September 15, 2014

Thomas Harbinson, Esq.

Please amend Rule 10280 to delete that part of (d) (1) that requires proof of service of the “walk-through settlement document” prior to submission and before issuance of an order approving. This requirement is unnecessary since the parties have signed the document and are presumed to have read it, duplicative since the document and order approving must be served on all parties and lien claimants after issuance and annoying as it is obstructive to the process.

September 15, 2014

Kristyn Lum, Esq., Rules Attorney
Aderant

We are writing to comment on the proposed amendment to 8 CCR 10957.1(c) of the WCAB Rules of Practice and Procedure out for written comment until September 17, 2014. Specifically, we request that 8 CCR 10957.1(c) be further amended to bring the deadline for filing a petition appealing the Administrative Director's independent medical review (IMR) determination in line with a similar deadline stated in Labor Code 4610.6(h).

We note that there are currently three different events which trigger the deadline to file an appeal of an IMR determination stated in 8 CCR 10957.1(c), 8 CCR 9768.16(b), and Labor Code 4610.6(h).

In the proposed amendment to 8 CCR 10957.1(c), the deadline to file a petition for appeal is triggered **30 days after service of the IMR determination** as follows:

> (c) The petition shall be filed with the Workers' Compensation Appeals Board no later than 30~~20~~ days after service of the ~~IBR~~ IMR determination. An untimely petition may be summarily dismissed.

The deadline to file a petition for appeal in 8 CCR 9768.16(b) is triggered **20 days after the receipt of the decision** after independent medical review as follows:

> (b) The parties may appeal the Administrative Director's written decision by filing a petition with the Workers' Compensation Appeals Board and serving a copy on the Administrative Director, within twenty days after receipt of the decision.

Finally, the deadline to file an appeal under Labor Code 4610.6(h) is triggered **30 days after the mailing of the IMR determination** as follows:

> (h) A determination of the administrative director pursuant to this section may be reviewed only by a verified appeal from the medical review determination of the administrative director, filed with the appeals board for hearing . . . within 30 days of the date of mailing of the determination to the aggrieved employee or the aggrieved employer.

To promote consistency between the above rules and to avoid confusion, we suggest that 8 CCR 10957.1(c) be further amended to match the deadline set forth in Labor Code 4610.6(h) as follows:

> (c) The petition shall be filed with the Workers' Compensation Appeals Board no later than 30~~20~~ days after ~~service~~mailing of the ~~IBR~~ IMR determination to the aggrieved employee or the aggrieved employer. An untimely petition may be summarily dismissed.

Thank you for your time and consideration.

September 16, 2014

Anne Marie Rappola
Boehm & Associates

Boehm & Associates submits the following comments regarding proposed Rules 10563 and 10563.1.

We acknowledge the Statement of Reasons relating to the adoption of proposed Rule 10563.1 ("Other Appearances Required"), including the intent to eliminate the apparent conflict between Rule 10240 and section 10770.1 on the issue of a lien claimant's obligation to appear at lien conferences.

However, we are concerned with regard to the provision in 10563.1(c) requiring *only* lien claimants with liens in excess of $25,000 to appear at all mandatory settlement conferences and trials of the case in chief when the claim has been accepted (unless excused by the WCJ) with *full settlement authority*.

Proposed Rule 10563.1 imposes no such requirement on defendants regarding lien settlement authority in these accepted claims before the case in chief resolves. Rule 10240, which will be repealed and partially incorporated into proposed Rule 10563.1 at the very least provided at subsection (b)" *"All parties shall have a person available with settlement authority at the mandatory settlement conference or lien conference...."* (Emphasis added.)

Medical treatment lien claimants in accepted claims (where the treatment related to the accepted portion of the claim) are almost always well-prepared with authority to resolve the unnecessarily longstanding non-payment issue. It is usually the defendant who has no authority whatsoever to resolve the lien claim.

Unfortunately, it has been our experience that appearances by lien claimants at MSC's and trials in accepted cases, particularly when the lien is in excess of $25,000, rarely result in lien resolution. This is usually because defense counsel is without the requisite authority from the carrier to resolve the lien claim. It is rare for defense counsel to appear at an MSC or trial of the case-in-chief with any authority (or access to authority) to resolve the medical treatment lien for an accepted claim, *even when the treatment was provided on the date of injury, the medical reasonableness and necessity are undisputed, and the fully documented lien was served long ago on the appropriate parties.*

Moreover, requiring lien claimants to attend MSC's and Trials *where liens are not at issue* is unduly burdensome. Board Rule 10240, which became operative November 17, 2008, requires lien claimants in accepted cases with lien claims over $25,000 to appear at MSCs. In Southern California, cases often have multiple MSC hearings prior to the resolution of the case-in-chief, even in accepted claims. Multiple, fruitless appearances and attempts to engage with defense attorneys who have no intention of addressing lien issues at all is a costly responsibility to impose on lien claimants who do not maintain a daily presence at each Board. This requirement does little to reduce the number of liens.

With all due respect to all concerned, the failure to resolve liens in accepted claim cases usually is not due to the lien claimant having no authority or failing to be present at MSC's and trials. It is because the defendant remains unprepared and without authority to resolve the lien claim prior to the resolution of the case-in-chief, or even at the time of settlement of the case-in-chief.

Now, once again, additional burdens are being placed on lien claimants, while defendants are financially rewarded for delaying payment and engaging in protracted and unnecessary litigation regarding payment for industrial medical treatment. There should be incentives for carriers to pay responsibly and timely for industrial treatment in accepted claims early in the case, such as the actual imposition of sanctions for

failure to pay. To the contrary, the Board is arming defendants with additional opportunities to disallow legitimate liens while defendants face no obligation to actually deal with the lien claimants who comply with the rules and appear at these MSC's and trials.

Essentially, lien resolution at the Boards has devolved into a two-tier system, where the discovery rights of lien claimants' (including "physician lien claimants") are ignored, deferred or denied by carriers, defense attorneys and the Boards during the case-in-chief, and where resolution of a lien claim in an accepted case prior to resolution of the case-in-chief is the exception rather than the rule. In fact, because even simple inquiries of lien claimants regarding the status of the case in chief are often ignored by the parties, it is sometimes difficult for the lien claimant to determine whether an applicant's claim is accepted or denied.

At a minimum, Board Rule 10240 mandated that defendants were **statutorily** required to appear at MSC's with settlement authority. Now, with proposed rules 10563 and 10563.1 there appears to be no incentive for defendants to address liens until case-in-chief resolution.

Our comments are directed toward creating a level playing field, with the requirement that all parties be prepared to make substantial progress toward resolution of issues, including liens, sooner rather than later, and toward eliminating avoidable delays, needless appearances, and excessive demands on the limited resources of the Board.

WORKERS' COMPENSATION SECTION

THE STATE BAR OF CALIFORNIA

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State of California
Chairman's Office

SEP 16 2014

Worker's Compensation Appeals Board
SAN FRANCISCO

September 9, 2014

To whom it may concern:

We the Executive Committee of the Workers' Compensation Section of the State Bar present the following comments related to the proposed changes to the Workers' Compensation Appeals Board Rules of Practice & Procedure Title 8, California Code of Regulations Sections 10213 - 10296 and 10300-10999.

Below you will find the comments we have related to certain sections and potential conflicts between these Rules of Practice & Procedure and the Labor Code.

§ 10390. Place of Filing Documents After Initial Application or Case Opening Document.

This section should outline that the filing procedures described herein should also point the practioner to the exceptions to particular situations governed by **§10397. Restrictions on the Rejection for Filing of Documents Subject to a Statute of Limitations or a Jurisdictional Time Limitation** otherwise there may be potential conflicts that will cause confusion and litigation.

§ 10563.1 Other Appearances Required.

This section causes us to pose the question about how the practitioner can reconcile this section with all the sections related to Lien Claimants **not** being parties to the workers' compensation action until the case-in-chief has settled. Please see **§10205** and Labor Code **§4903.5**.
As practitioners we also recommend an addition or reference to **§10770.1(m)** and what violations of its provisions entail.

Respectfully Submitted,
State Bar Workers' Compensation Section Executive Committee/
Practice and Ethics Subcommittee
Chair – Yvonne Lang, Esq.
Co-Chair – Robert Rassp, Esq.

DISCLAIMER

This position is only that of the Workers' Compensation Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in Workers' Compensation Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

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Dear WCAB Rules,

Below are my concerns with proposed changes to CCR 10563.1 and 10770.1 (h).

While I have no issue with "Interpreter Petitioners" being required to appear at all lien conferences and that they will now be treated as lien claimants; the real concern is being properly added to the Official Address Record (OAR). Since the approval of CCR 10451.3 I have personally filed dozens of Petitions with proper Notice of Representation and NOT once has our company been added to the OAR for any of the WCAB venues. How is the "Interpreter Petitioner" going to be able to exercise their right to due process if the WCJ's are not adding us to the OAR? Until that issue is resolved, I do not feel that it is appropriate to require "Interpreter Petitioners" to be present at Lien Conferences if they are not going to be properly notified and able to exercise their right to due process.

Secondly does this now mean that Petitions will not be addressed and/or answered by the WCJ's until the case in chief has settled? I was under the impression that the whole point of CCR 10451.3 was to get interpreters paid in a timely manner for Cost services and not have to wait till the case in chief has settled. Is that no longer the case?

Thank you for your attention.

Veronica Perez
Nunez & Barrera Interpreters

AdvoCal
Legislative and Administrative Agency Advocacy
Professional Association Management
Established 1983

September 17, 2014

Margaret Hosel, Assistant Secretary
Workers' Compensation Appeals Board
Via Email: WCABRules@dir.ca.gov

RE: NOTICE OF PROPOSED RULEMAKING
RULES OF PRACTICE AND PROCEDURE

TITLE 8, CALIFORNIA CODE OF REGULATIONS, SECTIONS 10213 THROUGH 10296 AND SECTIONS 10300 THROUGH 10999 (i.e., Division 1, Chapter 4.5, Subchapters 1.9 & 2)

TO: The Honorable Chairwoman and Commissioners of the Workers' Compensation Appeals Board

Our client, the California Workers' Compensation Interpreters Association (CWCIA), reviewed the proposed revisions to your Rules of Practice and Procedure and offers the following comments:

While we appreciate your repeal of Regulation 10240 and its reincarnation in new Regulation 10563.1, we are concerned that Petitioners with Claims of Cost, unlike lien claimants, may not receive notice of lien conferences and other proceedings. CWCIA urges you also to amend Regulation 10205.5(a) to include Petitioners with Claims of Cost in the Official Participant Record maintained by the DWC. In the interests of due process, justice and efficiency, it is essential for Petitioners with Claims of Cost also to receive timely notices of proceedings where their claims are being considered.

Second, although new Regulation 10563.1(b) provides, in part, that " an interpreter filing a petition for costs shall be subject to the provisions of this section and sections 10770(h) and 10770.1," it is unclear which portions of those latter regulations are applicable or if further clarification is needed. For example, should Regulation 10770(h) be amended, to read:

> (h) When a lien claimant <u>or a petitioner with claims for cost</u> notifies the Workers' Compensation Appeals Board in writing that its lien <u>or claim</u> has been resolved or withdrawn, the lien claim <u>or claim for cost</u> shall be deemed dismissed with prejudice by operation of law. Once a lien claim <u>or claim for cost</u> has been so dismissed, the lien claimant <u>or petitioner</u> shall be excused from appearing at any noticed hearing.

Another example would be that Regulation 10770.1 requires lien claimants to demonstrate that they have paid their lien filing fee. Since Petitioners with Claims of Cost do not have to pay a lien filing fee, they should be excluded from those relevant portions of Regulation 10770.1.

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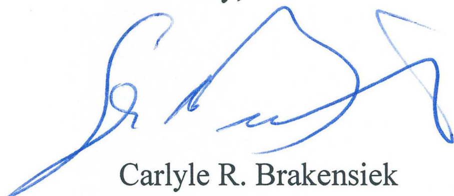
Third, with the inclusion of Petitioners with Claims of Cost in Section 10563.1, will this change now require them to wait until the resolution of the case-in-chief to obtain reimbursement? In our opinion, Regulation 10451.3(g) prevails, but CWCIA urges the WCAB to clarify that a "Petition for Costs" filed by an interpreter may be adjudicated prior to the settlement of the case-in-chief. If interpreters were forced to wait until the case-in-chief settled, it would be devastating and would cause the pool of qualified interpreters to shrink further.

On behalf of CWCIA, thank you for your consideration of our comments on your proposed regulations.

Sincerely,



Carlyle R. Brakensiek
Legislative Advocate
California Workers' Compensation Interpreters Association

CRB:moi

cc: Gilbert Calhoun, President, CWCIA
CWCIA Issues, Plans and Objectives Committee