

Chapter 4.5. Division of Workers' Compensation

SUBCHAPTER 1.9. RULES OF THE COURT ADMINISTRATOR

§ 10213. [Repealed]

§ 10227. [Renumbered]

§ 10230. [Renumbered]

§ 10233. [Renumbered]

§ 10236. [Renumbered]

§ 10240. [Renumbered]

§ 10241. [Repealed]

§ 10243. [Renumbered]

§ 10244. [Renumbered]

§ 10246. [Repealed]

§ 10250. [Renumbered]

§ 10251. [Renumbered]

§ 10252. [Renumbered]

§ 10253. [Repealed]

§ 10254. [Renumbered]

§ 10256. [Repealed]

§ 10260. [Renumbered]

§ 10272. [Renumbered]

§ 10275. [Renumbered]

§ 10280. [Renumbered]

§ 10281. [Renumbered]

§ 10294. [Repealed]

§ 10295. [Renumbered]

§ 10296. [Renumbered]

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

**Article 4.
Filing of Documents**

§ 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: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5501.5, 5501.6, Labor Code.

§ 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.

(d) 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: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126 and 5500.3, Labor Code; 10397, title 8, California Code of Regulations.

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

Reference: Sections 126, 5316, 5500, 5501, and 5813 Labor Code.

§10397. Restrictions on the Rejection for Filing of Documents Subject to a Statute of Limitations or a Jurisdictional Time Limitation.

(a) An application for adjudication of 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 shall preclude the discretionary or conditional acceptance for 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 shall be deemed to excuse non-compliance with any 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 sanctions under Labor Code section 5813 and Rule 10561.

Authority: Article XIV, Section 4, California Constitution; Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 126, 5316, 5500, 5501, and 5813, Labor Code.

Article 5. Pleadings and Forms

§10414. 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 declaration of readiness to proceed in the form prescribed by the Appeals Board. The declaration of readiness shall be served on all parties and lien claimants.

(b) 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) 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 declaration of

readiness to proceed, and shall state with specificity the same on the declaration of readiness to proceed. Unless a status or priority conference is requested, the declarant shall also state under penalty of perjury that the moving party has completed discovery and is ready to proceed on the issues specified in the declaration of readiness.

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

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

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

§ 10416. Objection to Declaration of Readiness to Proceed.

(a) Any objection to a declaration of readiness to proceed shall be filed and served within ten calendar days after service of the declaration. The objection shall set forth, under penalty of perjury, 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 by any party, lien claimant, attorney or representative may give rise to proceedings under Labor Code section 134 for contempt or Labor Code section 5813 for sanctions.

(c) 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 declaration of readiness to proceed and has not filed an objection under this section, 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 5500.3, 5502 and 5813, Labor Code

§ 10417. 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) The following documents may be submitted on a walk-through basis:

(1) Compromise and releases;

(2) Stipulations with request for 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.

(d) The following procedures shall be followed for filing walk-through documents:

(1) A walk-through settlement document (i.e., a compromise and release or a stipulations with request for 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 compromise and release or a stipulations with request for 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, 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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) A workers' compensation judge who is presented with a walk-through petition for attorney's fees or petition to compel attendance shall issue an order in compliance with section 10349.

Authority: Sections 133 and 5307, Labor Code.

Reference: Sections 4053, 4054, 5001, 5002, 5702 and 5710, Labor Code.

§ 10470. Emergency Petition for Stay.

(a) A party may present to the presiding workers' compensation judge of the district office having venue a petition to stay an action by another party pending a hearing.

(b) 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.

(c) A party who walks through a petition to stay an action shall provide notice to the opposing party or parties no later than 10:00 a.m. of the immediately preceding court day. This notice shall: (1) state with specificity the nature of the relief to be requested by the petition to stay; and (2) state 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. The notice shall be given by either fax or e-mail. 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 and timely advise the opposing party of the information set forth in subdivisions (c)(1) and (c)(2), 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.

(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 designee shall, in his or her 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.

Article 8. Hearings

§ 10548. 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 10346 shall be used to avoid continuances.

Authority: Sections 133 and 5307, Labor Code.

Reference: Article XIV, Section 4, California Constitution; and Sections 5502 and 5502.5, Labor Code.

§ 10549. 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 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.

§10552. Expedited Hearing 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 application for adjudication of claim and a declaration of readiness to proceed pursuant to section 10414 establishing a bona fide, good faith dispute 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.

(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 redesignate the expedited hearing as a mandatory settlement conference, receive a pretrial conference 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 redesignation of an expedited hearing includes, but is 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.

§10555. Priority Conference Calendar.

(a) A priority conference shall be set upon the filing of a declaration of readiness 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 was 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) 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.

§ 10561. Sanctions.

(a) On its own motion or upon the filing of a petition pursuant to Rule 10450, 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 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 nonfrivolous 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 or lien claimant’s ability to raise and pursue legal arguments that reasonably can be regarded as not settled.

(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 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 Commissioners, judges, or staff.

(e) 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 4903.6(c) and 5813 Labor Code.

§ 10561.5. [Repealed]

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

Reference: Sections 5502 and 5700, Labor Code.

§ 10592. 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 judges of the district offices to which the cases are assigned. If the presiding 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 his or her designee upon referral by one of the presiding judges.

(c) Any request or petition to consolidate cases involving multiple injured workers that are assigned to workers' compensation 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 his or her designee.

(d) In resolving any request or petition to consolidate cases under subdivision (b) or (c), the Chief Judge or his or her designee shall set the request or petition for a conference regarding the place of hearing. At or after the conference, the Chief Judge or 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 10589. In reaching any determination, the Chief Judge or 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 his or her designee.

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

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

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

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

(a) No judicial or quasi-judicial officer of the Workers' Compensation Appeals Board or 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 made or (2) his or her opinion regarding any statements, conduct, or events occurring in proceedings before him or her, except as follows:

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

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 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;
 - (2) by a Deputy 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) 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 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, 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 Commissioner;
 - (2) any Deputy 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 designee;
 - (7) any workers' compensation consultant of the Retraining and Return to Work Unit;
 - (8) any arbitrator or mediator; and

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

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

(h) This section 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, 5700, 5701 and 5708 Labor Code; and Section 703.5, Evidence Code.

Article 11. Transcript of Testimony

§ 10740. Transcripts.

Unless otherwise ordered by a commissioner, a deputy commissioner, or a presiding workers’ compensation judge, testimony taken at hearings in compensation proceedings will not be transcribed except upon the request of a party accompanied by the fee prescribed in the Rules of the Administrative Director.

No person shall make a photographic copy of a transcript from the Board file except upon payment prescribed by law for a copy of the transcript.

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

Reference: Sections 5300, 5301, 5309, 5700, 5701 and 5708, Labor Code; and Section 703.5, Evidence Code.

Article 12. Record of Proceedings

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

Reference: Section 126, Labor Code.

§ 10754. Sealing Documents.

(a) The presiding workers' compensation judge or the 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. 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 for an order sealing the requested records. The petition must be accompanied by a memorandum of points and authorities and a declaration containing facts sufficient to justify the sealing.

(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 or with the Appeals Board 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.

(3) If necessary to prevent disclosure, the petition, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete version conditionally under seal.

(4) If the presiding judge or the Appeals Board denies the petition to seal, the clerk must return the lodged record to the submitting party and must not place it in the adjudication file.

(5) A document filed with the district office or the Appeals Board shall not disclose material contained in a previously filed document that is sealed, conditionally under seal, or subject to a pending petition to seal.

(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.

(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 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 contain the material that needs to be placed 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 representative, subject to any reasonable conditions and limitations as the presiding judge or the 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.

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

Reference: Section 5708, Labor Code; Rule 2.551, California Rules of Court

§ 10755. Destruction of Records.

Except as otherwise provided by these rules, or as ordered by a workers' compensation judge or the 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 10208.7.

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

Reference: Section 135, Labor Code.

§10760. Recording of Trial Level Proceedings.

(a) For the purposes of this section, "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 DWC facilities if the broadcasts are controlled by the DWC and DWC personnel.

(c) Recording shall be permitted only on written order of the workers' compensation judge assigned to the case as provided in this subdivision. The workers' compensation judge in his or her discretion may permit, refuse, limit, or terminate recording.

(1) Any person who wishes to record a trial level proceeding shall make a written request to the presiding workers' compensation judge for permission to record the proceeding at least five 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 are not transcribed by a hearing reporter;

(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 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.

(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.

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

Reference: Rule 1.150, California Rules of Court.

Article 13.

Liens

§ 10770. Filing and Service of Lien Claims.

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

(1) A lien claim may be filed or served only if permitted by Labor Code section 4900 et seq. An otherwise permissible lien claim shall not be filed or served if doing so would violate the premature filing restrictions of Labor Code section 4903.6(a).

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

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

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

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

(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) Except as provided in subdivisions (g) or (h) of section 10393 or as ordered by the Workers' Compensation Appeals Board, no statement or itemized voucher shall be filed in support of any lien claim (original or amended). If an original lien claim is filed with supporting documentation, the original lien claim shall be filed but not the supporting documentation. Any supporting documentation for any lien claim (original or amended) that was previously filed or lodged for filing may be destroyed without notice.

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

(A) a proof of service;

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

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

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

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

(5) Unless the lien claimant is concurrently filing an initial (case opening) application in accordance with section 10770.5, a lien claim shall bear the adjudication case number(s) previously assigned by the Workers' Compensation Appeals Board for the injury or injuries.

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

If the lien claimant asserts it is exempt from payment of the filing fee because it is not filing a section 4903(b) or claim of costs lien or because it is an entity specified in Labor Code section 4903.05(c)(7), it shall indicate this in the designated field of the lien form.

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

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

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

(8) Any lien claim or supporting documentation submitted in violation of subdivisions (c)(1) through (c)(7) 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.

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

(10) 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)(4), 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(c)(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)(4)(D), (c)(8), (c)(9), and (d)(2) shall not apply to any notice of claim or lien claim of: (1) the Employment Development Department; (2) the California Victims of Crime Program; (3) any lien claimant listed as being excepted under parts (A) through (C) of section 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: Sections 133, 5307, 5309 and 5708, Labor Code.

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

§ 10770.1. Lien Conferences and Lien Trials.

(a)(1) A lien conference shall be set: (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: 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.

Article 17.
Reconsideration, Removal, and Disqualification

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

(a) Except as otherwise provided by sections 10840 or 10865, all documents filed in connection with any petition for reconsideration, petition for removal, petition for disqualification or any other matter pending before the Appeals Board shall comply with the requirements of sections 10205.10, 10205.12, 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: Sections 133, 5307, 5309 and 5708, Labor Code.

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

Article 20.
Review of Administrative Orders

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

(a) This section shall apply only to petitions appealing an independent medical review (IMR) determination of the Administrative Director (AD) regarding treatment for:

(1) an injury occurring on or after January 1, 2013; and

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

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

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

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

(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

(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 that determination.

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

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

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

(3) The petition shall 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) 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.

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

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

(k) 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) If the IMR determination is reversed by the workers' compensation judge or the Appeals Board, the dispute shall be remanded to the AD in accordance with Labor Code section 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 10250, 10409, 10507, 10508, 10842, 10845, 10846, 10852, 10856, 10859 and 10860, California Code of Regulations, title 8.

§ 10958. [Repealed]

Article 22. Arbitration

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

Reference: Sections 5270-5278, Labor Code.