needing ~~to be~~ placement under seal.

(2) If the order directs that an entire document shall be sealed, and if the sealed document is contained in a paper adjudication file, the sealed document shall be placed in a sealed envelope, which shall be removed from the file before the file is made available for public inspection. If the sealed document is in an electronic adjudication file, the document shall be marked as sealed. No entirely sealed document in a paper file or an electronic file shall be available for public inspection.

(3) If the order directs that a portion or portions of a document be sealed, and if the partially sealed document is contained in a paper adjudication file, the partially sealed document shall be placed in a sealed envelope, however, a version of the document with the sealed portion redacted shall be made available for public inspection. If the sealed document is in an electronic adjudication file, a version of the document with the sealed portion redacted also shall be electronically maintained and shall be made available for public inspection.

(f) Sealed documents shall be made available for inspection by any party to the case or by ~~his their~~ *any party's* representative, subject to any reasonable conditions and limitations as the presiding workers' compensation judge, the presiding workers' compensation judge's designee, or the *Workers' Compensation* Appeals Board may impose.

~~(g) Sealed documents shall not otherwise be made available for public inspection except by order of a workers' compensation judge or the Appeals Board which shall be made only on a showing that good cause exists to permit the inspection.~~

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Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5708, Labor Code; Rule 2.551, California Rules of Court.

§ ~~10760~~ 10818. Recording of ~~Trial Level~~ Proceedings.

(a) For the purposes of this ~~section~~ rule, "recording" means any photographing, recording, or broadcasting of trial level proceedings using video, film, audio, any digital media or other equipment.

(b) Except as provided in this rule, ~~trial level~~ proceedings shall not be photographed, recorded, or broadcast. This rule does not prohibit the Division of Workers' Compensation (DWC) from photographing or videotaping sessions for judicial education or publications and is not intended to apply to closed-circuit television broadcasts solely within DWC or ~~between~~ *among* DWC facilities if the broadcasts are controlled by the DWC and DWC personnel.

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(c) Recording shall be permitted only on written order ~~of~~ by the assigned workers' compensation judge ~~assigned to the case as provided in this subdivision~~. The workers' compensation judge ~~in his or her discretion~~ may permit, refuse, or limit~~, or terminate~~ recording.

(1) Any person who wishes to record a ~~trial level~~ proceeding shall make a written request to the ~~presiding~~ assigned workers' compensation judge ~~for permission to record the proceeding~~ and shall serve the written request on all parties at least ~~five~~10 business days before the proceeding commences unless good cause to shorten time is shown. ~~The workers' compensation judge assigned to the proceeding shall rule upon the request. The district office shall promptly notify the parties that a request has been filed.~~

(2) The workers' compensation judge may hold a hearing on the request or rule on the request without a hearing.

(3) In ruling on the request, the workers' compensation judge shall consider the following factors:

(A) Importance of maintaining public trust and confidence in the workers' compensation system;

(B) Importance of promoting public access to the workers' compensation system;

(C) Parties' support of or opposition to the request;

(D) Nature of the case;

(E) Privacy rights of all participants in the proceeding, including witnesses;

(F) Effect on any minor who is a party, prospective witness, or other participant in the proceeding;

(G) Effect on any ongoing law enforcement activity in the case;

(H) Effect on any subsequent proceedings in the case;

(I) Effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;

(J) Effect on excluded witnesses who would have access to the televised testimony of prior witnesses;

(K) Security and dignity of the trial level proceeding;

(L) Undue administrative or financial burden to DWC or participants;

(M) Interference with neighboring hearing rooms;

(N) Maintaining orderly conduct of the proceeding;

(O) Any other factor the workers' compensation judge deems relevant.

(4) The workers' compensation judge's ruling on the request to permit recording is not required to make findings or a statement of decision. The workers' compensation judge may condition the order permitting recording of the proceedings on the requestor's agreement to pay any increased costs incurred by DWC resulting from recording the proceeding (for example, for additional security). The requestor shall be responsible for ensuring that any person who records the trial level proceedings on their behalf know and follow the provisions of the order and this rule.

(5) The order permitting recordation may be modified or terminated on the workers' compensation judge's own motion or upon application to the workers' compensation judge without the necessity of a prior hearing or written findings. Notice of the application and any modification or termination ordered pursuant to the application shall be given to the parties and each person permitted by the previous order to record the proceeding.

(6) The workers' compensation judge shall not permit recording of the following:

(A) Proceedings held in chambers ~~which~~ *that* are not transcribed by a hearing reporter;

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(B) Proceedings closed to the public; and

(C) Conferences between an attorney and a client, witness, or aide, between attorneys, or between counsel and the workers' compensation judge at the bench, unless transcribed by a hearing reporter.

(7) The workers' compensation judge may require a demonstration that people and equipment comply with this rule. The workers' compensation judge may specify the placement of equipment to minimize disruption of the proceedings.

(8) The following rules shall apply to all recording:

(A) One video recording device and one still photographer shall be permitted.

(B) The equipment used shall not produce distracting sound or light. Signal lights or devices to show when equipment is operating shall not be visible.

(C) Microphones and wiring shall be unobtrusively located in places approved by the workers' compensation judge and shall be operated by one person.

(D) Operators shall not move equipment or enter or leave the courtroom while the proceeding is in session, or otherwise cause a distraction.

(E) Equipment or clothing shall not bear the insignia or marking of a media agency.

(9) If two or more people request recordation of a proceeding, they shall file a statement of agreed arrangements. If they are unable to agree, the workers' compensation judge may deny a request to record the proceeding.

(d) Any violation of this rule or an order made under this rule is an unlawful interference with the proceedings *and* may be the basis for an order terminating recording, a citation for contempt, or an order imposing monetary or other sanctions as provided by law.

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(e) Notwithstanding (a) through (d), a workers' compensation judge may permit inconspicuous personal recording devices to be used by parties in a courtroom to make sound recordings as personal notes of the proceedings. A person proposing to use a recording device shall obtain advance permission from the workers' compensation judge before recording the proceeding. The recording shall not be used for any purpose other than as personal notes, and shall not constitute evidence as to any matter recorded. The right of any individual to use a personal recording device shall be suspended if, in the workers' compensation judge's sole discretion, it appears that:

(1) The continued recording of the proceedings will inhibit any party or witness from participation in the proceeding; or

(2) The recording is done in a manner that threatens to disrupt the proceeding.

(f) Only the stenographic recording provided by an Official Hearing Reporter shall be deemed the official recording of a proceeding.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Rule 1.150, California Rules of Court.

§ 10820. When Certified Copies Will Issue.

(a) Certified copies of findings~~, and~~ awards ~~or~~ and other final orders for the purpose of having judgment entered and execution issued by the clerk of a superior court shall be issued by the presiding workers' compensation judge, or the presiding workers' compensation judge's designee, only upon written request of ~~a~~ the person seeking to have judgment entered and execution issued, ~~entitled to benefits thereunder~~ or by ~~their~~ *that person's* attorney or ~~authorized~~ non-attorney representative, and upon payment of the fees prescribed by the Rules of the Administrative Director.

(b) Certified copies of such orders and awards against authorized insurance carriers, authorized self-insured employers, the State of California and all political subdivisions thereof shall be issued only upon receipt of a written request showing good cause therefor.

(c) Every request for a certified copy of any final order must state whether proceedings are pending on reconsideration or judicial review, whether a petition for reconsideration or a writ of review has been filed, and whether the decision, a certified copy of which is requested has become final.

(d) Nothing in these rules~~, however,~~ shall limit the power of the Workers' Compensation Appeals Board to issue a certified copy at any time upon its own motion without charge.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5806, 5807 and 5808, Labor Code.

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§ 10825. Withholding Certified Copies.

As an alternative to the issuance of an order staying execution, the Workers' Compensation Appeals Board may direct by order that no certified copy be issued. Such an order shall have the same effect as an order staying execution issued under similar circumstances.

(a) Before staying execution or issuing an order withholding issuance of a certified copy of an order, decision or award, the Workers' Compensation Appeals Board in its discretion may require the filing of a bond from an approved surety equivalent to twice the probable amount of liability in the case.

(b) The bond shall be filed in the record of the case.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 130, 134, 5105, 5806, 5807, 5808, 5809, 6000, 6001 and 6002, Labor Code.

ARTICLE 15
Findings, Awards and Orders

§ 10832. Notices of Intention and Orders after Notices of Intention.

(a) The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including but not limited to:

(1) Allowing or disallowing a lien;

(2) Allowing or disallowing a petition for costs;

(3) Sanctioning a party;

(4) Submitting the matter on the record after a party fails to appear; or

(5) Dismissing an application.

(b) A Notice of Intention may be served by designated service in accordance with rule 10629, except a Notice of Intention in the form of an order with a clause rendering the order null and void if an objection is filed within a certain time period must be served by the Workers' Compensation Appeals Board.

(c) If an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may:

(1) Sustain the objection;

(2) Issue an order consistent with the notice of intention together with an opinion on decision; or

(3) Set the matter for hearing.

(d) Any order issued after a notice of intention shall be served by the Workers' Compensation Appeals Board pursuant to rule 10628.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5307, Labor Code; and Sections 10628 and 10629, title 8, California Code of Regulations.

§ ~~10570~~ 10833. Minute Orders.

Interlocutory or interim orders, including but not limited to orders of dismissal of improper or unnecessary parties, may be entered upon the minutes of hearing and will become the order of the Workers' Compensation Appeal Board upon the filing thereof.

Authority: Sections 133, 5307, Labor Code.
Reference: Section 5307.5, Labor Code.

§ 10835. Effect of Stipulations.

(a) Findings, awards and orders may be based upon stipulations of parties in open court or upon written stipulation signed by the parties.

(b) No finding shall be made contrary to a stipulation of the parties without giving the parties notice and an opportunity to be heard.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5702, Labor Code.

§ ~~10776~~ 10840. Approval of Attorney's Fee by Workers' Compensation Appeals Board Required.

~~(a) No request for payment or demand for payment of a fee shall be made by any attorney for, or agent of, a worker or dependent of a worker until the fee has been approved or set by the Workers' Compensation Appeals Board.~~

~~(b)~~(a) No attorney or agent shall request, demand or accept any money from a worker or dependent of a worker for the purpose of representing the worker or dependent of a worker before the Workers' Compensation Appeals Board or in any appellate procedure related thereto until the fee has been approved or set by the Workers' Compensation Appeals Board or an appellate court.

~~(c)~~(b) Any agreement between any attorney or agent and a worker or dependent of a worker for payment of a fee shall be submitted to the Workers' Compensation Appeals Board for approval within ~~ten (~~10~~)~~ days after the agreement is made.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4903 and 4906, Labor Code.

§ ~~10778~~ 10842. Request for Increase of Attorney's Fee

All requests for an increase in attorney's fee shall be accompanied by proof of service on the applicant of written notice of the attorney's adverse interest and of the applicant's right to seek independent counsel. Failure to ~~so~~ notify the applicant may constitute grounds for dismissal of the request for increase in fee.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4903 and 4906, Labor Code.

§ ~~10775~~. 10844. Reasonable Attorney's Fee.

In establishing a reasonable attorney's fee, the workers' compensation judge or arbitrator shall consider the:

(a) Responsibility assumed by the attorney~~,~~;

(b) Care exercised in representing the applicant~~,~~;

(c) Time involved~~,~~; and

(d) Results obtained.

~~Reference will be made to guidelines contained in the Policy and Procedural Manual and workers' compensation judges and arbitrators shall at all times comply with Labor Code section 5313 by setting forth the reasons or grounds for applying the guidelines in any fee determination. Through its power to grant reconsideration on its own motion, the Appeals Board shall exercise authority to ascertain the extent to which these guidelines are followed.~~

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4903 and 4906, Labor Code.

§ ~~10780~~. 10850.~~Dismissal~~ Order Dismissing Application.

~~Except as provided in Rule 10562 and 10582 and unless good cause to the contrary appears, orders of dismissal of claim forms for injuries on or after January 1, 1990 and before January 1, 1994, and o~~

(a) Orders of dismissal of applications for adjudication ~~for injuries before January 1, 1990 and on or after January 1, 1994,~~ shall issue forthwith ~~when~~ upon request~~ed~~ by the employee unless there is good cause to not issue an order.

(b) All other orders of dismissal of applications for adjudication ~~of claim forms for injuries occurring on or after January 1, 1990 and before January 1, 1994, or orders of dismissal of applications for adjudication for injuries occurring before January 1, 1990 and on or after January 1, 1994,~~ shall issue only after service of a notice of intention allowing at least ~~fifteen (15)~~ 10 days for ~~the~~ any adverse party~~ies~~ to show good cause to the contrary, and not by an order with a clause rendering the order null and void if an objection showing good cause is filed.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5307, Labor Code.

ARTICLE 16
Liens

§ 10862. Filing and Service of Lien Claims and Supporting Documents.

(a) A lien claim may be filed only if permitted by Labor Code section 4900 et seq. An otherwise permissible lien claim shall not be filed if doing so would violate the premature filing restrictions of Labor Code section 4903.6(a).

(b) A section 4903(b) lien shall only be filed electronically in accordance with section 4903.05 and not by any other method.

(c) All other lien claims may be filed utilizing an optical character recognition (OCR) lien claim form approved by the Appeals Board.

(d) The claims of two or more providers of goods or services shall not be merged into a single lien. 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.

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

(1) A proof of service;

(2) The verification under penalty of perjury outlined in rule 10863, if required; and

(4) Any other declaration or form required by law to be concurrently filed with a lien claim, including but not limited to documents required by Labor Code sections 4903.05, 4903.06 and 4903.8.

(f) Nothing in this rule 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.

(g) All original and amended lien claims, and all related documents, including a full statement or itemized voucher for any section 4903(b) lien and any document listed in rule 10862(e) shall be served on:

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

(A) The worker or dependent(s) 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

(B) The underlying case of the worker or dependent(s) has been resolved; or

(C) The worker or the dependent(s) chooses not to proceed with the case.

(2) 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.

(h) 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 within the meaning of these rules unless allowed by statute.

(i) Where a lien has been served on a party, that party shall have no obligation to file that lien with the Workers' Compensation Appeals Board.

(j) 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 and 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.

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(k) Any lien claim filed in violation of the provisions of this rule may be deemed not filed for any purpose, including tolling or extending the time for filing the lien claim, and may not be acknowledged or returned to the filer and may be destroyed at any time without notice.

Authority: Sections 133, 5307 and 5708, Labor Code.
Reference: Sections 4900 et seq., 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; and Sections 10862 and 10863, title 8, California Code of Regulations.

§ ~~10890~~ 10863. Verification of Compliance with Labor Code Section 4903.6 on ~~to~~ Filing of Lien Claim or Application by Lien Claimant.

(a) Any section 4903(b) lien, any lien for medical-legal costs, and any application related to any such lien shall have attached to it a verification under penalty of perjury which shall contain a statement specifying in detail the facts establishing that both of the following 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 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) The time provided for payment of medical-legal expenses pursuant to Labor Code section 4622 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 is not being filed solely because of a dispute subject to the independent medical review and/or the independent bill review process.

(c) In addition, if an Application for Adjudication of Claim is also being filed, the verification under penalty of perjury 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).

(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 the time periods set forth in rule 10863(a) have elapsed;

(2) That the section 4903(b) lien, the lien 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 of Claim is being filed, that venue is proper as set forth in rule 10863(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.

(e) If the Appeals Board approves an e-form or optical character recognition (OCR) form for this declaration, lien claimants shall file the declaration using the adopted form.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4603.2, 4603.6, 4610.5, 4610.6, 4622, 4903, 4903.6, 5402 and 5501.5 Labor Code; and Section 10863, title 8, California Code of Regulations.

§ 10868. Notices of Representation for Lien Claimants.

(a) Whenever any lien claimant obtains representation after a lien has been filed, or changes such representation, the lien claimant shall, within 5 days, file and serve a notice of representation in accordance with rules 10390, 10400, 10401 and 10402. If a copy of the notice of representation is not in the record at the time of the hearing, the lien claimant's representative shall lodge a copy at the hearing and shall personally serve a copy on all parties appearing. Unless a representative signs an initial lien document on behalf of a lien claimant, a notice of representation is required.

(b) In addition to the requirements of rules 10390, 10400 and 10401, the notice shall:

(1) Include the 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; and

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

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(c) The notice shall be verified by a declaration signed by the lien claimant and the lien claimant's representative under penalty of perjury stating:

(1) "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.";

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(2) "This representation began on _____, ___, 20___.

(A) "I am not aware of any other attorney or non-attorney who was previously representing the lien claimant."; or

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(B) "I am aware that _____ [specify person or entity] was previously representing the lien claimant. This Notice of Representation supersedes any previous Notice of Representation. I hereby certify that I have notified the previous attorney or non-attorney representative in writing.";

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(3) "By signing below, the representative affirms that they are not disqualified from appearing under Labor Code section 4907, WCAB rule 10445 (Cal. Code Regs., tit. 8, § 10445) or by any other rule, order, or decision of the Workers' Compensation Appeals Board, the State Bar of California, or any court."

(d) Any violation of this rule may give rise to monetary sanctions, attorney's fees and costs under Labor Code section 5813 and rule 10421.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 130, 4907 and 5710; Sections 284, 285 and 286, Code of Civil Procedure; and Sections 10390 and 10445, title 8, California Code of Regulations.

§ 10872. Notification of Resolution or Withdrawal of Lien Claims.

(a) Within seven days after a lien has been resolved or withdrawn, the lien claimant shall file and serve a notification of resolution or a withdrawal of the lien claim. For purposes of this rule, a lien is not resolved unless payment in accordance with an order or an informal agreement has been made and received.

(b) The lien claimant shall appear at any hearing that was noticed prior to the resolution or withdrawal of the lien unless excused by the Workers' Compensation Appeals Board. The lien claimant shall be excused from appearing at any subsequently noticed hearing.

(c) Any violation of this rule may give rise to monetary sanctions, attorney's fees, and costs under Labor Code section 5813 and rule 10421.

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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; and Section 10421, title 8, California Code of Regulations.

§ 10873. Lien Claimant Declarations of Readiness to Proceed.

(a) A lien conference shall be set when any party files a Declaration of Readiness to Proceed in accordance with rule 10742 on any issue(s) relating to lien claim other than in the case in chief, or by the Workers' Compensation Appeals Board on its own motion at any time.

(1) 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.

(2) 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 to Proceed. 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.

(3) Once a Declaration of Readiness to Proceed for a lien conference has been filed, it cannot be withdrawn. If the lien of a lien claimant that has filed a Declaration of Readiness to Proceed has been resolved, that lien claimant shall request that its lien be withdrawn in accordance with rule 10872.

(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) When a party files and serves a Declaration of Readiness to Proceed on an issue ~~directly~~ relating to a lien claim other than in the case in chief, the party shall designate on the Declaration of Readiness to Proceed form that it is requesting a lien conference and shall not designate any other kind of conference. If a status conference or any other type of conference is requested or is set on the calendar, that status conference or other type of conference shall be deemed a lien conference and shall be governed by any and all rules applying to a lien conference.

(c) Nothing in this rule shall preclude the Workers' Compensation Appeals Board, in its discretion, from setting a type of hearing other than that requested in the Declaration of Readiness to Proceed.

(d) After a lien conference or lien trial has been ordered off calendar, no party or lien claimant shall file a new Declaration of Readiness to Proceed for at least 90 days. The Declaration of Readiness to Proceed 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 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 days after the most recent hearing.

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; and Sections 10305, 10421, 10629, 10742, 10750, 10755, 10872 and 10888, title 8, California Code of Regulations.

§ ~~10770.6~~ 10874. Verification to Filing of Declaration of Readiness to Proceed by or on Behalf of Lien Claimant.

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

(a) Stating either that:

(1) The Declaration of Readiness to Proceed 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 that:

(1) The underlying case has been resolved; or

(2) At least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with their case.

The declarant shall make a diligent search to determine that the injured worker has chosen not to proceed with their 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 to Proceed 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

[ ] The underlying case has been resolved; or

[ ] At least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with their case (Check one box). In determining that the injured worker has chosen not to proceed with their 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.

(c) If the Appeals Board approves an e-form or optical character recognition (OCR) form for this declaration, lien claimants shall file the declaration using the adopted form.

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Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903, 4903.6 and 5501.5, Labor Code.

§ 10875. Lien Conferences.

(a) All defendants and lien claimants shall appear at all lien conferences, either in person or by attorney or non-attorney representative. Each defendant, lien claimant, attorney and non-attorney representative appearing at any lien conference:

(1) Shall have sufficient knowledge of the lien dispute(s) to inform the workers' compensation judge 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.

(b) If a lien claimant fails to appear at a lien conference, the worker's compensation judge may issue a notice of intention to dismiss consistent with rule 10888, or defer the lien.

(c) If a defendant does not appear, or for any other reason any lien claim(s) or lien issue(s) cannot be fully resolved at the lien conference, the workers' compensation judge shall take one of the following actions:

(1) Set a lien trial and close discovery;

(2) Upon a showing of good cause, allow a continuance of the lien conference to another lien conference; 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 non-attorney representative by a defendant or lien claimant or the delayed receipt of the defendant's or lien claimant's file by that attorney or non-attorney representative.

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

(d) 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 and set for trial, the defendant(s) and lien claimant(s) shall prepare, sign, and file with the workers' compensation judge a Pre-Trial 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 Pre-Trial Conference Statement shall be deemed waived, absent a showing of good cause. Evidence not disclosed on the Pre-Trial Conference Statement 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.

(e) Any violation of the provisions of this rule may give rise to monetary sanctions, attorney's fees, and costs under Labor Code section 5813 and rule 10421.

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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; and Sections 10305, 10421, 10629, 10742, 10750, 10755, 10872 and 10888, title 8, California Code of Regulations.

§ 10876. Fees Required at Lien Conference.

(a) No lien claimant that is required to pay a lien filing or lien activation fee shall file a Declaration of Readiness to Proceed 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.

(b) 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.

(1) 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).

(2) 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.

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

(1) 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.

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

(3) 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 to Proceed, the proof shall establish that the activation fee was paid contemporaneously with the filing of the Declaration of Readiness to Proceed.

(d) 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.

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

(1) 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.

(2) 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 to Proceed its lien shall be dismissed with prejudice; however, in neither case shall the dismissed lien toll, preserve, or extend any applicable statute of limitations.

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

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; and Sections 351, 352, 451 and 452, Evidence Code.

§ 10878. Submission at Lien Conferences.

(a) The workers' compensation judge may order that any unresolved lien claim(s) or lien issue(s) be submitted for decision solely on the exhibits listed in the Pre-Trial Conference Statement if no witnesses are listed in the Pre-Trial Conference Statement.

(b) 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 as set forth in rule 10787.

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; and Sections 351, 352, 451 and 452, Evidence Code.

§ 10880. Lien Trials.

(a) All defendants and lien claimants shall appear at all lien trials, either in person or by attorney or non-attorney representative. Each defendant, lien claimant, attorney and non-attorney representative appearing at any lien trial:

(1) Shall have sufficient knowledge of the lien dispute(s) to inform the workers' compensation judge 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.

(b) Where a lien claimant or defendant served with notice of a lien trial fails to appear either in person or by attorney or non-attorney representative, the workers' compensation judge may:

(1) Dismiss the lien claim after issuing a 10-day notice of intention to dismiss with or without prejudice, or

(2) Hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a 10-day notice of intention to submit, make such decision as is just and proper, or

(3) Defer the issue ~~to~~ of the lien and submit the case on the remaining issues.

(c) If the workers' compensation judge defers a lien issue, upon the issuance of a decision on the remaining issues, the workers' compensation judge shall:

(1) Issue a 10-day notice of intention to order payment of the lien in full or in part, or

(2) Issue a 10-day notice of intention to disallow the lien, or

(3) Continue the lien issue to a lien conference.

(d) At the conclusion of a lien trial, the workers' compensation judge shall prepare minutes of hearing and a summary of evidence as set forth in rule 10787.

(e) Any violation of the provisions of this rule may give rise to monetary sanctions, attorney's fees and costs under Labor Code section 5813 and rule 10421.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; ~~and~~ Sections 5502(e) and 5708, Labor Code; and Section 10787, title 8, Code of Regulations.

§ 10888. Dismissal of Lien Claims.

(a) The Appeals Board or a workers' compensation judge may order a lien dismissed for lack of prosecution, non-appearance by the lien claimant, or failure to comply with the provisions of the Labor Code or these rules.

(b) A lien claim may be dismissed for lack of prosecution on a petition filed by a party or on the Appeals Board's or the workers' compensation judge's own motion if the lien claimant fails to file a Declaration of Readiness to Proceed ~~*to proceed*~~ within:

(1) 180 days after the underlying case of the injured employee or the dependent(s) of a deceased employee has been resolved or the injured employee or the dependent(s) of a deceased employee choose(s) not to proceed with the case; or

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

(c) A dismissal for failure to appear at a hearing shall only issue if the lien claimant was provided with notice of the lien conference or lien trial.

(d) A dismissal for failure to comply with the Labor Code or these rules shall only be issued if the lien claimant has failed to comply with a statute or rule that provides that a lien may be dismissed for non-compliance.

(e) Before issuing an Order dismissing a lien, the Workers' Compensation Appeals Board shall issue a Notice of Intention to Dismiss the lien claim consistent with rule 10832 that provides at least 10 days for the lien claimant to file and serve a response showing good cause why an Order dismissing the lien should not issue.

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, 5502.5 and 5404.5, Labor Code; and Sections 10305 and 10832, title 8, California Code of Regulations.

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§ ~~10772~~ 10899. Unemployment Compensation Disability Liens.

When an unemployment compensation disability lien is filed by the Employment Development Department, there shall be a rebuttable presumption that the amounts stated therein have been paid to the injured worker by the Employment Development Department.

In any case involving a lien claim for unemployment compensation disability benefits or unemployment compensation benefits and extended duration benefits where it appears that further benefits may have been paid subsequent to the filing of the claim of lien, the workers' compensation judge shall notify the lien claimant when the case is ready for decision or for Order Approving Compromise and Release, and the lien claimant shall have five (5) days thereafter in which to file and serve an amended lien reflecting all payments made to and including the date of filing of the amended lien.

In cases where a Compromise and Release is filed and continuing unemployment compensation disability benefits or unemployment compensation benefits and extended duration benefits are being paid, the workers' compensation judge will ascertain the full amount of the lien claim as of the time of the approval of the Compromise and Release so that the allocation made under the authority of Labor Code section 4904 may be changed to reflect unemployment compensation disability or unemployment compensation and extended duration payments to the date of decision.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4903 and 4904, Labor Code.

ARTICLE 17
Arbitration

§ 10900. Mandatory Arbitration.

Unless the applicant is not represented by an attorney, any party may file an arbitration submittal form after a defendant denies liability for benefits because it disputes insurance coverage.

Any party may file an arbitration submittal form after a petition for contribution pursuant to Labor Code section 5500.5 has been filed.

Any party may file a petition objecting to arbitration submittal if the party asserts the issues in dispute are not subject to mandatory arbitration pursuant to Labor Code section 5275(a).
Upon receipt of an arbitration submittal form or an objection to an arbitration submittal form, the presiding judge may set the matter for a status conference to determine if the issues in dispute are subject to mandatory arbitration.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5270, 5272, 5275, 5276, 5277 and 5500.5, Labor Code

§ 10905. Voluntary Arbitration.

The parties agreeing to submit an issue or issues to voluntary arbitration shall jointly submit an arbitration submittal form outlining the issues they propose to submit to arbitration.

Unless there is an existing ADJ number, an Application for Adjudication of Claim shall be concurrently filed with *an* arbitration submittal form.

Upon receipt of an arbitration submittal form, the presiding judge may set the matter for a status conference to clarify the issues submitted to the arbitrator or to ensure compliance with Labor Code section 5270.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5270, 5271, 5272, 5273, 5275, 5276 and 5277, Labor Code.

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§ 10910. Selection of Arbitrator.

(a) If the parties agree on an arbitrator, the parties shall file a proposed order appointing arbitrator concurrently with the arbitration submittal form. The presiding judge, or a judge designated by the presiding judge, shall within 10 days of receipt of the arbitration submittal form and proposed order, issue an Order Appointing Arbitrator or set the matter for a status conference.

(b) If the arbitration submittal form requests a panel pursuant to Labor Code section 5271, the presiding judge or a judge designated by the presiding judge shall, within 10 days of receipt of the arbitration submittal form, serve on each of the parties an identical list of arbitrators selected at random pursuant to Labor Code 5271(b).

(1) Within 10 days of service of the list of arbitrators, any party may file a petition to disqualify an arbitrator for reasons set forth in section 170.1 of the Code of Civil Procedure. A timely petition for disqualification suspends the arbitrator selection process until the presiding judge acts on the petition. Together with any order issued regarding the petition for disqualification, the presiding judge shall set forth time limits for striking names.

(2) Within 15 days of service of the list of arbitrators, each party may strike two names from the list and serve notice of the names struck on all parties to the arbitration. Failure to serve notice waives a party's right to participate in the arbitrator selection process.

(3) The presiding judge, or a judge designated by the presiding judge, shall within 30 days of receipt of the arbitration submittal form, issue an Order Appointing Arbitrator or set the matter for a status conference.

(c) Only the arbitrator named in the Order Appointing Arbitrator shall conduct the arbitration.

(d) An arbitrator shall not communicate with any party regarding the merits of the issues to be arbitrated until appointed as the named arbitrator in the Order Appointing Arbitrator.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5271, 5272, 5273, 5275, 5276 and 5277, Labor Code; and Section 170.1, Code of Civil Procedure.

§ ~~10998.~~ 10912. Disqualification of Arbitrator.

~~This rule applies to injuries occurring on or after January 1, 1990, except that this rule applies regardless of the date of injury for voluntary arbitration pursuant to Labor Code section 5275, subdivision (b).~~

After service of a list of panel members pursuant to rule ~~10995~~ 10910, any party may, within ~~six (6)~~ 10 days, petition the presiding workers' compensation judge to remove any member from the panel pursuant to section 170.1 of the Code of Civil Procedure. If ~~n event~~ the presiding workers' compensation judge finds cause under section 170.1 of the Code of Civil Procedure, the presiding workers' compensation judge shall remove the member or members of the panel challenged and add to the original list the appropriate number of arbitrators at random to make a full panel and, within ~~six (6)~~ 10 days, serve the list on the parties.

If ~~n event~~ the presiding workers' compensation judge selects an arbitrator pursuant to rule ~~10995~~ 10910, the parties will have ~~six (6)~~ 10 days after service of the name of the arbitrator to petition to disqualify that arbitrator pursuant to section 170.1 of the Code of Civil Procedure. If the presiding workers' compensation judge finds cause, the presiding workers' compensation judge shall assign another arbitrator pursuant to Labor Code section 5271~~, subdivision~~ (d) and order the issue or issues in dispute submitted to that arbitrator.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5271, 5272, 5273, 5275, 5276 and 5277, Labor Code; Section 170.1, Code of Civil Procedure; and Section 10910, title 8, California Code of Regulations.

§ 10914. Record of Arbitration Proceeding.

(a) The arbitrator shall make and maintain the record of the arbitration proceeding and shall file the record with the Appeals Board when required by this rule or rule 10940.

(b) The parties shall provide the arbitrator with a copy of the Arbitration Submittal Form and the Order Appointing Arbitrator.

(c) The record of arbitration proceedings shall include the following:

(1) Order Appointing Arbitrator;

(2) Notices of appearance of the parties involved in the arbitration;

(3) Minutes of the arbitration proceedings, identifying those present, the date of the proceeding, the disposition and those served with the minutes or the identification of the party designated to serve the minutes;

(4) Pleadings, petitions, objections, briefs and responses filed by the parties with the arbitrator;

(5) Exhibits filed by the parties;

(6) Stipulations and issues entered into by the parties;

(7) Arbitrator's Summary of Evidence containing evidentiary rulings, a description of exhibits admitted into evidence, the identification of witnesses who testified and summary of witness testimony;

(8) Verbatim transcripts of witness testimony if witness testimony was taken under oath.

(9) Findings, orders, awards, decisions and opinions on decision made by the arbitrator; and

(10) Arbitrator's report on petition for reconsideration, removal or disqualification.

(d) The arbitrator shall file any finding, order or award together with the opinion on decision with the *Workers' Compensation* Appeals Board when it is served on the parties.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5271, 5272, 5273, 5275, 5276 and 5277, Labor Code; and Section 10940, title 8, California Code of Regulations.

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§ ~~10999.~~ 10920. Arbitrator Fee and Cost Disputes.

Any dispute involving an arbitrator's fee or cost shall be resolved by the presiding workers' compensation judge of the appropriate local office or, in ~~his or her~~ ~~their~~ *the presiding judge's* absence, the acting presiding workers' compensation judge.

Any request to resolve a dispute about arbitrator fees or costs must be accompanied by any written agreement pertaining to arbitrator fees or costs and a statement that shall include the nature of the dispute and an itemization of the hours spent in actual arbitration hearing, in preparation for arbitration, and in preparation of the decision. The statement shall also include an itemization of the verifiable costs including use of facility, reporters and transcript preparation.

An arbitrator's fee shall not exceed a reasonable amount. In establishing a reasonable fee, the ~~P~~presiding ~~W~~workers' ~~C~~compensation ~~J~~judge shall consider:

(a) Responsibility assumed by the arbitrator;

(b) Experience of the arbitrator;

(c) Number and complexity of the issues being arbitrated;

(d) Time involved; and

(e) Expeditiousness and completeness of issue resolution.

The presiding workers' compensation judge of each local office shall maintain statistics on all arbitration fees awarded pursuant to Labor Code section 5273(c) including the amount ~~thereof~~ and rationale ~~or basis~~ for the award pursuant to (a) through (e) ~~herein~~ above.

Arbitration costs will be allowed in a reasonable amount pursuant to Labor Code section 5273~~, subdivision~~ (a).

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5271, 5271, 5273, 5275, 5276 and 5277, Labor Code.

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ARTICLE 18
Reconsideration, Removal and Disqualification

§ 10940. Filing and Service of Petitions for Reconsideration, Removal, Disqualification and Answers.

(a) Petitions for reconsideration, removal, or disqualification and answers shall be filed in EAMS or with the district office having venue in accordance with Labor Code section 5501.5 unless otherwise provided. Petitions for reconsideration of decisions after reconsideration of the Appeals Board shall be filed with the office of the Appeals Board. Petitions filed in EAMS pursuant to this rule must comply with rules 10205.10-10205.14.

(b) No duplicate copies shall be filed with any district office or with the Appeals Board. No documents sent directly to the Appeals Board by fax or e-mail will be accepted for filing, unless otherwise ordered by the Appeals Board.

(c) Every petition and answer shall be verified upon oath in the manner required for verified pleadings in courts of record. A verification and a proof of service shall be attached to each petition and answer. Failure to file a proof of service shall constitute valid ground for dismissing the petition.

(d) A petition shall not exceed 25 pages and an answer shall not exceed 10 pages unless allowed by the Appeals Board. Any verification, proof of service, exhibit, document cover sheet or document separator sheet filed with the petition or answer shall not be counted in determining the page limitation. Upon its own motion or upon a showing of good cause, the Appeals Board may allow the filing of a petition or answer that exceeds 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 reasons why the request should be granted.

(e) If the petition seeks removal or reconsideration of an arbitrator's decision or disqualification of an arbitrator, the petition and any answer shall be served on the arbitrator and all affected parties in accordance with rule 10610.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5501.5, 5900, 5902 and 5905, Labor Code; and Sections 10205.10-10205.14 and 10610, title 8, California Code of Regulations.

§ ~~10842.~~ 10945. Required Contents of Petitions for Reconsideration, Removal, ~~and~~ Disqualification and Answers.

(a) Every petition for reconsideration, removal or disqualification shall fairly state all of the material evidence relative to the point or points at issue. Each contention ~~contained in a petition for reconsideration, removal, or disqualification~~ shall be separately stated and clearly set forth. A failure to fairly state all of the material evidence may be a basis for denying the petition.

(b) ~~Each~~ Every petition ~~for reconsideration, removal, or disqualification,~~ and ~~each~~ answer ~~thereto~~ shall support its evidentiary statements by specific references to the record.

(1) References to any stipulations, issues, or testimony contained in any Minutes of Hearing, Summary of Evidence or hearing transcript shall specify:

(A) The date and time of the hearing; and

(B) If available, the page(s) and line number(s) of the Minutes, Summary, or transcript to which the evidentiary statement relates (e.g., "Summary of Evidence, 5/1/08 trial, 1:30 pm session, at 6:11-6:15").

(2) References to any documentary evidence shall specify:

(A) The exhibit number or letter of the document;

~~(B) The date and time of the hearing at which the document was admitted or offered into evidence;~~

(~~C~~)B) Where applicable, the author(s) of the document;

(~~D~~)C) Where applicable, the date(s) of the document; and

(~~E~~)D) The relevant page number(s) ~~and, if available, at least one other relevant identifier (e.g., line number(s), paragraph number(s), section heading(s)) that helps pinpoint the reference within the document~~ (e.g., "~~the 6/16/08 report~~ Exhibit M, Report of John A. Jones, M.D., 6/16/08 at p. 7. ~~Apportionment Discussion, 3rd full W [Defendant's Exh. B, admitted at 8/1/08 trial, 1:30pm session]~~").

(3) References to any deposition transcript shall specify:

(A) The exhibit number or letter of the document;

~~(B) The date and time of the hearing at which the deposition transcript was admitted or offered into evidence;~~

(~~C~~B) The name of the person deposed;

(~~D~~C) The date ~~and time~~ of the deposition; and

(~~E~~D) The relevant page number(s) and line(s) (e.g., "~~the~~ Exh. 3, 6/20/08 depo of William A. Smith, M.D., at 21:20-22:5 ~~[Applicant's Exh. 3, admitted at 12/1/08 trial, 8:30am session~~]").

(c)(1) Copies of documents that have already been received in evidence or that have already been made part of the adjudication file shall not be attached or filed as exhibits to petitions for reconsideration, removal, or disqualification or answers ~~thereto. Except as provided by section 10856, d~~ Documents attached in violation of this rule may be detached from the petition or answer and discarded.

(2) A document that is not part of the adjudication file shall not be attached to or filed with a petition for reconsideration or answer unless a ground for the petition for reconsideration is newly discovered evidence.

(3) A document shall not be attached to or filed with a petition for removal or disqualification or answer unless the document is not part of the adjudication file and is relevant to a petition for removal or disqualification.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5310, 5311, 5900, 5902 and 5904, Labor Code.

§ ~~10843.~~ 10955. Petitions for Removal and Answers.

(a) At any time within ~~twenty (~~20~~)~~ days after the service of the order or decision, or of the occurrence of the action in issue, any party may petition for removal based upon one or more of the following grounds:

(1) The order, decision or action will result in significant prejudice.

(2) The order, decision or action will result in irreparable harm.

The petitioner must also demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order, decision or award. Failure to file the petition to remove timely shall constitute valid ground for dismissing the petition for removal.

(b) The petition for removal and any answer ~~thereto~~ shall be verified upon oath in the manner required for verified pleadings in courts of record.

(c) A copy of the petition for removal shall be served forthwith upon all parties by the petitioner. Any adverse party may file an answer within ~~ten (~~10~~)~~ days after service. No supplemental petitions, pleadings or responses shall be considered unless requested or approved by the Appeals Board.

(d) ~~The~~ A workers' compensation judge may, within ~~fifteen (~~15~~)~~ days of the filing of the petition for removal, rescind the order or decision in issue, or take action to resolve the issue raised in the petition. If the judge so acts, or if the petitioner withdraws the petition at any time, the petition for removal will be deemed automatically dismissed, requiring no further action by the Appeals Board. The issuance of a new order or decision, or the occurrence of a new action, will recommence the time period for filing a petition for removal as described above.

(e) The filing of a petition for removal does not terminate the judge's authority to proceed in a case or require the judge to continue or cancel a previously scheduled hearing absent direction from the Appeals Board. After a petition for removal has been filed, the workers' compensation judge shall consult with the presiding workers' compensation judge prior to proceeding in the case or continuing or canceling a scheduled hearing.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5310, Labor Code.

§ ~~10452,~~ 10960. Petition for Disqualification of Judge.

Proceedings to disqualify a workers' compensation judge under Labor Code ~~S~~section 5311 shall be initiated by the filing of a petition for disqualification supported by an affidavit or declaration under penalty of perjury stating in detail facts establishing one or more of the grounds for disqualification specified in ~~S~~section 641 of the Code of Civil Procedure. ~~of the workers' compensation judge to whom a case or proceeding has been assigned.~~ The petition to disqualify a workers' compensation judge and any answer shall be verified upon oath in the manner required for verified pleadings in courts of record.

If the workers' compensation judge assigned to hear the matter and the grounds for disqualification are known, the petition for disqualification shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known. ~~In no event shall any such petition be allowed after the swearing of the first witness.~~

A petition for disqualification shall be referred to and determined by a panel of three commissioners of the Appeals Board in the same manner as a petition for reconsideration.

Authority: Section 5307, Labor Code.
Reference: Section 641, Code of Civil Procedure; and Sections 5310 and 5311, Labor Code.

§ ~~10859.~~ 10961. ~~Orders~~ Actions by Workers' Compensation Judge After ~~Filing of~~ Petition for Reconsideration is Filed.

Within 15 days of the ~~After a petition for reconsideration has been~~ timely ~~filed~~ filing of a~~, a workers' compensation judge may, within the period of fifteen (15) days following the date of filing of that~~ petition for reconsideration, a workers' compensation judge shall perform one of the following actions: ~~amend or modify the order, decision or award or rescind the order, decision or award and conduct further proceedings. Further proceedings shall be initiated within 30 days from the order of recession.~~

(a) Prepare a Report and Recommendation on Petition for Reconsideration in accordance with rule 10962;

(b) Rescind the entire order, decision or award and initiate further proceedings within 30 days; or

(c) Rescind the order, decision or award and issue an amended order, decision or award. The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the amended order, decision or award.

~~The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the new, amended or modified order, decision or award.~~ After ~~this period of fifteen (~~15~~)~~ days ha~~s~~ve elapsed from the filing of a petition for reconsideration, a workers' compensation judge shall not ~~make~~ issue any order in the case ~~nor correct any error~~ until the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision after reconsideration.

Authority: Section 5307, Labor Code.
Reference: Sections 5903, 5906, 5907 and 5908.5, Labor Code; and Section 10962, title 8, California Code of Regulations.

§ ~~10860~~. 10962. Report of Workers' Compensation Judge.

Petitions for reconsideration, petitions for removal and petitions for disqualification shall be referred to the workers' compensation judge from whose decisions or actions relief is sought. If ~~T~~the workers' compensation judge ~~shall~~ prepares a report it ~~that~~ shall contain:

(a) A statement of the contentions raised by the petition;

(b) A discussion of the support in the record for the findings of fact and the conclusions of law that serve as a basis for the decision or order as to each contention raised by the petition, or, in the case of a petition for disqualification, a specific response to the allegations and, if appropriate, a discussion of any failure by the petitioner to comply with the procedures set forth in ~~R~~rule ~~10452,~~ 10960; and

(c) The action recommended on the petition.

The workers' compensation judge shall submit the report to the Appeals Board within 15 days after the petition is filed unless the Appeals Board grants an extension of time. The workers' compensation judge shall serve a copy of the report on the parties and any lien claimant, the validity of whose lien is specifically questioned by the petition, at the time the report is submitted to the Appeals Board.

If the workers' compensation judge assigned to the case is unavailable, the presiding judge or the presiding judge's designee shall prepare and serve the report.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5900 and 5906, Labor Code; and Section 10960, title 8, California Code of Regulations.

§ ~~10848~~. 10964. Supplemental Petitions.

(a) When a petition for reconsideration, removal or disqualification has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board.

(b) A party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading.

(c) Supplemental petitions or pleadings or responses other than the answer~~, except as provided by this rule,~~ shall neither be accepted nor deemed filed for any purpose ~~and shall not be acknowledged or returned to the filing party~~ except as provided by this rule.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5310, 5311 and 5900, Labor Code.

§ ~~10858~~.10966. Correction of Errors.

Before a petition for reconsideration is filed, a workers' compensation judge may correct the decision for clerical, mathematical or procedural error or amend the decision for good cause under the authority and subject to the limitations set out in Sections 5803 and 5804 of the Labor Code.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5309, 5803 and 5804, Labor Code.

§ ~~10846~~. 10972. Skeletal Petitions.

A petition for reconsideration, ~~or~~ removal or disqualification may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5310, 5311, 5900, 5902 and 5904, Labor Code.

§ ~~10856.~~ 10974. Allegations of Newly Discovered Evidence and Fraud.

Where reconsideration is sought on the ground of newly discovered evidence that could not with reasonable diligence have been produced before submission of the case or on the ground that the decision had been procured by fraud, the petition must contain an offer of proof, specific and detailed, providing:

(a) The names of witnesses to be produced;

(b) A summary of the testimony to be elicited from the witnesses;

(c) A description of any documentary evidence to be offered;

(d) The effect that the evidence will have on the record and on the prior decision; and

(e) As to newly discovered evidence, a full and accurate statement of the reasons why the testimony or exhibits could not reasonably have been discovered or produced before submission of the case.

A petition for reconsideration sought upon these grounds may be denied if it fails to meet the requirements of this rule, or if it is based upon cumulative evidence.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5902 and 5903, Labor Code.

§ ~~10862.~~ **10984. Hearing After Reconsideration Granted.**

Where reconsideration has been granted and the case referred to a workers' compensation judge for proceedings on reconsideration, the workers' compensation judge shall, upon the conclusion thereof, prepare and serve upon the parties a summary of evidence received in the proceedings after reconsideration granted.

Unless otherwise instructed by the panel before which a case is pending, the workers' compensation judge to whom the case has been assigned for further proceedings may rule on requests for postponement, continuance of further hearing, join additional parties, dismiss unnecessary parties where such dismissal is not opposed by any other party to the case, make all interlocutory or procedural orders that are agreed to by all parties, issue subpoenas, rule on motions for discovery, rule on all evidentiary motions and objections, and make all other rulings necessary to expedite and facilitate the trial and disposition of the case. The workers' compensation judge shall not order a medical examination, obtain a recommended disability evaluation, make an order taking the case off calendar, nor make an order approving or disapproving ~~c~~Compromise and ~~r~~Release.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5309 and 5313, Labor Code.

§ ~~10864~~. 10986. Authority of Workers' Compensation Judge After Decision After Reconsideration.

After a decision after reconsideration has become final, subsequent orders and decisions in a case ~~may~~ shall be made by any trial level workers' compensation judge ~~to whom the case is assigned pursuant to Section 10348, including orders approving or disapproving compromise and release, orders allowing or disallowing liens, orders for enforcement of the decision of the Appeals Board, orders granting or denying petitions to reopen, orders rescinding, altering or amending the decision of the Appeals Board for good cause under Labor Code Section 5803, orders for increased compensation under Labor Code Section 5814, orders terminating liability, orders for commutation and orders resolving issues that, the Board in its decision has left for determination by a workers' compensation judge~~.

~~A workers' compensation judge may not make an order correcting a decision after reconsideration for clerical, mathematical, or procedural error. Requests for such correction shall be acted on by the panel that made the decision or if the composition of the Board has changed, by the successor panel~~. An order correcting a decision after reconsideration for clerical, mathematical or procedural error shall be made by the panel that made the decision or if the composition of the Board has changed, by the successor panel.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5900, 5910 and 5911, Labor Code.

§ ~~10865.~~ 10990. Reconsideration of Arbitration Decisions Made Pursuant to Labor Code Sections 3201.5 and 3201.7.

(a) A petition for reconsideration from an arbitration decision made pursuant to Labor Code ~~S~~section 3201.5(a)(1) or ~~S~~section 3201.7(a)(1) (known as "carve-out" cases) shall be filed directly with the office of the Appeals Board ~~in San Francisco~~ within ~~twenty (~~20~~)~~ days of the service of the final order, decision, or award made and filed by the arbitrator or board of arbitrators. A copy of the petition for reconsideration shall be served on the arbitrator or arbitration board.

(b) Notwithstanding any other provision of these rules, a petition for reconsideration in a carve-out case shall be filed directly with the office of the Appeals Board ~~in San Francisco~~, and not with any district office, including the San Francisco district office. ~~The street address and the post office box address of the Appeals Board may be found 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 Appeals Board in San Francisco (currently, (415) 703-4550).~~ Any petition for reconsideration in a carve-out case that is received by any district office shall neither be accepted for filing nor deemed filed for any purpose. If a carve-out petition for reconsideration is submitted to a district office in violation of this rule, the petition shall be returned to the petitioner with a letter referencing this rule, noting that the petition was improperly submitted to a district office and has been rejected, and indicating that the petition should be filed directly with the Appeals Board ~~in San Francisco~~ consistent with this rule.

(c) The petition for reconsideration in a carve-out case, which shall be submitted with a document cover sheet, shall also comply with each of the following requirements:

(1) It shall be captioned so as to identify it as a "Petition for Reconsideration from Arbitrator's Decision Under Labor Code section 3201.5 or 3201.7" and it shall caption:

(A) The injured employee's first and last names;

(B) The name(s) of the defendant(s);

(C) The alternative dispute resolution (ADR) case number (i.e., the carve-out arbitration case number); and

(D) The Workers' Compensation Appeals Board adjudication case number, if previously assigned;

(2) It shall set forth the date on which the arbitrator or board of arbitrators served the arbitration decision. Proof of service of the arbitration decision on the parties shall be either by a verified statement of the arbitrator or the board of arbitrators indicating the date of service and listing the names and addresses of the persons served or by written acknowledgment of receipt by the parties at the time of the arbitration proceedings;

(3) It shall append, under a document separator sheet a copy of that portion of the collective bargaining agreement relating to the workers' compensation arbitration and reconsideration processes;

(4) It shall append, under a document separator sheet, a completed ~~a~~Application for ~~a~~Adjudication of ~~c~~Claim (but without any venue designation), which is required solely for the purpose of obtaining the information set forth therein (e.g., the injured employee's date(s) of injury and date of birth; the names and mailing addresses of the parties); therefore, it shall not be deemed an application for purposes of Labor Code section 4064(c); and

(5) It shall contain a proof of service of the petition, including service on the arbitrator or board of arbitrators.

(d) After the filing of the carve-out petition for reconsideration, an adjudication file will be created and an adjudication case number will be assigned, if there is no existing adjudication case number. Any new adjudication case number will be served by the Appeals Board on the parties and attorneys, and on the arbitrator or board of arbitrators, at the addresses listed in the proof of service to the petition.

(e) Following the Appeals Board's service of the adjudication case number (or, if there is an existing case, following the filing of the carve-out petition for reconsideration), and until the Appeals Board issues a decision disposing of all issues raised in the petition, all further documents shall be filed directly with the office of the Appeals Board ~~in San Francisco~~, and not with any district office.

(f) Within 15 days after receiving the petition for reconsideration, the arbitrator or board of arbitrators shall perform one of the following actions:

(1) Rescind the entire order, decision or award and initiate further proceedings within 30 days; or

(2) Rescind the order, decision or award and issue an amended order, decision or award. The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the amended order, decision or award; or

(3) ~~s~~Submit to the Appeals Board ~~in San Francisco~~ an electronic copy ~~photocopy~~ of the complete record of proceedings, including:

~~(1)~~(A) The transcript of proceedings, if any;

~~(2)~~(B) A summary of testimony if the proceedings were not transcribed;

~~(3)~~(C) The documentary evidence submitted by each of the parties;

~~(4)~~(D) An opinion that sets forth the rationale for the decision; and

~~(5)~~(E) A report on the petition for reconsideration, consistent with the provisions of ~~section 10860~~ rule 10962. The original arbitration record shall not be filed.

(g) Upon receipt of the electronic copy of the complete record of proceedings, ~~T~~the Appeals Board may enter ~~scan~~ the petition for reconsideration, any answer, and the ~~photocopied~~ record of the arbitration proceedings into the adjudication file within EAMS. ~~Upon scanning, the paper documents shall be destroyed.~~

(h) The petition for reconsideration, any answer, and the arbitration record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under ~~section 10750~~ rule 10803.

(i) After an arbitration decision has been made, the arbitrator or board of arbitrators shall maintain possession of the original record of the arbitration proceedings until the time for filing a petition for reconsideration has passed. Thereafter one of the parties may be designated custodian of the arbitration record as provided for in the collective bargaining agreement.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 3201.5, 3201.7 and 4064 Labor Code; and Sections 10803 and 10962, title 8, California Code of Regulations.

§ ~~10866.~~ 10995. Reconsideration of Arbitrator's Decisions or Awards Made Pursuant to the Mandatory or Voluntary Arbitration Provisions of Labor Code Sections 5270 through 5275.

(a) Any final order, decision or award filed by an arbitrator under the mandatory or voluntary arbitration provisions of Labor Code ~~S~~sections 5270 through 5275 shall be subject to the reconsideration process. ~~as set forth in Labor Code Sections 5900 through 5911 and Rules 10842 through 10850. The parties, respectively, shall serve the arbitrator with the petition for reconsideration and the answer.~~

(b) A petition for reconsideration from any final order, decision or award filed by an arbitrator under the mandatory or voluntary arbitration provisions of Labor Code sections 5270 through 5275, and any answer ~~to such a petition~~, shall be filed in EAMS or with the district office having venue in accordance with Labor Code section 5501.5. ~~may be filed with any district office or with the office of the Appeals Board in San Francisco.~~ No duplicate copies of petitions ~~filed with a district office~~ shall ~~not also~~ be filed with any other district office or with the Appeals Board ~~in San Francisco~~.

(c) ~~When a petition for reconsideration is filed from any final order, decision or award made by an arbitrator under Labor Code Sections 5270 through 5275,~~Within 15 days after receiving the petition for reconsideration, the arbitrator shall perform one of the following actions:

(1) Rescind the entire order, decision or award and initiate further proceedings within 30 days; or

(2) Rescind the order, decision or award and issue an amended order, decision or award. The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the amended order, decision or award; or

(3) P~~p~~repare and serve a report on reconsideration as provided in ~~R~~rule ~~10860~~ 10962. Upon completion of the report on reconsideration, the arbitrator shall concurrently forward an electronic copy of the arbitrator's ~~original~~ report and an electronic copy ~~photocopy~~ of the complete arbitration file directly to the presiding workers' compensation judge of the district office having venue over the matter. Upon receipt of the arbitrator's ~~original~~ report and the ~~photocopy of the complete arbitration file,~~ record of arbitration proceedings the district office shall enter ~~scan~~ the report and the ~~photocopied~~ file into the EAMS adjudication file. ~~and, after scanning, shall destroy these documents. Thereafter, the adjudication file shall be electronically transferred to the Appeals Board for action on the petition for reconsideration or, to the extent that the adjudication file is in paper form, the file shall be delivered to the Appeals Board.~~

(d) The petition for reconsideration, any answer, and the arbitration record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under ~~section 10750~~ rule 10803.

~~(e) The costs of photocopying the arbitrator's file shall be reimbursed to the arbitrator in accordance with the provisions of Labor Code section 5273, within 30 days after the liable party or parties receives the arbitrator's billing for those costs.~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5270-5275, 5501.5 and 5900-5911, Labor Code; and Sections 10962 and 10979, title 8, California Code of Regulations.

FORUM 3

REPEALED RULES

~~§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; and Stats. 2004, ch. 34, § 48.~~

~~§10304. Article and Section Headings.~~

~~Article and section headings shall not be deemed to limit or modify the meaning or intent of the provisions of any section hereof.~~

~~Authority cited: Sections 133, 5307, Labor Code.~~
~~Reference: Sections 133, 5307, Labor Code.~~

~~§ 10322. Workers' Compensation Appeals Board Records Not Subject to Subpoena.~~

~~The records, files and proceedings of the Workers' Compensation Appeals Board shall not be taken from its offices either on informal request or in response to a subpoena duces tecum or any order issued out of any other court or tribunal. Except as precluded by Civil Code Section 1798.24, or Government Code Section 6254, certified copies of portions of the records desired by litigants shall be delivered upon payment of fees as provided in the Rules of the Administrative Director.~~

~~Authority cited: Sections 133 and 5307, Labor Code.~~
~~Reference: Sections 127, 5811, Labor Code.~~

~~§10349. Orders Equivalent to Notices of Intention.~~

An order with a clause rendering the order null and void if an objection showing good cause is filed within ten (10) days shall be deemed equivalent to a ten (10) day notice of intention.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section !, Labor Code.

§10350. Trials: Appointment and Authority of Pro Tempore Workers' Compensation Judges.

A presiding workers' compensation judge may appoint and assign a pro tempore workers' compensation judge to conduct a trial on any issue in any proceeding before the Workers' Compensation Appeals Board and to make and file a finding, opinion, order, decision or award based thereon. Before assignment of a particular pro tempore workers' compensation judge, the parties or their representatives shall submit a request and written stipulation to the presiding workers' compensation judge. The request and written stipulation shall set out in full the name and the office address of the attorney agreed upon to conduct the trial as a pro tempore workers' compensation judge.

If a case is off calendar or has not before been set on the trial calendar, the request and written stipulation must be filed with a Declaration of Readiness to Proceed pursuant to Section 10414. The presiding workers' compensation judge, upon approval of the request for trial by a pro tempore workers' compensation judge, will assign the case to the trial calendar making appropriate arrangements to provide the pro tempore workers' compensation judge with facilities and staff at a time and place convenient to the Workers' Compensation Appeals Board and the pro tempore workers' compensation judge.

At the time of any conference hearing, the parties or their representatives may file the same request and written stipulation which will be submitted to the presiding workers' compensation judge who will assign the case to the trial calendar in the same manner as set forth above.

Pro tempore workers' compensation judges will have all the authority and powers of workers' compensation judges as set forth in the Labor Code and Rules of Practice and Procedure of the Workers' Compensation Appeals Board including inquiry into adequacy of and approval of compromise and release agreements and stipulated findings including the authority to issue appropriate findings, awards and orders. Pro tempore workers' compensation judges shall be bound by the Rules of Practice and Procedure of the Workers' Compensation Appeals Board (including Articles 6, 7 and 8).

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 123.7,5309 and 5310, Labor Code.

§10351. Conference Hearings: Appointment and Authority of Pro Tempore Workers' Compensation Judges.

A pro tempore workers' compensation judge shall in any case filed have the same power as a workers' compensation judge to conduct conference hearings, including mandatory settlement conferences, rating mandatory settlement conferences and status conferences; to inquire into the adequacy of and to approve compromise and release agreements; to approve stipulated findings and to issue appropriate awards based on the stipulations; to frame stipulations and issues and make interim and interlocutory orders at the conference hearing.

The presiding workers' compensation judge may assign a pro tempore workers compensation judge to any conference hearing calendar including rating mandatory settlement conferences or status conferences. The name of the pro tempore workers' compensation judge shall appear on the notice of hearing. Failure to object to the assignment within five days of service of notice of conference hearing shall constitute a waiver of any objection to proceeding before the pro tempore workers' compensation judge assigned to the mandatory settlement conference hearing, rating mandatory settlement conference or status conference

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 123.7,5309 and 5310, Labor Code.

§10352. Reconsideration of Pro Tempore Workers' Compensation Judge's Orders, Decisions or Awards.

Any final order, decision or award filed by a pro tempore workers' compensation judge shall be subject to the reconsideration process as set forth in Labor Code Sections 5900 through 5911.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 121, 123.7, 5309, 5310 and 5900-5911, Labor Code.

§10353. Settlement Conference Authority.

(a) In accordance with Labor Code section 5502, subdivision (e)(2), the workers' compensation judge shall have authority to inquire into the adequacy and completeness, including provision for lien claims, of compromise and release agreements or stipulations with request for award or orders, and to issue orders approving compromise and release agreements or awards or orders based upon approved stipulations. The workers' compensation judge may make orders and rulings regarding admission of evidence and discovery matters, including admission of offers of proof and stipulations of testimony where appropriate and necessary for resolution of the dispute(s) by the workers' compensation judge, and may submit and decide the dispute(s) on the record pursuant to the agreement of the parties. The workers' compensation judge shall not hear sworn testimony at any conference.

(b) The workers' compensation judge may temporarily adjourn a conference toa time certain to facilitate a specific resolution of the dispute(s) subjectto Labor Code section 5502, subdivision (e)(1).

Subject to the provisions of Labor Code Section 5502.5 and Rule 10416, upon a showing of good cause, the workers' compensation judge may continue a mandatory settlement conference to a date certain, may continue it to a status conference on a date certain, or may take the case off calendar. In such a case, the workers' compensation judge shall note the reasons for the continuance or order taking off calendar in the minutes. The minutes shall be served on all parties and lien claimants, and their representatives.

(c) Absent resolution of the dispute(s), the parties shall file at the mandatory settlement conference a joint pre-trial statement setting forth the issues and stipulations for trial, witnesses, exhibits, and the proposed permanent disability rating as provided by Labor Code Section 4065. The parties may modify their proposed ratings only when evidence, relevant to the proposed ratings, and disclosed or obtained after the mandatory settlement conference, becomes admissible pursuant to Labor Code Section 5502, subdivision (e)(3).

A summary of conference proceedings including the joint pre-trial conference statement and the disposition shall be filed by the workers' compensation judge in the record of the proceedings on a form prescribed and approved by the Appeals Board and shall be served on the parties.

Authority cited: Sections 133, 5307 and 5502, Labor Code.
Reference: Sections5502 and 5502.5, Labor Code.

§10364. Parties Applicant.

(a) Any person in whom any right to relief is alleged to exist may appear, or be joined, as an applicant in any case or controversy before the Workers' Compensation Appeals Board. A lien claimant may become a party where the applicant's case has been settled by way of a compromise and release, or where the applicant chooses not to proceed with his or her case.

(b) Any person against whom any right to relief is alleged to exist may be joined as a defendant.

(c) In death cases, all persons who may be dependents shall either join or be joined as applicants so that the entire liability of the employer or the insurer may be determined in one proceeding.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5300,5303, 5307.5, 5500 and 5503, Labor Code.

§10380. Joinder of Parties.

After filing of an Application for Adjudication, the Appeals Board, a workers' compensation judge may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall be served with copies of the order of joinder, the application, minutes of hearing and summary of evidence, medical reports and other

documents, as directed in the order of joinder. The Workers' Compensation Appeals Board may designate the party or parties who are to make service.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5307.5and 5316, Labor Code.

§ 10390. Place of Filing Documents After Initial Application or Case Opening Document.

Except as otherwise provided by these rules or ordered by the Workers' Compensation Appeals Board, after the filing and processing of an initial application for adjudication of claim or other case opening document, all documents required or permitted to be filed under the rules of the Appeals Board shall be filed only in EAMS or with the district office having venue.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5501.5, 5501.6, Labor Code; Section 10397, California Code of Regulations, title 8.

§ 10391. Filing of Documentary Evidence.

(a) Except as provided by section 10603(a), no "original" business records, medical records, or other documentary evidence shall be filed with the Workers' Compensation Appeals Board. Only a photocopy or other reproduction of an original document shall be filed. All paper documents that are scanned into EAMS are destroyed after filing pursuant to section 10205.10.

(b) It is presumed the filed photocopy is an accurate representation of the original document.

(c) If a party or lien claimant alleges that a filed photocopy is inaccurate or unreliable, the party alleging the document is inaccurate or unreliable shall state the basis for the objection. The filing party must establish that the document is an accurate representation of the original document.
) A party or lien claimant that elects to retain the original of an exhibit or proposed exhibit need not retain the original after (1) the exhibit has been authenticated at trial; or (2) a settlement that resolves all pending issues has been approved and all appeals have been exhausted; or (3) the time for seeking appellate review has expired.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126 and 5500.3, Labor Code.

§ 10392. Time of Filing Documents.

(a) A paper document, including one filed by mail (regardless of when posted), is deemed filed on the date it is received, if received prior to 5 p.m. on a court day (i.e., Monday through Friday, except designated State holidays). A paper document received after 5 p.m. of a court day shall be deemed filed as of the next court day.

(b) When a paper document is filed by mail or by personal service, the Appeals Board or the district office that received the document for filing shall affix on it an appropriate endorsement as evidence of receipt. The endorsement may be made by handwriting, hand-stamp, electronic date stamp, or by other means.

(c) An electronically transmitted document shall be deemed to have been received by EAMS when the electronic transmission of the document into EAMS is complete, if received prior to 5 p.m. on a court day (i.e., Monday through Friday, except designated State holidays). An electronic document received after 5 p.m. of a court day shall be deemed filed as of the next court day.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126 and 5500.3, Labor Code.

§ 10393. Filing of Medical Reports, Medical-Legal Reports, and Various Records.

(a) Except as provided by section 10603, medical reports, medical-legal reports, medical records, and other records and documents shall be filed only in accordance with the following provisions.

(b) This subdivision shall apply where a declaration of readiness (other than a declaration of readiness for an expedited hearing) is being filed, including a walk-through declaration of readiness.

(1) When filing a declaration of readiness, the filing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator, and any treating physician that:

(A) are then in its possession or control; (B) are relevant to the issue being raised by the declaration of readiness; and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time, unless otherwise ordered by the Workers' Compensation Appeals Board.

(2) When filing an objection to a declaration of readiness, or within ten days of the filing of the declaration of readiness if no objection is timely filed, each opposing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator, and any treating physician that: (A) are then in its possession or control; (B) are relevant to the issue being raised by the declaration of readiness; and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time, unless otherwise ordered by the Workers' Compensation Appeals Board.

(c) This subdivision shall apply where a declaration of readiness for an expedited hearing is being filed.

(1) When filing a declaration of readiness for an expedited hearing, the filing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator,

and any treating physician that: (A) are then in its possession or control; (B) are relevant to the issue being raised by the declaration of readiness; and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time.

(2) When filing an objection to a declaration of readiness for an expedited hearing, or within ten days of the filing of the declaration of readiness if no objection is timely filed, each opposing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator, and any treating physician that: (A) are then in its possession or control; (B) are relevant to the issue being raised by the declaration of readiness; and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time.

(3) All other medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness, and that have not been filed previously, shall be filed at the time of trial, unless otherwise ordered by the Workers' Compensation Appeals Board.

(d) This subdivision shall apply where a compromise and release or a stipulations with request for award is being filed, with the exception that this subdivision shall not apply when the compromise and release or the stipulations with request for award is being filed on a walk-through basis in accordance with section 10417.

(1) When filing a compromise and release or a stipulations with request for award, the filing party shall file all agreed medical evaluator reports, qualified medical evaluator reports, treating physician reports, and any other medical records or other records (e.g., wage statements) that: (A) are relevant to a determination of the adequacy of the compromise and release or stipulations with request for award; and (B) have not been filed previously.

(2) If the compromise and release or the stipulations with request for award is not approved, and the matter is set for a hearing on the adequacy of the proposed settlement, any additional reports, records, or other documents not previously filed that are being proposed as exhibits shall be filed at the time of the adequacy hearing, unless otherwise ordered by the Workers' Compensation Appeals Board.

(3) If the compromise and release or the stipulations with request for award is not approved at or after the adequacy hearing, and the matter is set for a mandatory settlement conference or trial, then any additional medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits shall be filed in the same manner as set forth in subdivisions (g) and (h).

(e) Excerpted portions of relevant physician, hospital or dispensary records shall be filed in accordance with section 10205.12.

(f) Excerpted portions of relevant personnel records, wage records and statements, job descriptions, and other business records shall be filed in accordance with section 10205.12.

(g) At a mandatory settlement conference, rating mandatory settlement conference, priority conference or lien conference, all other medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness, and that have not been filed previously, shall be filed, but only if the matter is being set for trial, unless otherwise ordered by the Workers' Compensation Appeals Board.

(h) At trial, any additional medical reports, medical-legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness shall be filed, unless otherwise ordered by the Workers' Compensation Appeals Board.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5316, 5500, 5501 and 5813, Labor Code.

§ 10400. Applications.

(a) Except as provided by sections 10865 and 10953, proceedings for the adjudication of rights and liabilities before the Workers' Compensation Appeals Board shall be initiated by the filing of an Application for Adjudication, a case opening Compromise and Release Agreement, a case opening Stipulations with Request for Award, or a Request for Findings of Fact under section 10405.

(b) A case opening Compromise and Release Agreement, a case opening Stipulations with Request for Award, and a Request for Findings of Fact under section 10405 are each an application for purposes of invoking the jurisdiction of the Workers' Compensation Appeals Board, but none of these documents shall be deemed an application for purposes of Labor Code section 4064(c).

(c) Upon the filing of an initial application, the application shall be assigned an adjudication case number and a venue.

(d) When filing an amended application, the applicant shall indicate on the box set forth on the application form that it is an amended application.

(e) Upon filing an Application for Adjudication, the filing party or lien claimant shall concurrently serve a copy of the application and any accompanying documents on all other parties and lien claimants.

(f) If the party filing the application is an unrepresented injured employee, an unrepresented dependent of a deceased employee, or a lien claimant or non-attorney representative of a lien claimant who falls within one of the exceptions of section 10228, subdivisions (c)(5)(A) through (c)(5)(C), the Workers' Compensation Appeals Board:

(1) shall serve a conformed copy of the application on all parties and lien claimants, including the filing applicant, who are listed on either on the application, on the proof of service to the application, or on the address record (if an address record was previously created for an earlier application); and

(2) if it is an initial application, shall concurrently give notification of the assigned adjudication case number and venue.

Such service shall be deemed service of a conformed copy of the application for purposes of Labor Code section 5501.

(g) For all other parties and lien claimants, the Workers' Compensation Appeals Board:

(1) shall serve a conformed copy of the application on the filing party or lien claimant (or, if represented, on the filing party or lien claimant's attorney or other representative); and

(2) if it is an initial application, shall concurrently give notification of the assigned adjudication case number and venue.

Upon receipt of the conformed copy of the application, the filing party or lien claimant (or, if represented, the filing party or lien claimant's attorney or other representative) shall forthwith serve a copy of the conformed application on all other parties and lien claimants who are listed on the application or on the proof of service to the application, and, if it is an initial application, shall concurrently notify all other parties and lien claimants of the assigned adjudication case number and venue.

Such service shall be deemed service of a conformed copy of the application for purposes of Labor Code section 5501.

(h) Disclosure of the applicant's Social Security number is voluntary, not mandatory. A failure to provide a Social Security number will not have any adverse consequences. Nevertheless, although an applicant is not required by law to provide a Social Security number, he or she is encouraged to do so. 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.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5316, 5500 and 5501, Labor Code.

§10401. Separate Application for Each Injury.

A separate Application for Adjudication shall be filed for each separate injury for which benefits are claimed even though the employer is the same in each case. Separate pleadings shall be filed in each case.

All claims of all persons arising out of the same injury to the same employee shall be filed in the same proceeding.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 3208.2 and 5500, Labor Code.

§10402. Minors, Incompetents as Applicants.

If the Applicant is a minor or incompetent, the Application for Adjudication shall be accompanied by a Petition for Appointment of a Guardian ad Litem and Trustee. In those instances where the minor has the right of nomination, the nomination shall be included in the petition.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5307.5and 5500, Labor Code.

§10403. Application Required Before Jurisdiction Invoked and Before Compelled Discovery May Be Commenced.

The jurisdiction of the Workers' Compensation Appeals Board is invoked only by the filing of an initial Application for Adjudication of Claim or other case opening document. The pre-application assignment of a non-adjudication EAMS case number by any ancillary unit of the Division of Workers' Compensation (e.g., the Disability Evaluation Unit, the Information and Assistance Office, the Rehabilitation Unit, or the Retraining and Return to Work Unit):

(a) does not establish the jurisdiction of the Workers' Compensation Appeals Board and, therefore, does not permit it to conduct any hearings or to issue any orders;

(b) does not toll the statute of limitations (except as provided in Labor Code section 5454 for submissions to the Information and Assistance Unit); and

(c) does not authorize the commencement of formal, compelled discovery.

Nothing in this section shall be construed to preclude any non-compelled pre-application medical evaluations or investigations.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5300, 5301 and 5500, Labor Code.

§10412. Proceedings and Decisions After Venue Change.

When an order changing venue is issued, all further trial level proceedings shall be conducted at, and all further trial level orders, decisions, and awards shall be issued by, the district office to which venue was changed until another order changing venue is issued.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126 and 5501.6, Labor Code.

§10430. Letters of Appointment for Medical Examinations.

After the filing of an Application for Adjudication, each party will notify all other parties, and their attorneys or representatives, of any medical appointment scheduled for the purposes of medical-legal evaluation. That notice shall be given at the same time the injured worker is advised of the appointment.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5401 and 5703, Labor Code.

§10440. Pleadings.

SERIOUS WILLFUL MISCONDUCT

All allegations that an injury was caused by either the serious and willful misconduct of the employee or of the employer must be separately pleaded and must set out in sufficient detail the specific basis upon which the charge is founded so that the adverse parties and the Workers' Compensation Appeals Board may be fully advised.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 4550, 4551, 4552, 4553, 4553.1, Labor Code.

§10445. Allegations.

SERIOUS WILLFUL MISCONDUCT

All allegations that an injury was caused by serious and willful misconduct shall:

(a) When the charge of serious and willful misconduct is based on more than one theory, set forth each theory separately.

(b) Whenever the charge of serious and willful misconduct is predicated upon the violation of a particular safety order, set forth the correct citation or reference and all of the particulars required by Labor Code Section 4553.1.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 4550,4551, 4552, 4553, 4553.1, Labor Code.

§10451.1. Determination of Medical-Legal Expense Disputes.
PETITIONS
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) whether the claimed medical-legal expense was incurred for the purpose of proving or disproving a contested claim;

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

(D) 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;

(E) 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;

(F) 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; and

(G) an assertion by the defendant that an interpreter was not reasonably required at a medical-legal examination because the employee proficiently speaks and understands the English language.

(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 a 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) 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:~~

(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 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(c)(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 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 the provider failed to make a timely and proper request for second review in the form prescribed by the Rules of the Administrative Director 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, within 14 days after receipt of the provider's request for second review, the defendant issued a timely and proper final written determination and made payment consistent with that determination and the provider failed to request IBR within 30 days after service of this second review determination.

(g) 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 Rule 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.

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 section 4622 or other applicable provisions of law, and in addition to any lien filing fee, lien activation fee, or IBR fee that, by statute, 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; and Sections 9792.5.5(b)(2) and 9792.5.7(c)(5), title 8, California Code of Regulations.

§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) a dispute over whether UR was 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);~~

~~(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; and~~

~~(H) an assertion by the defendant that an interpreter was not reasonably required at a medical treatment appointment because the employee proficiently speaks and understands the English language.~~

~~(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.

§10454. Automatic Reassignment After Reversal.

Notwithstanding Rule 10453, where the Appeals Board reverses a decision of a workers' compensation judge on an issue of the statute of limitations, jurisdiction, employment, or injury arising out of and in the course of employment, and remands the case for further proceedings, the party who filed the petition for reconsideration that resulted in the reversal shall be entitled to automatic reassignment of the case to another workers' compensation judge upon a motion or petition requesting reassignment filed at the district office within 30 days after the decision of the Appeals Board becomes final.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section5310, Labor Code.

§10462. Petition to Terminate Liability; Filing.

A petition to terminate liability for continuing temporary disability indemnity under a findings and award, decision or order of the Appeals Board or a workers' compensation judge shall be filed within 10 days of the termination of the payments or other compensation. Failure to file such a petition within 10 days may affect the right to credit for an overpayment of temporary disability indemnity.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 4650,4651.1, Labor Code.

§10466. Objections to Petition, Hearing, Interim Order.

If written objection to the petition to terminate is not received within fourteen (14) days of its proper filing and service, the Workers' Compensation Appeals Board may order temporary disability compensation terminated, in accordance with the facts as stated in the petition or in

such other manner as may appear appropriate on the record. If the petition to terminate is not properly completed or executed in accordance with Section 10464, the Workers' Compensation Appeals Board may summarily deny or dismiss the petition.

Objection to the petition by the employee shall be filed in writing within fourteen (14) days of service of the petition, and shall state the facts in support of the employee's contention that the petition should be denied, and shall be accompanied by a Declaration of Readiness to Proceed to Expedited Hearing. All supporting medical reports shall be attached to the objection. The objection shall also show that service of the objection and the reports attached thereto has been made upon petitioner or counsel.

Upon the filing of a timely objection, where it appears that the employee is not or may not be working and is not or may not be receiving disability indemnity, the petition to terminate shall be set for expedited hearing not less than ten (10) nor more than thirty (30) days from the date of the receipt of the objection.

If complete disposition of the petition to terminate cannot be made at the hearing, the workers' compensation judge assigned thereto, based on the record, including the allegations of the petition, the objection thereto, and the evidence (if any) at said hearing, shall forthwith issue an interim order directing whether temporary disability indemnity shall or shall not continue during the pendency of proceedings on the petition to terminate. Said interim order shall not be considered a final order, and will not preclude a complete adjudication of the petition to terminate or the issue of temporary disability or any other issue after full hearing of the issues.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 4650and 4651.1, Labor Code.

§10480. Answers.

An Answer to each Application for Adjudication shall be filed and served ten (10) days after service of the Declaration of Readiness to Proceed required by rule 10414 or 10415.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section 5500, Labor Code.

§10484. Procedural Requirement.

The Answer used by the parties shall conform to a form prescribed and approved by the Appeals Board. Additional matters may be pleaded as deemed necessary by the answering party.

A general denial is not an answer within this rule. The Answer shall be accompanied by a proof of service upon the opposing parties.

Evidence upon matters and affirmative defenses not pleaded by Answer will be allowed only upon such terms and conditions as the Appeals Board or workers' compensation judge may impose in the exercise of sound discretion.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5500, 5505, Labor Code.

§10496. Awards and Orders Without Hearing.

GENERAL

Awards and orders may be based upon stipulations of parties in open court or upon written stipulation signed by the parties.

Authority cited: Sections 133, 5307, Labor Code.
Reference: Section 5702, Labor Code.

§10497. Rejection of Stipulations.

GENERAL

No finding shall be made contrary to a stipulation of the parties on an issue without giving the parties notice and an opportunity to present evidence thereon.

Authority cited: Sections 133, 5307, Labor Code.
Reference: Section 5702, Labor Code.

§ 10500. Service by the Workers' Compensation Appeals Board.

(a) Except as provided in subdivision (b) below, the Workers' Compensation Appeals Board may, in its discretion, designate a party or lien claimant, or their attorney or agent of record, to make service of notices of the time and place of hearing, orders approving compromise and release, awards based upon stipulations with request for award and any interim or procedural orders. In deciding whether to exercise this discretion, the Workers' Compensation Appeals Board may consider whether service by it would be more efficient and cost-effective because most or all of the parties, lien claimants, attorneys, or agents of record to be served have specified e-mail or fax as their preferred method of service. If discretion is exercised so as to require designated service, the party, lien claimant, or attorney or agent of record designated to make service shall retain the proof of service and shall not file it unless ordered to do so by the Workers' Compensation Appeals Board.

(b) The Workers' Compensation Appeals Board shall serve all parties and lien claimants of record notice of any final order, decision, or award issued by it on a disputed issue after

submission. The Workers' Compensation Appeals Board shall not designate a party or lien claimant, or their attorney or agent of record, to serve any final order, decision, or award relating to a submitted disputed issue.

(c) If the Workers' Compensation Appeals Board effects personal service of a document at a hearing or at a walk-through proceeding, the proof of personal service shall be made by endorsement on the document, setting forth the fact of personal service, the name(s) of the person(s) served and the date of service. The endorsement shall bear the signature of the person making the service.

(d) If the Workers' Compensation Appeals Board serves a document by mail, the proof of mail service shall be made by endorsement on the document, setting forth the fact of mail service on the persons or entities listed on the official address record who have not designated e-mail or fax as their preferred method of service. The endorsement shall state the date of mail service and it shall bear the signature of the person making the service.

(e) If the Workers' Compensation Appeals Board electronically serves a document through EAMS on persons or entities listed on the official address record who have designated e-mail or fax as their preferred method of service, the record of electronic service maintained in EAMS shall constitute proof of service on such persons or entities by the Workers' Compensation Appeals Board.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5316 and 5504, Labor Code.

§10501. Service in Non-Dependent Death Cases.

When an Application for Adjudication, stipulations with request for award or compromise and release is filed in a death case in which there is a bona fide issue as to partial or total dependency, the filing party shall serve copies of the documents on the Department of Industrial Relations, Death Without Dependents Unit.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section 4706.5, Labor Code.

§10505. Service by the Parties or Lien Claimants.

(a) This section shall apply when a document is served by a party, a lien claimant, or their attorney or other agent of record.

(b) Except when a document is personally served, service of any document shall be made by first-class mail or by an alternative method that will effect service that is equivalent to or more expeditious than first-class mail, unless:

(1) the party, lien claimant, attorney, or agent being served has previously specified that a designated preferred method of service other than first-class mail may be used for any service, consistent with section 10218; or

(2) the serving party, lien claimant, attorney, or agent and the receiving party, lien claimant, attorney, or agent previously agreed to some other method of service.

For purposes of this subsection, "an alternative method that will effect service that is equivalent to or more expeditious than first-class mail" shall be limited to either: (i) use of express (overnight) or priority mail; or (ii) use of a bona fide commercial delivery service or attorney service promising delivery within two business days, as shown on the service's invoice or receipt.

(c) If a document is personally served by a party or lien claimant, the proof of personal service shall be made by endorsement on the document, setting forth the fact of personal service, the name(s) of the person(s) served and the date of service. The endorsement shall bear the signature of the person making the service.

(d) If a document is served by a party or lien claimant by mail on persons listed on the official address record who have designated mail as their preferred method of service, who have failed to make any designation, or who have previously agreed to accept mail service in accordance with subdivision (g), the proof of mail service may be made by: (1) affidavit or declaration of service; (2) written statement endorsed upon the document served and signed by the party making the statement; or (3) letter of transmittal. The proof of service shall set forth the names and addresses of persons served, the fact of service by mail, the date of service, and the address(es) to which mailing was made.

(e) If a document is served by a party or lien claimant by e-mail on persons listed on the official address record who have designated e-mail as their preferred method of service, or who have previously agreed to accept e-mail service in accordance with subdivision (g), the proof of e-mail service must state:
(1) the e-mail address of the person making the e-mail service;

(2) the date of the e-mail service;

(3) the name(s) and e-mail address(es) of the person(s) served; and

(4) that the document was served by e-mail and that there was no report of any error or delay in the transmission of the e-mail.

Absent evidence to the contrary, service by e-mail shall be deemed complete at the time of transmission, unless a document is re-served in accordance with subdivision (h).

(f) If a document is served by a party or lien claimant by fax on persons listed on the official address record who have designated fax as their preferred method of service, or who have

previously agreed to accept fax service in accordance with subdivision (g), the proof of fax service must state:
(1) the sending fax machine telephone number of the person making the fax service;

(2) the date and time of the fax service;

(3) the name and the fax machine telephone number of the person served; and

(4) that the document was served fax transmission and the transmission was reported as complete and without error.

Absent evidence to the contrary, service by fax shall be deemed complete at the time of transmission, unless a document is re-served in accordance with subdivision (h).

(g) By prior agreement of the parties or lien claimants, or where authorized or requested by the receiving party or lien claimant, service of any document may be made by methods other than the designated preferred method of service.

(h) This subdivision shall apply where, after serving a document in accordance with subdivisions (d), (e), (f), and/or (g), the serving party or lien claimant (or their attorney or agent of record) subsequently receives notification that the service to one or more parties or lien claimants (or to their attorneys or agents of record) failed.

(1) When the serving party or lien claimant (or their attorney or agent of record) receives notification of failed service to any intended recipient(s), the server shall promptly re-serve the document on the intended recipient(s) using the method of service (i.e., mail, e-mail, fax) best calculated to result in valid service on the intended recipient(s), even if the intended recipient(s) did not previously designate that method as their preferred method of service.

(2) The server need not re-serve the document on intended recipients for whom the server did not receive notification of failed service.

(3) On re-service, the server shall execute a new proof of service in accordance with subdivisions (c), (d), (e), and/or (f), showing re-service on the intended recipient(s).

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5316, Labor Code.

§10506. Service: Mailbox.

Where a district office of the Workers' Compensation Appeals Board maintains mailboxes for outgoing documents and allows consenting parties, lien claimants, and attorneys to obtain their documents from their mailboxes, documents so obtained shall be deemed to have been served on the party, lien claimant, or attorney by mail on the date of service specified on the document.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section 5316, Labor Code.

§10510. Service on Represented Employees or Dependents and on Attorneys or Agents.

(a) All orders, decisions, findings, awards, minutes of hearing, notices of hearing, correspondence, and any other documents issued by the Workers' Compensation Appeals Board, including those being served by designated service in accordance with section 10500, shall be served on:

(1) the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented by an attorney or other agent of record;

(2) each attorney or other agent of record of the injured employee or any dependent(s) of a deceased employee; and

(3) each attorney or other agent of record for any other affected party or affected lien claimant, unless that party or lien claimant is unrepresented, in which event service shall be made directly on the party or lien claimant.

(b) Except for designated service under section 10500 or as otherwise provided by these rules, service by any party or lien claimant shall be made on the attorney(s) or agent(s) of record of each other affected party or affected lien claimant, unless that party or lien claimant is unrepresented, in which event service shall be made directly on the party or lien claimant. Except as provided in section 10500, or as otherwise ordered by a workers' compensation judge or the Appeals Board, no party or lien claimant shall be required to serve any document on the injured employee or any dependent(s) of a deceased employee, if the employee or dependent is represented by an attorney or other agent of record.

(c) Nothing in this rule shall preclude more comprehensive service, either as ordered by the Workers' Compensation Appeals Board or in the discretion of the Workers' Compensation Appeals Board or the parties.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5316, Labor Code.

§10560. Submission at Single Trial.

The parties are expected to submit for decision all matters properly in issue at a single trial and to produce at the trial all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense. However, a workers' compensation judge may order that the issues in a case be bifurcated and tried separately upon a showing of good cause.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; and Section 5708, Labor Code.

§10562. Failure to Appear.

(a) Where a party served with notice of trial fails to appear either in person or by attorney or representative, the workers' compensation judge may
(1) dismiss the application after issuing a ten (10) day notice of intention to dismiss, or

(2) hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a ten (10) day notice of intention to submit, make such decision as is just and proper.

(b) Where a party served with notice of a mandatory settlement conference fails to appear at the conference, the workers' compensation judge may

(1) dismiss the application after issuing a ten (10) day notice of intention to dismiss, or

(2) close discovery and forward the case to the presiding workers' compensation judge to set for trial.

(c) Where a party, after notice, fails to appear at either a trial or a conference and good cause is shown for failure to appear, the workers' compensation judge may take the case off calendar or may continue the case to a date certain.

(d) Where a lien claimant served with notice of a conference fails to appear at the conference either in person or by attorney or representative, and fails to have a person with settlement authority available by telephone, the workers' compensation judge may

(1) dismiss the lien claim after issuing a ten (10) day notice of intention to dismiss with or without prejudice, or

(2) close discovery and forward the case to the presiding workers' compensation judge to set for trial.

(e) Where a lien claimant served with notice of a trial fails to appear, the workers' compensation judge may

(1) dismiss the lien claim after issuing a ten (10) day notice of intention to dismiss with or without prejudice, or

(2) hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a ten (10) day notice of intention to submit, make such decision as is just and proper, or

(3) defer the issue to the lien and submit the case on the remaining issues.

(f) If the workers' compensation judge defers a lien issue, upon the issuance of his or her decision on the remaining issues, the workers' compensation judge shall

(1) issue a ten (10) day notice of intention to order payment of the lien in full or in part, or

(2) issue a ten (10) day notice of intention to disallow the lien, or

(3) continue the lien issue to a lien conference.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Article XIV, Section 4, California Constitution; and Sections 5502(e) and 5708, Labor Code.

§ 10563. Appearances Required of Parties to Case-in-Chief.

(a) Each party as defined by section 10301(dd)(1) and (2) (i.e., an injured employee, a dependent, or a defendant) shall appear or have an attorney or other representative appear at all hearings pertaining to the case-in-chief. This section shall not apply to lien conferences or lien trials.

(b) Each party shall have a person available with settlement authority at all hearings. This person need not be present if the party's attorney or other representative is present and can obtain immediate authority by telephone.

(c) A represented injured employee or dependent shall personally appear at any mandatory settlement conference.

(d) Any appearance required by this rule may be excused by the Workers' Compensation Appeals Board. Any appearance not required by this rule may be ordered by the Workers' Compensation Appeals Board.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5502 and 5700, Labor Code.

§10563.1. Other Appearances Required.

(a) Appearances at lien conferences and lien trials shall be governed by sections 10770(h) and 10770.1.

(b) Each party as defined by section 10301(dd)(4) and (5) (i.e., a medical-legal provider in a medical-legal dispute not subject to independent bill review and an interpreter filing a petition for costs) shall be subject to the provisions of this section and sections 10770(h) and 10770.1.

(c) Where liability for the claim has been accepted, a lien claimant with liens or claims of cost totaling $25,000 or more shall appear in person or by attorney or other representative at all mandatory settlement conferences and trials in the case-in-chief, except expedited hearings. If the lien claimant does not personally appear, the attorney or other representative appearing shall either have full settlement authority or have full settlement authority immediately available by telephone.

(d) Where liability for the claim has been accepted, a lien claimant with liens or claims of cost totaling less than $25,000 need not appear at any mandatory settlement conference or trial in the case-in-chief, but the lien claimant shall be immediately available by telephone with full settlement authority and shall notify defendant(s) of the telephone number at which the defendant(s) may reach the lien claimant.

(e) Any appearance required by this section may be excused by the Workers' Compensation Appeals Board. Any appearance not required by this section may be ordered by the Workers' Compensation Appeals Board.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5502 and 5700, Labor Code.

§10566. Minutes of Hearing and Summary of Evidence.

Minutes of hearing and summary of evidence shall be prepared at the conclusion of each hearing and filed in the record of proceedings. They shall include:

(a) The names of the commissioners, deputy commissioner or workers' compensation judge, reporter, the parties present, attorneys or other agents appearing therefor and witnesses sworn;

(b) The place and date of said hearing;

(c) All interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence (with the identity of the party offering the same) and the disposition, which shall include the time and action, if any, required for submission;

(d) A summary of the evidence required by Labor Code Section 5313 that shall include a fair and unbiased summary of the testimony given by each witness;

(e) If motion pictures are shown, a brief summary of their contents;

(f) A fair statement of any offers of proof.

If the disposition is an order taking off calendar or a continuance, the reason therefor shall be given.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section 5313, Labor Code.

§10578. Waiver of Summary of Evidence.

The summary of evidence need not be filed upon waiver by the parties or upon issuance of a stipulated order, decision or award.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section 5702, Labor Code.

§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(dd)(6); 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 applicable law(s); 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 provided by section 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(dd)(6)(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(dd)(6)(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 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 cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903, 4903.5, 4903.6 and 5404.5, Labor Code.

§10583. Dismissal of Claim Form–Labor Code Section 5404.5.

Where an application for adjudication for an injury on or after January 1, 1990 and before January 1, 1994, has not been filed by any of the parties, an employer or insurer seeking dismissal of a claim form for lack of prosecution shall solely utilize the procedures set forth in Labor Code Section 5404.5 and shall not seek an order of dismissal from the Appeals Board by the filing of an application for adjudication, a request for pre-application determination or any other petition or request.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section5404.5, Labor Code.

§10600. Evidence and Reports.

The filing of a document does not signify its receipt in evidence, and, except for the documents listed in section 10750 of these Rules, only those documents that have been received in evidence shall be included in the record of proceedings on the case.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section 5708,Labor Code.

§10601. Copies of Non-Medical Reports and Records.

Where documents, including videotapes, are to be offered into evidence, copies shall be served on all adverse parties no later than the mandatory settlement conference, unless a satisfactory showing is made that the documents were not available for service by that time.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section 5502(e), Labor Code.

§10604. Certified Copies.

Certified copies of the reports or records of any governmental agency, division or bureau shall be admissible in evidence in lieu of the original reports or records.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5703and 5708, Labor Code.

§10605. Reproductions of Documents.

A nonerasable optical image reproduction provided that additions, deletions, or changes to the original document are not permitted by the technology, a photostatic, microfilm, microcard, miniature photographic, or other photographic copy or reproduction, or an enlargement thereof,

of a writing is admissible as the writing itself if the copy or reproduction was made and preserved as a part of the records of a business (as defined by Evidence Code Section 1270) in the regular course of that business. The introduction of the copy, reproduction, or enlargement does not preclude admission of the original writing if it is still in existence. The Workers' Compensation Appeals Board may require the introduction of a hard copy printout of the document.

A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving by a preponderance of the evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section 5708, Labor Code.

§10607. Computer Printouts of Benefits Paid.

If a party requests that a defendant provide a computer printout of benefits paid, within twenty (20) days the defendant shall provide the requesting party with a current computer printout of benefits paid. The printout shall include the date and amount of each payment of temporary disability indemnity, permanent disability indemnity, and vocational rehabilitation maintenance allowance, and the period covered by each payment, and the date, payee, and amount of each payment for medical treatment. This request may not be made more frequently than once in a one-hundred-twenty (120) day period unless there is a change in indemnity payments.
A defendant that has paid benefits shall have a current computer printout of benefits paid available for inspection at every mandatory settlement conference.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5502(e) and 5708, Labor Code.

§10608. Filing and Service of Medical Reports and Medical-Legal Reports.

(a) Service of all medical reports, medical-legal reports, and other medical information on 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), (5), or (6), 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 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 in its possession or under its control on the requesting party or physician lien claimant within 10 calendar days of the request, if 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 10 calendar days of receipt.

(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: (A) all other parties, whether or not they have previously requested service; and (B) all physician lien claimants that have previously requested service. The filing declarant also shall serve a copy

of any subsequently-received medical report or medical-legal report relating to the claim on all other parties and each physician lien claimant within 10 calendar days of receipt.

(3) Within 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: (A) all other parties, whether or not they have previously requested service; and (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 or medical-legal report relating to the claim on the requesting party or physician lien claimant within 10 calendar days of receipt, consistent with subdivisions (b)(3)(A) and (b)(3)(B).

(4) If, at any time after the periods specified in 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 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 or medical-legal report relating to the claim on the physician lien claimant within 10 calendar days of receipt.

(5) All medical reports or 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) 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) 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) When the petition is filed, a copy shall be concurrently served on the injured employee (or the dependent(s) of a deceased injured employee) and the defendant(s) or, if represented, their attorney or non-attorney of record. 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) The caption of the petition shall identify it as a "Petition by Non-Physician Lien Claimant for Medical Information."

(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(a)(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.

(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), (5), or (6), 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(a)(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 Rule 10561.

Authority cited: Sections 133, 4903.6(d), 5307, 5309 and 5708, Labor Code.
Reference: Sections 4903.6(d), 5001, 5502, 5703 and 5708, Labor Code; and 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) Except as provided in subdivision (b) below, document service between parties and lien claimants may be effected by CD-ROM, DVD, or other electronic media. This shall include sending attachments by e-mail, but only if there has been a prior agreement between the parties or lien claimants that e-mail may be utilized to serve documents.

(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; and Section 250, Evidence Code.

§10615. Continuing Duty to Serve.

During the continuing jurisdiction of the Workers' Compensation Appeals Board, the parties have a continuing duty to serve on each other and any lien claimant requesting service any physicians' reports received.

Authority cited: Sections 133 and 5307, Labor Code.

§10616. Employer-Maintained Medical Records.

A written communication from a physician containing any information listed in Section 10606 that is contained in any record maintained by the employer in the employer's capacity as employer will be deemed to be a physician's report and shall be served as required in Sections 10608 and 10615. Records from an employee assistance program are not required to be filed or served unless ordered by the Workers' Compensation Appeals Board.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4600, 5703 and 5708, Labor 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 cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5703 and 5708, Labor Code.

§10626. Examining and Copying Hospital and Physicians' Records.

Subject to Labor Code section 3762, and except as otherwise provided by law, all parties, their attorneys, agents and physicians shall be entitled to examine and make copies of all or any part of physician, hospital, or dispensary records that are relevant to the claims made and the issues pending in a proceeding before the Workers' Compensation Appeals Board.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 4600, Labor Code.

§10629. Filing and Listing of Exhibits.

(a) Proposed exhibits shall be filed in accordance with the provisions of section 10233 and 10603.

(b) At every mandatory settlement conference, regular hearing, expedited hearing, and conference at which any issue will be submitted for decision, each party or lien claimant shall submit, and shall personally serve on each other appearing party or appearing lien claimant, a list of the exhibits that the party or lien claimant proposes to offer in evidence.

(1) If any such hearing is continued, a new list identifying all of the party or lien claimant's proposed exhibits (including all previously listed exhibits that the party or lien claimant still intends to offer, and any new exhibits) shall be prepared and served, with the exceptions that: (A)

any exhibit already admitted in evidence, or marked in evidence but not admitted, need not be re-listed; (B) if the previous list was accepted for filing and scanned into EAMS, and no changes have been made to the previous list, a new list need not be prepared and served; and (C) if the previous list was served (but not accepted for filing and scanned into EAMS), and no changes have been made to the previous list, a new list need not be served, but the list still must be filed.

(2) If a list of exhibits is being submitted after an initial mandatory settlement conference, the list shall separately identify:

(A) the exhibits that the party listed at the time of the initial mandatory settlement conference; and

(B) the exhibits that the party did not list at the time of the initial mandatory settlement conference.

(c) If a party or lien claimant with a currently pending issue fails to appear after proper notice at any hearing described in subdivision (b), even if the party or lien claimant was excused from appearing, then:

(1) the non-appearing party or lien claimant with a currently pending issue shall forthwith file and serve its exhibit list, but consideration of its exhibits shall be subject to the limitations or evidentiary sanctions set forth in section 10562; and

(2) the appearing party(ies) or lien claimant(s) shall forthwith serve their exhibit list(s) on the non-appearing party or lien claimant.

For purposes of this subdivision, a party or lien claimant will be deemed to have a "currently pending issue" if an issue directly related to that party or lien claimant has been raised in a declaration of readiness and that issue has not been resolved by a stipulation or adjudication, it has not been withdrawn (including by failure to raise the issue at the mandatory settlement conference or trial), and it has not been judicially deferred.

(d) Each exhibit listed must be clearly identified by author/provider, date, and title or type (e.g., "the July 1, 2008 medical report of John Doe, M.D. (3 pages)"). Each medical report, medical-legal report, medical record, or other paper or record having a different author/provider and/or a different date is a separate "document" and must be listed as a separate exhibit, with the exception that the following documents may be listed as a single exhibit, unless otherwise ordered by the Workers' Compensation Appeals Board:

(1) excerpted portions of physician, hospital or dispensary records, provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates of treatment or other service(s) covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of physician, hospital or dispensary records shall be admitted in evidence;

(2) excerpted portions of personnel records, wage records and statements, job descriptions, and other business records provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of personnel records, wage records and statements, job descriptions, and other business records shall be admitted in evidence; and

(3) Explanation of Benefits (EOB) letters.

(e) Each exhibit listed must specify an exhibit number or initial that identifies it and the party, parties, or lien claimant offering it (e.g., Applicant's Exhibit 1, 2, 3, etc.; Defendant's Exhibit A, B, C, etc.; Lien Claimant's AA, BB, CC, etc.; Joint Exhibit XX, YY, etc.).

(f) Nothing in this section shall prevent a workers' compensation judge from referring an unrepresented injured employee, dependent or uninsured employer to the Information and Assistance Office to prepare an exhibit list in accordance with the provisions of subdivisions (a), (b), (c), (d) and (e).

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

§10631. Specific Finding of Fact--Labor Code Section 139.2(d)(2).

Where a qualified medical evaluator's report has been considered and rejected pursuant to Labor Code section 139.2, subdivision (d)(2), the workers' compensation judge or Appeals Board shall make and serve a specific finding on the qualified medical evaluator and the Industrial Medical Council at the time of decision on the regular workers' compensation issues. The specific finding may be included in the decision.

If the Appeals Board, on reconsideration, affirms or sets aside the specific finding of fact filed by a workers' compensation judge, it shall advise the qualified medical evaluator and the Industrial Medical Council at the time of service of its decision on the petition for reconsideration. If the workers' compensation judge does not make a specific finding and the Appeals Board, on reconsideration, makes a specific finding of rejection pursuant to Labor Code Section 139.2, subdivision (d)(2), it shall serve its specific finding on the qualified medical evaluator and the Industrial Medical Council at the time it serves its decision after reconsideration.

Rejection of a qualified medical evaluator's report pursuant to Labor Code section139.2, subdivision (d)(2) shall occur where the qualified medical evaluator's report does not meet the minimum standards prescribed by the provisions of Rule10606 and the regulations of the Industrial Medical Council.

This rule shall apply to injuries on or after January 1, 1994.

~~Authority cited: Sections 133 and 5307, Labor Code.~~
~~Reference: Section 139.2(d)(2), Labor Code.~~

~~§10632. Labor Code Section 4065--Evidence.~~

~~Where the provisions of Labor Code Section 4065 apply, the workers' compensation judge shall receive into evidence the "proposed ratings" submitted by the parties.~~

~~Authority cited: Sections 133 and 5307, Labor Code.~~
~~Reference: Section 4065, Labor Code.~~

~~§10633. Proposed Rating-Labor Code Section 4065.~~

~~A "proposed rating" pursuant to Labor Code Section 4065 shall include the appropriate disability numbers for each part of the body resulting in permanent disability and a standard rating of the factors of disability.~~

~~Where the provisions of Labor Code Section 4065 have been used to determine permanent disability, the workers' compensation judge shall comply with Labor Code Section 5313 and state the evidence relied upon and the reasons or grounds on which selection of the proposed rating is based.~~

~~Authority cited: Sections 133 and 5307, Labor Code.~~
~~Reference: Section 4065, Labor Code.~~

~~§10634. Labor Code Section 4628(k) Requests.~~

~~Failure to comply with Labor Code Section 4628, subdivision (k) shall not make the medical report inadmissible as evidence and eliminate liability for medical-legal costs where good cause has been shown for the failure to comply and, after notice of non-compliance, compliance takes place within a reasonable period of time or within a time prescribed by the workers' compensation judge.~~

~~Authority cited: Sections 133 and 5307, Labor Code.~~
~~Reference: Section 4628(k), Labor Code.~~

~~§10750. Record of Proceedings.~~

~~(a) The Workers' Compensation Appeals Board's record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing,~~

exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions and awards, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings.

(b) Upon approval of a compromise and release or stipulations with request for award, all medical reports that have been filed as of the date of approval shall be deemed to have been admitted in evidence and shall be deemed to have been transferred to the record of proceedings.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126 and 5708, Labor Code.

§10751. Adjudication File.

The Workers' Compensation Appeals Board's adjudication file shall consist of:

(a) the record of proceedings; and

(b) all documents filed or lodged by any party, lien claimant, attorney or other agent of record.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 126, Labor Code.

§10753. Inspection of Files.

Except as provided by sections 10208.6 and 10754, or as ordered by a workers' compensation judge or the Appeals Board, the adjudication case files of the Workers' Compensation Appeals Board may be inspected in accordance with the provisions of sections 10208.5 and 10208.6.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 126, Labor Code.

§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(d) 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(d) and 4903.06, the entire lien claim shall be deemed dismissed by operation of law.~~

~~(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.~~

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

~~(A) All other lien claims shall be filed 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).~~

(B) Lien claimants set forth in parts (A) through (C) of section 10205.10(c)(5) may file a lien claim utilizing an approved 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.

(c) Requirements for Filing 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.

(2) Only original (i.e., initial or opening) lien claims shall be filed. Except as provided in subdivisions (g) or (h) of section 10393 or as ordered by the Workers' Compensation Appeals Board, no amended lien claims shall be filed. Any amended lien previously filed or lodged for filing may be destroyed without notice.

(3) 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.

(4) Unless the lien claimant is concurrently filing an initial (case opening) application in accordance with section 10770.5, a lien claim shall bear the adjudication case number(s) previously assigned by the Workers' Compensation Appeals Board for the injury or injuries.

(5) 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(d)(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.

(6)(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.~~

~~(7) Any lien claim or supporting documentation submitted in violation of subdivisions (c)(1) through (c)(6) shall not be deemed filed for any purpose, shall not be acknowledged or returned to the filer, and may be destroyed at any time without notice.~~

~~(8) 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.~~

~~(9) Where a lien has been served on a party, that party shall have no obligation to file that lien with the Workers' Compensation Appeals Board.~~

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

~~(1) All original and amended lien claims, and all related documents, including supporting documentation and any document listed in subdivision (c)(3), shall be served on:~~

~~(A) the injured worker (or, if deceased, the worker's dependent, 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 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 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 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 has been dismissed, and the lien claimant is filing or has filed a new application; or~~

~~(IV) the worker or the dependent chooses 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 the lien claimant is not the original service provider or is not an entity described in Labor Code sections 4903.05(d)(7) or 4903.06(b); 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.

(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.

(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.

(f) For purposes of this subdivision, an "amended" lien includes: (1) a lien 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 that reflects a change in the amount of the lien based on payments made by the defendant; and/or (3) a lien 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 with respect to the adjudication case number(s) originally listed.

(g) Within five business days after a lien 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 (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) 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. Once a lien claim has been so dismissed, the lien claimant shall be excused from appearing at any noticed hearing.

(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.

(j) Inclusion of the injured employee's Social Security number on a lien 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.

(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.

(*l*) The provisions of subdivisions (c)(3)(D), (c)(7), (c)(8), 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 10205.10(c)(5); (4) any governmental entity pursuing a lien claim for child support or spousal support; and (5) the Uninsured Employers Benefits Trust Fund.

Authority cited: 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; and Sections 9792.5, 9794, 9795.4, 10561 and 10770.5, title 8, California Code of Regulations.

§10770.1. Lien Conferences and Lien Trials.

(a)(1) A lien conference shall be set: (A) when any party, including a lien claimant who is a "party" as defined by section 10301(dd)(6), files a declaration of readiness (DOR) in accordance with section 10414 on any issue(s) directly relating to any lien claim(s); or (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 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) 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 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 of 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.

(d) When a party, including a lien claimant who is a "party" as defined by section 10301(dd)(6), 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. If a status conference or any other type of conference is requested or is set on the calendar, that status conference or other type of 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.

(e) 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.

(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 (g).

(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).

(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.

(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).

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.

(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.

(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.

(l) If a party is designated to serve notice of a lien conference or lien trial under sections 10500(a) and 10544, that party shall bring a copy of its proof of service to the lien conference or lien trial and, if another party fails to appear, the proof of service shall be filed with the Workers' Compensation Appeals Board.

(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.

(n) The provisions of subdivisions (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 10205.10(c)(5); (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 cited: 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, 352, 451 and 452, Evidence Code; and Sections 10250, 10205.16, 10301(u), 10301(z), 10364(a), 10561, 10629 and 10770-10772, title 8, California Code of Regulations.

§10770.7. Requirement for Liens Filed Before January 1, 2017.

Any section 4903(b) lien that is subject to a filing fee pursuant to section 4903.05 and that is filed before January 1, 2017 shall be dismissed unless, on or before July 1, 2017, the lien

claimant electronically files, in accordance with Article 4 of the Workers' Compensation Appeals Board Rules of Practice and Procedure, a Supplemental Lien Form and 4903.05(c) Declaration on the form approved by the Appeals Board.

Authority cited: Sections 133, 5307 and 5708, Labor Code.
Reference: Sections 4903 and 4903.05, and Labor Code; and Sections 9792.5, 9794, 9795.4, 10390 et seq., 10561, 10770 and 10770.5, title 8, California Code of Regulations.

§10773. Law Firm Employees.

(a) Law firm employees not holding current active membership in the State Bar may appear on behalf of the law firm if:
(1) the client has been fully informed of the involvement of the law firm employee and that the person is not a current active member of the State Bar of California;
(2) in all proceedings where the law firm employee appears and in all documents the person has prepared, the person appearing or preparing the documents is identified and it is fully disclosed that the person is not licensed to practice law in the State of California; and
(3) the attorney directly responsible for supervising the law firm employee appearing in any proceedings is identified.
(b) A workers' compensation judge shall not approve any compromise and release agreement or stipulations with request for award signed by a law firm employee who is not currently an active member of the State Bar of California without the specific written authorization of the attorney directly responsible for supervising the law firm employee.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Section 4907, Labor Code.

§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; and Sections 10774 and 10779, title 8, California Code of Regulations.

§10779. Disbarred and Suspended Attorneys.

An attorney who has been disbarred or suspended by the Supreme Court for reasons other than nonpayment of State Bar fees, or who has been placed on involuntary inactive enrollment status by the State Bar, or who has resigned while disciplinary action is pending shall be deemed unfit to appear as a representative of any party before the Workers' Compensation Appeals Board during the time that the attorney is precluded from practicing law in this state.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 4907, Labor Code; and Section 6126, Business and Professions Code.

§10785. Electronically Filed Decisions, Findings, Awards, and Orders.

The Appeals Board or a workers' compensation judge may electronically file any decision, findings, award, order or other document within EAMS, either by preparing the document in paper form and then scanning it into EAMS or by preparing the document directly within EAMS. Any such electronically filed document shall have the same legal effect as a document filed in paper form.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5313 and 5908.5.

§10828. Necessity for Bond.

Where a party intending to file for writ of review requests a stay of execution or withholding issuance of a certified copy of the order, decision or award that is the subject of the party's complaint, the request will ordinarily be granted, conditioned upon the filing of a bond from an approved surety equivalent to twice the probable amount of liability in the case.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5808, 5956, 6000, 6001 and 6002, Labor Code.

§10840. Filing Petitions for Reconsideration, Removal, and Disqualification and Answers.

(a) Except as provided in sections 10865 and 10953, petitions for reconsideration, removal, or disqualification and answers thereto may be filed with any district office of the Workers' Compensation Appeals Board or with the office of the Appeals Board in San Francisco. Duplicate copies of petitions filed with a district office shall not also be filed with any other district office or with the Appeals Board in San Francisco.

(b) Except as provided in sections 10865 and 10953, the following persons and entities may file petitions for reconsideration, removal, or disqualification (and answers thereto) electronically within EAMS:

(a) a party, lien claimant, attorney, or other representative who has been assigned an individual EAMS login and password by the Division of Workers' Compensation as part of an electronic filing trial group; and

(b) a law firm, an insurance company, a self-insured employer, a third party administrator, or lien claimant who has been assigned an organizational EAMS login and password by the Division of Workers' Compensation as part of an electronic filing trial group.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5900, 5902 and 5905, Labor Code.

§10844. Petitions for Disqualification and Answers.

In addition to the requirements of section 10452, the petition for disqualification and any answer thereto shall be verified upon oath in the manner required for verified pleadings in courts of record.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 5311, Labor Code; and Section 641, Code of Civil Procedure.

§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, 10390, 10391, and 10392 including but not limited to the 25-page limitation of section 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 cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5310, 5311, 5900 and 5905, Labor Code.

§10850. Proof of Service.

Service of copies of any petition for reconsideration, removal, or disqualification or any answer thereto shall be made, in accordance with Rule 10505, on all parties to the case and on any lien claimant, the validity of whose lien is specifically questioned by the petition, and to any case that has been consolidated therewith pursuant to Section 10590. Failure to file proof of service shall constitute valid ground for dismissing the petition.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5310, 5311, 5902 and 5903, Labor Code.

§10852. Insufficiency of Evidence.

Where reconsideration is sought on the ground that findings are not justified by the evidence, the petition shall set out specifically and in detail how the evidence fails to justify the findings.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5902and 5903, Labor Code.

§10870. Approval of Compromise and Release.

Agreements that provide for the payment of less than the full amount of compensation due or to become due and undertake to release the employer from all future liability will be approved only where it appears that a reasonable doubt exists as to the rights of the parties or that approval is in the best interest of the parties. No agreement shall relieve an employer of liability for vocational rehabilitation benefits unless the Workers' Compensation Appeals Board makes a finding that there is a good faith issue which, if resolved against the injured employee, would defeat the employee's right to all workers' compensation benefits.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 4646,5001, 5002 and 5100.6, Labor Code.

§10874. Form.

Every compromise and release agreement shall comply with the provisions of Labor Code Sections 5003-5004 and conform to a form provided by the Appeals Board.

Authority cited: Sections 133, 5307, Labor Code.
Reference: Sections 5001, 5002, 5003, 5004, Labor Code.

§10878. Settlement Document as an Application.

The filing of a compromise and release agreement or stipulations with request for award shall constitute the filing of an application which may, in the Workers' Compensation Appeals Board's discretion, be set for hearing, reserving to the parties the right to put in issue facts that might otherwise have been admitted in the compromise and release agreement or stipulations with request for award. If a hearing is held with this document used as an application, the defendants shall have available to them all defenses that were available as of the date of filing of this document. The Workers' Compensation Appeals Board may thereafter either approve the settlement agreement or disapprove it and issue findings and award after hearing has been held and the matter submitted for decision.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5001, 5002, 5500 and 5702, Labor Code.

§10882. Action on Settlement Agreement.

The Workers' Compensation Appeals Board shall inquire into the adequacy of all compromise and release agreements and stipulations with request for award, and may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5001,5002 and 5702, Labor Code.

§10888. Resolution of Liens.

Before issuance of an order approving compromise and release that resolves a case or an award that resolves a case based upon the stipulations of the parties, if there remain any liens that have not been resolved or withdrawn, the parties shall make a good-faith attempt to contact the lien claimants and resolve their liens. A good-faith attempt requires at least one contact of each lien claimant by telephone or letter.

After issuing an order approving compromise and release that resolves a case or an award that resolves a case based upon the stipulations of the parties, if there remain any liens that have not been resolved or withdrawn, the workers' compensation judge shall

(1) set the case for a lien conference, or

(2) issue a ten (10) day notice of intention to order payment of any such lien in full or in part, or

(3) issue a ten (10) day notice of intention to disallow any such lien. Upon a showing of good cause, the workers' compensation judge may once continue a lien conference to another lien conference. If a lien cannot be resolved at a lien conference, the workers' compensation judge shall set the case for trial.

An agreement to "pay, adjust or litigate" a lien, or its equivalent, or an award leaving a lien to be adjusted, is not a resolution of the lien.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 4903, 4903.1, 4904, 5001, 5002 and 5702, Labor Code.

§10940. Application.

All claims against the Subsequent Injuries Fund shall be by an application in writing setting forth the date and nature of the industrial injury, together with all factors of disability alleged to have pre-existed said injury. Allegations of additional factors must be by amended application.

All applications against the Subsequent Injuries Fund shall be filed with the Appeals Board and a copy shall be served by mail on the Division of Workers' Compensation, Subsequent Injuries Fund, in accordance with Sections 10505 and10507. Where joinder of the Subsequent Injuries Fund has been ordered by the workers' compensation judge or the Appeals Board, the applicant shall forthwith file and serve an application as provided herein.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 4750, 4751, 4753, 4753.5 and 4754.5, Labor Code.

§10942. Service.

Service of all documents directed to the Subsequent Injuries Fund shall be made on the Division of Workers' Compensation, Subsequent Injuries Fund.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 4750, 4751, 4753, 4753.5 and 4754.5, Labor Code.

§10946. Medical Reports in Subsequent Injuries Benefits Trust Fund Cases.

When an application is filed against the Subsequent Injuries Benefits Trust Fund, any party who has previously filed medical reports shall forthwith serve copies on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund, and in no case later than thirty (30) days prior to the mandatory settlement conference or other hearing, unless service is waived by the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund.

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

§10950. Petitions Appealing Orders Issued by the Administrative Director.

Except as provided in Rule 10953, petitions appealing orders issued by the Administrative Director shall be filed in accordance with the provisions of Article 9 (section 10290 et seq.) of the Rules of the Court Administrator. Where a workers' compensation judge has determined such an appeal, any aggrieved party may file a petition for reconsideration in accordance with the provisions of Labor Code section 5900 et seq. and Appeals Board Rules 10840 et seq.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 129, 4603, 4604, 5300, 5301 and 5302, Labor Code.

§10995. Mandatory Arbitration.

(a) This rule applies to injuries occurring on or after January 1, 1990.

(b) Any application for adjudication that lists one or more disputes involving an issue set forth in Labor Code section 5275(a), shall be accompanied by an arbitration submittal form. The arbitration submittal form shall indicate that either:

(1) an arbitrator has been selected pursuant to Labor Code section 5271(a), or

(2) an unsuccessful attempt has been made to select an arbitrator and the presiding workers' compensation judge is requested pursuant to Labor Code section 5271(b), to assign a panel of five arbitrators.

(c) If the parties have agreed to an arbitrator pursuant to Labor Code section 5271(c), the presiding judge shall, within six (6) days of receipt of the arbitration submittal form, order the issue or issues in dispute submitted for arbitration pursuant to Labor Code sections 5272, 5273, 5276 and 5277.

(d) If the arbitration submittal form requests a panel pursuant to Labor Code section 5271(b), the presiding judge shall, within six (6) days of receipt of the arbitration submittal form, serve on each of the parties an identical list of five arbitrators selected at random pursuant to Labor Code 5271(b). For each party in excess of one party in the capacity of employer and one party in the capacity of injured employee or lien claimant, the presiding judge shall randomly select two

additional arbitrators to add to the panel in accordance with the selection process set forth in Labor Code section 5721(c). Each of the parties shall strike two arbitrators from the list and return it to the presiding judge within six (6) days after service. Failure to timely return the list shall constitute a waiver of a party's right to participate in the selection process. If one arbitrator remains, the presiding judge shall, within six (6) days of return of the lists from the parties, order the issue or issues submitted for arbitration before the selected arbitrator pursuant to Labor Code sections 5272, 5273, 5276 and 5277. If more than one arbitrator remains on the panel, the presiding judge shall randomly select an arbitrator from the remaining panelists.

(e) If the parties to the dispute have stricken all the arbitrators from the panel, the presiding judge shall, within six (6) days of receipt of the last of the returned lists, serve on each of the parties to the dispute a new list of five arbitrators and any additional arbitrators required by Labor Code section 5271(c), selected at random but excluding the names of the arbitrators on the prior list. Each of the parties to the dispute shall again strike two arbitrators from the list and return it to the presiding judge within six (6) days after service. This procedure shall continue until one or more arbitrators remain on the lists returned to the presiding judge.

(f) The parties shall provide all necessary materials to the arbitrator. Any paper file shall remain in the custody of the district office.

(g) A copy of any final decision, order or award from the arbitrator, together with a copy of the record developed as set forth in Labor Code sections 5276 and 5277, shall be filed with the presiding judge of the district office having venue. The district office shall scan the copies of the arbitrator's the decision, order or award and record into the EAMS adjudication file and, after scanning, shall destroy the copies.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5270-5278, Labor Code.

§ 10996. Voluntary Arbitration.

(a) At any time, the parties may agree to submit any issue for arbitration pursuant to Labor Code section 5275(b), by submitting an arbitration submittal form that indicates that the parties have selected an arbitrator pursuant to Labor Code section 5271(a), and by filing an application for adjudication if one has not been previously filed.

(b) Within six (6) days of receipt of the arbitration submittal form, the presiding workers' compensation judge shall order the issues in dispute submitted for arbitration pursuant to Labor Code sections 5272, 5273, 5276 and 5277.

(c) If the parties are unable to agree to an arbitrator under Labor Code section 5271(a), the parties may agree to follow the procedures for selecting an arbitrator under Labor Code section 5271(b) and (c), as set forth in section 10995.

(d) The parties shall provide all necessary materials to the arbitrator.

(e) A copy of any final decision, order or award from the arbitrator, together with a copy of the record developed as set forth in Labor Code sections 5276 and 5277, shall be filed with the presiding judge of the district office having venue. The district office shall scan the copies of the arbitrator's decision, order or award and the record into the EAMS adjudication file and, after scanning, shall destroy the copies.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 5270-5278, Labor Code.

§10997. Request for Arbitration.

In no event will arbitration be permitted after the taking of testimony in any proceeding.

Authority cited: Sections 133 and 5307, Labor Code.
Reference: Sections 5270-5277, Labor Code.

From:	Alexis Fung Chen Pen
To:	DIR WCABRules
Subject:	Comment on the Proposed Rules of Practice and Procedure
Date:	Friday, September 6, 2019 10:55:18 AM
Attachments:	image914457.png

Dear Workers' Compensation Appeals Board:

We are writing to comment on the proposed Rules of Practice and Procedure as follows:

Proposed Section 10302

The proposed amendments to the WCAB rules include new rule 10302, entitled "Rulemaking Notices." However, the proposed amendments do not indicate whether current section 10302 has been repealed or renumbered. As such, if the proposed amendments take effect as written, there will be two rules numbered section 10302 and it may be confusing to practitioners which versions of section 10302 are effective.

Thank you for your time and consideration.

Alexis Fung Chen Pen
Associate Rules Attorney

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