

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION

**PUBLIC HEARING**

Wednesday, January 4, 2017  
Hiram Johnson State Office Building - Santa Barbara Room  
455 Golden Gate Avenue  
San Francisco, California

**COMMISSIONERS**

**RICHARD NEWMAN**

**FRANK BRASS**

**DEIDRA LOWE**

**MARGUERITE SWEENEY**

**KATHERINE ZALEWSKI**

**JOSE RAZO**

Reported by: Emily Hatton, CSR No. 14066

Deborah Schneider, CSR No. 7650

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**INDEX**

**CHARLES RONDEAU**

**5**

**STEVE CATTOLICA**

**11**

**PILAR GARCIA**

**13, 17**

**CAROLINA DAROND**

**15**

1 PUBLIC HEARING

2 SAN FRANCISCO, CALIFORNIA

3 WEDNESDAY, JANUARY 4, 2017 - 9:58 a.m.

4 --oOo--

5 SECRETARY NEWMAN: I'm Richard Newman, Secretary Deputy  
6 Commissioner of the Appeals Board, and this is our hearing on  
7 two rules, one which has been amended, Rule 10770, and a new  
8 rule, 10770.7. But you all know that because you got the  
9 notice; right? Okay.

10 You're all here, presumably, to take in whatever speakers  
11 have to say and speak yourself, if you like. So far, I only  
12 have one speaker who wants to speak, but before we get to that,  
13 let me introduce everybody on the panel before I forget.

14 To my left is Commissioner Frank Brass. To my right,  
15 Commissioner Deidra Lowe and Marguerite Sweeney, Katherine  
16 Zalewski, and Jose Razo. And in the back hiding here is our  
17 primary regulatory attorney, Margaret Hosel. She's going to be  
18 helping us out if we need it.

19 So has everyone signed in that's here? And I only have  
20 one speaker so far.

21 Has anyone else signed the speaker list that wants to  
22 speak? Okay. All right.

23 So what we're going to do is have the speakers come up.  
24 When you come up, we have two reporters, luckily, from the  
25 State who are able to help us out today. Make sure you clearly

1 state your name and your company affiliation that you're  
2 associated with, and understand you can say what you like, but  
3 we're not going to respond here. This will be something we  
4 take in just like all of the written comments we're getting,  
5 and we'll respond later.

6 A couple of introductory comments about the comment  
7 period: there are two forms that are involved with respect to  
8 these rules. One is the electronic -- they're both electronic.  
9 One is the lien form that is now to be used by filers after  
10 1-1-17, and if you go to 10770, that's the rule we've amended  
11 that references an electronic lien form that the Board has to  
12 approve, but we have approved that form. And we have --  
13 unfortunately, it's electronic. When I say, "unfortunately,"  
14 it means it's not reducible easily to a paper copy, but we have  
15 a mock-up of that form available as well as the other form  
16 which we reference in our new rule, which is the electronic  
17 declaration, and that's the supplemental declaration that lien  
18 filers prior to 1-1-17 will file by July 1, 2017.

19 Both of those are available as mock-ups so we have a  
20 printed version of what they look like, and I think they're in  
21 the back somewhere; so, hopefully, you got those. There will  
22 be a link to those at some point soon. Hopefully, a day or if  
23 not, sooner -- or I mean, today, if not sooner. It should have  
24 been yesterday. Today or tomorrow we hope to have a link up  
25 probably on the DWC and/or WCAB website, maybe both. Also, we

1 may have a newslines at some point with that link. So that's  
2 the only sort of wrinkle is that we don't have that. I wanted  
3 you to see what that looks like before you comment.

4 The other thing is because of this mock-up that you're  
5 getting today, we anticipate there are going to be more  
6 comments, and we've extended the time for comment to Wednesday,  
7 January 18th. So that gives us another two weeks from today;  
8 so, hopefully, that will be enough to comment. Really, there's  
9 nothing earth-shattering, in a sense, in the new forms. I  
10 won't say more than that, but just to be clear, they are based  
11 on the statute, and we may get into that with some of the  
12 comments.

13 Any questions about the preliminary matters? Okay. All  
14 right.

15 I'm going to ask, is Charles Rondeau ready to speak?

16 MR. RONDEAU: Yes, sir.

17 SECRETARY NEWMAN: Charles, do you want to come up and  
18 give your comment?

19 MR. RONDEAU: Yes, sir.

20 **CHARLES RONDEAU**

21 Good morning. My name is Charles Rondeau. I'm with the  
22 Rondeau Law Firm in the Los Angeles area. I'd like to thank  
23 the esteemed commissioners for allowing those of us in the  
24 workers' compensation community to make comments concerning the  
25 regulations. Since I understand from Judge Newman's comments

1 that there won't be responses from the bench, so to speak, a  
2 lot of my comments will be more in the form of questions that I  
3 hope that in responses, we'll get answers to some of these  
4 questions.

5 A large part of my practice involves representing medical  
6 service providers and other providers in the Los Angeles area  
7 and going south. A lot of these folks provide services in  
8 cases where there are disputes, whether there's a dispute with  
9 respect to underlying liability of the claim itself or with  
10 respect to certain body parts or aspects of the claim. So  
11 they'll -- certain parts of the declaration requirement are  
12 very problematic for them, and I had some comments about that.

13 But going to the first issue, as Judge Newman has  
14 indicated, the forms which have been passed out as my  
15 understanding or as described mock-ups and thus, not available,  
16 per se, if a lien claimant has a lien that is currently coming  
17 up for the 18-month statute, how are they to comply with the  
18 requirement of filing a lien in compliance with the new lien  
19 requirements if the new form is not available?

20 That's the first question.

21 SECRETARY NEWMAN: I am going to respond to that just to  
22 let you know because I think I misspoke. The electronic lien  
23 form is actually in use as of yesterday, 1-1 -- well, first  
24 legal day could be in use 1-2-17. It is in use. It's part  
25 of -- as you know, e-filers really entered a kind of contract

1 with DWC when they do e-filing, and all lien claimants now have  
2 to be e-filers or JET filers, I suppose, which is another form  
3 of electronic filing, and that form is in use.

4 What isn't available is what it actually looks like, and  
5 that's kind of something we're wrestling with. It was much  
6 easier in the old days, just print up a form. So we're giving  
7 you a mock-up of what it looks like, but lien filers could have  
8 started yesterday is my understanding.

9 MR. RONDEAU: Understood. So not being technically savvy  
10 and not being as diverse as perhaps I should be in electronic  
11 billing rules, am I then to understand this is a visual  
12 representation of how folks are supposed to report data and  
13 file liens in the system?

14 SECRETARY NEWMAN: That's my understanding.

15 MR. RONDEAU: Okay. Got it.

16 So, in other words, the fields that we see here on the new  
17 lien form are the fields that one needs to fill out, and  
18 they're available on the new lien form?

19 SECRETARY NEWMAN: Correct.

20 MR. RONDEAU: Understood. Thank you for the answer to  
21 that question.

22 SECRETARY NEWMAN: Sure.

23 MR. RONDEAU: Moving on to a more problematic issue.

24 Many providers that I represent, again, provide services  
25 in cases where there's a dispute. And the only category that

1 seems to be available for them to file liens in the declaration  
2 requirement going forward is Labor Code Section 4903.05  
3 (c)(1)(e), and they have to file a declaration under penalty of  
4 perjury stating that they have, quote, documentation that  
5 treatment has been neglected or unreasonably refused or some  
6 such as provided for in Labor Code Section 4600.

7 As I'm sure the Commissioners are aware, when some of  
8 these liens were -- services were provided in the past, this  
9 was not a requirement that they collect such documentation.  
10 And I can tell you from personal experience, many providers are  
11 having difficulty assembling this documentation. The carriers  
12 are not -- I shouldn't say carriers. Payers would probably be  
13 the better description. The payers are not under any statutory  
14 or regulatory obligation to serve providers, including  
15 secondary and tertiary providers like a diagnostic imaging  
16 provider, a DME provider, an interpreter, and things of that  
17 sort with any claims, status, notices like benefit letters, et  
18 cetera, et cetera.

19 Has there been any consideration given to adopting  
20 regulations to require payers upon request to serve those  
21 documents onto would be lien claimants so that they can comply  
22 in good faith with the declaration requirements?

23 And the second question is, is that more of a DWC issue or  
24 a WCAB issue? I'm not quite sure.

25 Now, going on to the actual lien forms themselves. The

1 new lien form and the supplemental lien declaration form in the  
2 declaration section both refer to a party that's called a  
3 proper assignee, and I would assume that that would include,  
4 for instance, an assignee who's taken the accounts receivable  
5 and/or lien from a provider that's no longer providing services  
6 in the capacity that it did when the services were provided.  
7 If that is the case and that category of lien claimant for  
8 purposes of the declaration includes the proper assignee, may  
9 that proper assignee in and of themselves execute the  
10 declaration in lieu of the provider?

11 And similarly, if there has been such an assignment and  
12 the provider is no longer in business, may that same proper  
13 assignee execute the Labor Code Section 4903.8 (d) declaration  
14 that the services were actually provided and that the billing  
15 statement is accurate?

16 Again, going to the regulations that were amended, the  
17 amendments to 8 CCR Section 10770 require that both an original  
18 bill and either an itemized statement or invoice be appended to  
19 the lien when it's being filed. As I understand it, the EAMS  
20 system has been configured at this point that it only allows  
21 for one attachment called the original bill.

22 What does original bill mean?

23 Does the original bill mean the CMS 1500 or colloquially  
24 referred to as the HCFA?

25 Does it mean something else?

1           If there are multiple days of service, how many have to be  
2 attached?

3           Does the original bill attachment allow for both a  
4 merging, if you will, of the, quote, original bill, whatever  
5 that means, and the itemized statement and invoice?

6           And what happens if the size of the document that needs to  
7 be attached to comply exceeds what the EAMS system would allow?

8           The lien declaration -- strike that.

9           The lien form and the supplemental lien declaration form  
10 require the recording and collection of additional information,  
11 including identification of the, quote, billing provider and  
12 identification of the, quote, rendering provider. Neither of  
13 those terms is defined. Both require, apparently, the  
14 recording of an NPI number.

15           What if the billing has been done by a billing company  
16 which is not a service provider and thus that has no NPI  
17 number? Who is to be recorded there? Are they the billing  
18 provider, or is it simply the rendering provider?

19           That's all the comments I have at this point. Thank you.

20           SECRETARY NEWMAN: Thank you.

21           Anybody else want to speak?

22           Okay. No other comments.

23           Any other questions?

24           Okay. I think we're adjourned for now. Okay.

25           (Discussion held off the record.)



1 noncertified interpreter, and we were concerned that the  
2 Division has essentially acknowledged that they are not going  
3 to attempt to clarify that aspect of the declaration, and in  
4 that, put it back on the court to do so.

5 We would encourage all of you to work closely with them  
6 and to parse out exactly the vagaries of the language of the  
7 statute and the subsequent regulations so that the users of  
8 this system, especially the occasional users -- you know, the  
9 mega lien filers are going to figure this out, and they are  
10 going to have some slick process to get all this done.

11 But you know what, that is not where most of their trouble  
12 is. Most of their trouble is with the smaller lien filers who  
13 may even have to go and do this once or twice a month instead  
14 of, you know, several hundred times a month. And we believe  
15 that they are just as important as anybody else is, and the  
16 road map needs to be clear. And right now, it's not. So we  
17 are glad to know that the comment period is longer. I think it  
18 is going to encourage people to take a closer look at this, and  
19 we hope that not only the WCAB, but also your partner in this,  
20 the DWC, will do the exact same. Thank you.

21 SECRETARY NEWMAN: Any other comments, speakers? I want  
22 to make sure we have nobody else right now. I am going to  
23 adjourn, but understand that we are technically open to 5:00  
24 for comments. So we will have something set up here, but I  
25 don't expect people will be waiting until 5:00. But if anybody

1 comes down, we will take the comments. Thank you very much,  
2 and we look forward to receiving your written comments if you  
3 didn't get a chance to speak.

4 UNIDENTIFIED SPEAKER: Can I suggest that if somebody has  
5 comments by 5:00 that they come upstairs to the reception  
6 window and let us know that they are here.

7 SECRETARY NEWMAN: That's a good idea. So come to the 9th  
8 floor. Our Workers' Compensation Appeals Board is on the 9th  
9 floor and come to the reception window and let us know. I will  
10 have to have a sign-up for those that come later. Thank you.

11 (The record was closed at 10:24 a.m.)

12 (The record was reopened at 10:55 a.m.)

13 **PILAR GARCIA**

14 Good morning, and thank you so much for hearing us. My  
15 name's Pilar Garcia. I own language providing services,  
16 Statewide Interpreters, and we have been providing interpreting  
17 services for injured workers for the last 19 years. Part of  
18 the industry -- in some of the cases we do full-time liens.  
19 With the new law, we have right now in front of us liens that  
20 we cannot verify the way that you have proposed to us. And I  
21 want you to -- guys have in consideration interpreters and how  
22 we do business in order for you guys to create or -- create a  
23 path for us to do our verifications as well.

24 As interpreters, we provide the services for injured  
25 workers per request of applicants' attorneys, the injured

1 worker themselves, sometimes doctor's offices. We do request  
2 authorizations from the insurance companies. Very difficult to  
3 find an adjustor available to give you authorizations, plus  
4 they have their own vendors. So they might say, "No" just  
5 because we're not part of their vendors' list, as they call it.  
6 So we will get a denial authorization, or we will get a "no"  
7 answer. In the meantime, the injured worker needs to have an  
8 interpreter right there for their medical appointment.

9 Per request of many applicants' attorneys, we do have --  
10 we do interpretations, and us interpreters don't have all the  
11 resources to get information to file our liens. We do get the  
12 phone call, the request, but we don't know if the doctor's with  
13 the MPN or not until we receive a letter from the insurance  
14 company saying, "No, the doctor is out of the MPN." And at  
15 that moment, we need to stop, and we do stop unless the case is  
16 denied. But none of the provisions there -- most of the  
17 services are done most -- think about all the appointments that  
18 are done on a daily basis, just today. They're not done all of  
19 them with certified interpreters. Majority of those  
20 appointments are done with noncertified interpreters.

21 I've been doing this for 19 years. The follow-up  
22 appointments -- they're very well done with the noncertified  
23 interpreters. There's no provision there. It doesn't mention  
24 anything about the noncertified interpreter -- a provisionally  
25 certified as 9795.3 mentions.



1 all of them.

2 It's been really hard to just get by. At this point in  
3 time, we have more paperwork than the amount of work that we  
4 have right now in our company, and it's just becoming really  
5 impossible to provide a service that really is needed. We  
6 receive 30 to 40 phone calls a day to provide interpreting  
7 services. You know, we have to help our injured worker. We  
8 cannot just say, "No" to every time we receive a phone call.  
9 And we have all these amazing doctors and applicant attorneys  
10 that are constantly, you know, counting on us to help them out,  
11 and we, unfortunately, are not going to be able to do that  
12 anymore.

13 We cancel most of our appointments -- most of them. The  
14 only ones that we're accepting are the ones that we finally  
15 have an authorization because the authorization is not valid  
16 anymore. Most of our liens -- the ones that we have -- a lot  
17 of them were authorized verbally, and then the adjustors turn  
18 around and say, "Prove me," and we don't have a proof because  
19 they don't have two more minutes to send us verification either  
20 by fax or by e-mail that they actually authorized the service  
21 for us.

22 So we are tied. So we need your help because we don't  
23 know what to do. We are not lawyers. We are just  
24 interpreters. We are trying to go by the rules, but it's  
25 impossible.

1 PILAR GARCIA

2 In the provisions that you guys put here, we cannot file  
3 our verifications because, A, the doctor is part of the MPN or  
4 not part of the MPN. That is clear, but if our interpreter is  
5 not certified, how can we file a verification? That's very  
6 clear. And majority of appointments in California today are  
7 done with a noncertified interpreter because it's a follow-up  
8 appointment. It really does not require a certified  
9 interpreter; so we cannot file.

10 I got probably -- we got about 8 cases with us here -- 10  
11 cases with us here where I don't know where to file my  
12 verification. Whatever I say is going to be a lie, and I don't  
13 want to do that. So please help us out. Think about us  
14 interpreters. We're trying to help out the injured worker, do  
15 a business here in California, not in Clearwater, Florida.

16 The rules and regulations that the DIR have applied -- I'm  
17 going to say this -- are running out of business. Right now, I  
18 stop all my interpretation services after 19 years -- all of  
19 them. We probably provided about 30 to 40. Not anymore.  
20 Today we have 4 or 5 because of these new rules and regulations  
21 that are being pushed by the insurance company. Completely out  
22 of business. I'm out. And like me, there are several  
23 agencies -- I can give you their names if you guys require --  
24 who are taking that position. If that was the idea, well, you  
25 guys got it because we can't provide any services under these

1 conditions. Please help us out and change that just for  
2 interpreters at least.

3 SECRETARY NEWMAN: Do you want to clarify a question?

4 COMMISSIONER SWEENEY: Yes. I just wanted to ask, you're  
5 Statewide Interpreters?

6 MS. GARCIA: Correct.

7 COMMISSIONER SWEENEY: And approximately how many  
8 interpreters, about, work for you?

9 MS. GARCIA: We have about 315 interpreters that we might  
10 use.

11 COMMISSIONER SWEENEY: Okay. And can you clarify for me,  
12 most of the interpreters are not certified?

13 MS. GARCIA: Most of the interpreters are not certified,  
14 yeah.

15 COMMISSIONER SWEENEY: And can you speak to that a little  
16 bit on why most are not certified?

17 MS. GARCIA: All right. Perfect. Great.

18 I've been doing this for 19 years. SB 863 mandated that  
19 most interpreters needed to be certified. There were a couple  
20 of issues back then. There was not a certification place  
21 where -- to get the certification. The State stopped many  
22 years ago, lack of funds. Then they designated national board  
23 to be -- to give the certification back then.

24 Then some of them -- I've been promoting with my  
25 interpreters -- teaching them how to take the exam, how to take

1 the test. It costs money. These people get up in the morning,  
2 and probably they do, if they're lucky, three appointments a  
3 day because distance, traffic, et cetera. So to take a test  
4 has been very difficult for some of them.

5 I've been training them to get the test and to pass, and  
6 some of them have passed, but, A, not all the languages are  
7 certified. There are three Japanese certified interpreters --  
8 three in the State of California. I hire one, and just -- I  
9 have to tell you -- they charge \$1,600 for the day whether I  
10 want it or not, and I had to pay. I had to pay because it  
11 requires to have a certified interpreter for that QME.

12 It's not fair whatever the rules are for interpreters.  
13 You're putting it so difficult that we can't do business  
14 anymore. And here comes -- the other agencies are coming from  
15 the other states. Pilar was -- it was the Statewide  
16 Interpreters for California back then. No, not anymore. Now  
17 we are requested by other agencies from the other states  
18 because they have the authorization. There's no money  
19 difference between my rates and their rates. It's the  
20 authorization what is changing the problem.

21 They're not giving it to us because they want to give it  
22 to One Call, and One Call is doing the monopoly of the business  
23 as you all -- you all know that; right?

24 We all know that.

25 COMMISSIONER SWEENEY: No, that's why we're asking

1 questions.

2 MS. GARCIA: Okay.

3 COMMISSIONER SWEENEY: No, but thank you. I just wanted  
4 to get a little more of an idea about your company, and thank  
5 you for your comments.

6 MS. GARCIA: I just wanted to clarify a little bit more of  
7 your question is we usually do use certified interpreters for  
8 appearances at the Board and for QMEs and AMEs. The rest of  
9 follow-up appointments are done with uncertified interpreters  
10 or provisionally certified -- how the law calls it.

11 COMMISSIONER SWEENEY: Thank you.

12 MS. GARCIA: Is that clear?

13 COMMISSIONER SWEENEY: Yes. Thank you.

14 SECRETARY NEWMAN: Thank you.

15 MS. GARCIA: Any other questions?

16 SECRETARY NEWMAN: That's it. Thanks.

17 MS. DAROND: Thank you very much for your time.

18 SECRETARY NEWMAN: Yeah.

19 Don't think we're not taking what you're saying -- most of  
20 our responses are going to be from looking at the transcript  
21 and thinking it through. We're not responding right now, but  
22 there's going to be a lot of comments.

23 MS. GARCIA: Thank you, Your Honor. I appreciate that.

24 MS. DAROND: Thank you very much for your time.

25 SECRETARY NEWMAN: Any other speakers?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Okay.

Emily, can you be on-call or something during the day because we may --

THE REPORTER: Yes.

SECRETARY NEWMAN: Yeah, you know, we may have some coming in later.

All right. Let's adjourn for now. Thank you.

(The proceedings adjourned at 11:08 a.m.)

--oOo--

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\* \* \* \*

REPORTER'S CERTIFICATE

We, the undersigned Official Hearing Reporters for the State of California, Department of Industrial Relations, Division of Workers' Compensation, hereby certify that the foregoing matter is a full, true and correct transcript of the proceedings taken by us in shorthand, and with the aid of audio backup recording, on the date and in the matter described on the first page thereof.

Dated: January 9, 2017  
Fresno, California

  
DEBORAH SCHNEIDER  
Official Hearing Reporter

Dated: January 9, 2017  
San Francisco, California

  
EMILY HATTON  
Official Hearing Reporter