

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION APPEALS BOARD**

**STATEMENT OF REASONS FOR REPEAL, AMENDMENT
AND ADOPTION OF REGULATIONS**

Subject Matter of Repealed, Amended and Adopted Regulations:

**Title 8, California Code of Regulations, Sections 10300 through 10999.
Rules of Practice and Procedure.**

NOTICE IS HEREBY GIVEN that the Workers' Compensation Appeals Board, pursuant to the authority vested in it by Labor Code Sections 133 and 5307, has repealed, amended and adopted regulations by amending Title 8, California Code of Regulations, commencing with Section 10300. The effective date of the repeal, amendment and adoption of the regulations is January 1, 2003.

The regulations concern the Workers' Compensation Appeals Board's Rules of Practice and Procedure.

BACKGROUND TO REGULATORY PROCEEDING:

The Commission on Safety, Health and Workers' Compensation commissioned the RAND Corporation to conduct a study of the judicial system of the Workers' Compensation Appeals Board, hereafter "WCAB." The RAND Corporation's report recommended a number of changes, some of which required changes in the WCAB's Rules of Practice and Procedure. In addition, many of the WCAB's regulations were adopted twenty or more years ago and have not been significantly changed despite two major amendments to the workers' compensation laws and significant changes in technology. Moreover, the Legislature recently enacted, and the Governor signed, Assembly Bill 749, which made additional changes to the workers' compensation laws. The WCAB has amended, adopted, and repealed various sections of its Rules of Practice and Procedure in order to implement recommendations of the RAND report, make its procedures more efficient, adapt to changes in technology, and make the rules consistent with changes in the workers' compensation laws.

Pursuant to Government Code § 11351, the WCAB is not subject to Article 5 of the Administrative Procedures Act (commencing at Government Code § 11346), Article 6 (commencing at § 11349), Article 7 (commencing at § 11347.9), or Article 8 (commencing at § 11350), with the exception of § 11346.4(a)(5). The rulemaking proceeding to amend the WCAB's Rules of Practice and Procedure was conducted under the WCAB's rulemaking power under Labor Code § 5307 and was subject to the procedural requirements of § 5307.4. This Statement of Reasons for Repeal, Amendment and Adoption of Regulations was prepared to comply with the procedural requirements of Labor Code § 5307.4.

The repealed, amended and adopted regulations were the subject of a public comment period from June 28, 2002 until August 21, 2002. A public hearing was conducted in San Francisco on August 21, 2002.

1. Section Amended: 10301.

Problems Addressed

Labor Code § 5502(b) requires that a priority hearing calendar be established for issues requiring an expedited hearing and decision. That section requires that a hearing be held and a decision issued within thirty days of the filing of the Declaration of Readiness to Proceed. In order for a party to have a case set for expedited hearing, Title 8, California Code of Regulations, § 10136 (Rules of the Administrative Director of the Division of Workers' Compensation) requires the filing of a Request for Expedited Hearing, rather than a declaration of readiness as specified in § 5502(b). The Administrative Director is now proposing to amend § 10136 to require the filing of a Declaration of Readiness to Proceed to Expedited Hearing. A definition of that term is needed in order to conform to Labor Code § 5502(b) and § 10136.

Prior to this rulemaking, most of the definitions of the terms used in these rules were in § 10301, but the definition of the term "hearing" was in the first sentence of § 10541. In addition, that definition lacked specificity.

In some cases, lien claims remain unresolved after an injured worker has resolved his or her case, or has chosen not to proceed with the case. At that point, the injured worker is no longer acting as a party to the case but the rights of lien claimants were not clear under the regulations as they existed prior to this rulemaking.

Assembly Bill 749, which was recently enacted by the Legislature and signed by the Governor, amends Labor Code § 5502. Effective January 1, 2003, § 5502(c) will require the court administrator to establish a priority conference calendar for cases in which the injured worker is represented by an attorney and the issues in dispute are employment or injury arising out of and in the course of employment. Prior to this rulemaking, there was no regulation defining the term "priority conference" so there was no commonly understood way to refer to such conferences in the regulations.

The Rules of Practice and Procedure allow parties to request a conference at which they are provided with a permanent disability rating by a disability evaluator employed by the Division of Workers' Compensation's Disability Evaluation Unit. Prior to this rulemaking, in some cases, parties requested such a conference when there were other unrelated issues that prevented the parties from reaching an agreement to resolve the case. The WCAB determined that this was not an efficient use of the resources of the Disability Evaluation Unit. In addition, Labor Code § 5502, effective January 1, 1990, provides that a mandatory settlement conference shall be held after the filing of a Declaration of Readiness to Proceed but the regulations included only a definition of a rating pre-trial conference.

The Rules of Practice and Procedure define the term "record of proceedings" to include such things as the pleadings, minutes of hearings and summary of evidence, transcripts, evidence received in the course of a proceeding, notices, petitions, briefs, findings, orders, decisions and awards. Labor Code § 5275 provides that certain disputes shall be submitted for arbitration and that the parties to a case may agree to submit other disputes to an arbitrator. A party aggrieved by a decision of an arbitrator may file a petition for reconsideration and have that decision review by the WCAB but, prior to this rulemaking, the arbitrator's file was not included in the definition of the record of proceedings.

Prior to this rulemaking, the Rules of Practice and Procedure provided for a standby calendar in which cases were set for conference and, if the parties were unable to settle, the case was sent to a judge for an immediate trial. This procedure was used only in one district office of twenty-six. With the consent of the parties, this procedure can continue to be used in the absence of a regulation so the regulations that establish the procedure are unnecessary.

Assembly Bill 749, which was recently enacted by the Legislature and signed by the Governor, amends Labor Code § 5502. Effective January 1, 2003, § 5502(c) will require the court administrator to establish a priority conference calendar for cases in which the injured worker is represented by an attorney and the issues in dispute are employment or injury arising out of and in the course of employment. That section also provides that, if good cause is shown why discovery is

not complete, status conferences shall be held at regular intervals. Moreover, similar conferences may be necessary in other cases. Prior to this rulemaking, there was no regulation defining the term "status conference" so there was no commonly understood way to refer to such conferences in the regulations.

Specific Purpose and Basis of Amendments to Section 10301

The WCAB has amended § 10301 to provide a definition to the regulated public of the term "Declaration of Readiness to Proceed to Expedited Hearing." This term was defined in order to conform to Labor Code 5502(b), and Title 8, California Code of Regulations, § 10136 (Rules of the Administrative Director), which was being amended concurrently.

The WCAB has amended § 10541 by deleting the definition of the term "hearing" in that section and adding a new, more specific definition of that term to § 10301. The newly adopted definition lists all of the types of hearings, specifically trials, mandatory settlement conferences, rating mandatory settlement conferences, status conferences, and priority conferences.

The WCAB has amended the definition of the term "party" in § 10301 to include lien claimants when the injured worker's case has settled or the worker chooses not to pursue the case. This amendment was necessary to clarify the rights of lien claimants in those situations.

The WCAB has amended § 10301 to provide a definition to the regulated public of the term "priority conference." This term was defined because it is used in Labor Code § 5502(c), effective January 1, 2003, and the regulations adopted as part of this rulemaking to implement that section.

The WCAB has amended § 10301 to provide a definition to the regulated public of the term "rating mandatory settlement conference." Consistent with the enactment of Labor Code 5502, effective January 1, 1990, this definition was adopted to replace the term "rating pre-trial." A requirement was added that the unresolved issues at a rating mandatory settlement conference are limited to permanent disability and the need for future medical treatment. This change was necessary to efficiently use the resources of the Disability Evaluation Unit. Other nonsubstantive changes to this subsection included deletion of the word "hearing" as unnecessary and a correction of an error of omission.

The WCAB has amended the definition of the term "record of proceedings" in § 10301 to include an arbitrator's file, if one exists. This change was necessary because Labor Code § 5275 requires that certain issues be resolved by arbitrators. There was also a nonsubstantive change in capitalization for consistency in this subsection.

The WCAB has amended § 10301 to delete the definition of "standby calendar." The definition of this term is unnecessary because only one district office of twenty-six is known to use standby calendars and it can continue to do so where the parties consent without the need for regulations establishing the procedure.

The WCAB has amended § 10301 to provide a definition to the regulated public of the term "status conference." This term was added to include conferences under Labor Code § 5502(c), effective January 1, 2003, as well as conferences not otherwise defined.

Nonsubstantive Changes

Various subsections of § 10301 were renumbered so that the definitions remain in alphabetical order.

The definition of "Administrative Director" was added for clarity and consistency.

There was a spelling change in the definition of "Appeals Board" for consistency with Appeals Board decisions.

The term "application" was given the same definition as the term "Application for Adjudication," consistent with the use of those terms in the rules. In addition, there was a change to conform to modern standards of English usage.

The definition of "conference hearing" was deleted as unnecessary because all of the types of conferences are separately defined.

The term "Declaration of Readiness" was given the same definition as the term "Declaration of Readiness to Proceed," consistent with the use of those terms in the rules.

The definition of the term to "file" was added to clarify the meaning of this term in the rules.

The changes in the definition of the term "lien claimant" include a change in capitalization for consistency and correction of a punctuation error.

The definition of "mandatory settlement conference" was added to clarify the meaning of this term in the rules.

The definition of "proceeding" was deleted as unnecessary based on the adoption of the definition of the term "hearing" as part of this rulemaking.

The definition of the term "regular hearing" was amended to be equivalent to the term "trial" and the term "trial" was amended to take on the previous definition of the term "regular hearing." In addition, there was a change in capitalization for consistency.

The definition of the term to "serve" was added to clarify the meaning of this term in the rules.

The definition of "trial" was added, taking on the previous definition of the term "regular hearing."

2. Section Amended: 10308.

Problem Addressed

In each case file, the WCAB has an official address record. The persons and organizations listed on the official address record receive notices of hearings and are served with copies of orders and awards issued by the WCAB. Prior to this rulemaking, § 10308 required that parties and their attorneys or representatives be listed on the official address record but did not require that lien claimants be listed. In order to receive due process, lien claimants must receive notices of hearing and copies of orders and awards issued by the WCAB.

Specific Purpose and Basis of Amendments to Section 10308

The WCAB has amended § 10308 to add the requirement that names and addresses of lien claimants be listed on the official address record so that lien claimants will receive notices of hearing and copies of orders and awards issued by the WCAB.

Nonsubstantive Changes

There was an additional nonsubstantive change to conform to modern standards of English usage.

3. Section Amended: 10322.

Problem Addressed

Prior to this rulemaking, § 10322 provided that certified copies of records desired by litigants were to be delivered upon payment of fees as provided in Title 8, California Code of Regulations, § 9990 (Rules of the Administrative Director.) Section 9990 provides the amount of the fees but other regulations of the Administrative Director include additional requirements concerning the payment of the fees. Those sections include § 9992, which generally requires that the request for copies must be accompanied by the fees in the form of cash, check or money order payable to the Division of Workers' Compensation, and § 9994, which provides for a deposit fee based upon an estimate of the number of transcript pages. However, § 10322 did not specify that any section other than § 9990 was applicable.

Specific Purpose and Basis of Amendments to Section 10322

The WCAB has deleted from § 10322 the reference to § 9990 of Title 8, California Code of Regulations (Rules of the Administrative Director.) This change was necessary so that all of the regulations of the Administrative Director concerning the payment of fees are applicable to any request for certified copies.

4. Section Amended: 10324

Problem Addressed

Prior to this rulemaking, § 10324 prohibited a party from filing a document with the WCAB unless all other parties were served with copies of the document, and it prohibited one party from discussing the merits of a case with a workers' compensation judge, hereafter "judge," in the absence of the other parties. However, nothing in the regulations precluded a lien claimant from filing a document without serving the other parties, or discussing the merits of a case with a judge in the absence of the other parties. In addition, § 10324 precluded a party from discussing a case with a judge in a situation where another regulation would allow the discussion, such as where a party is "walking through" a settlement document pursuant to § 10890, adopted as part of this rulemaking.

Specific Purpose and Basis of Amendments to Section 10324

The WCAB has amended § 10324 to make the rules concerning service of filed documents and ex parte discussions of cases, which are now applicable to the parties, applicable to lien claimants. This amendment was necessary in order to insure that documents filed by lien claimants are served on the parties, and that lien claimants do not engage in discussions of the merits of cases with judges in the absence of the parties. The WCAB has also amended § 10324 to include an exception for situations covered by other sections of the regulations in order to avoid a conflict in the regulations.

5. Section Amended: 10340.

Problem Addressed

Labor Code § 134 provides that the seven-member Appeals Board may hold contempt proceedings and the Appeals Board has delegated that power to judges. Labor Code § 5813 provides that a judge may order a party or an attorney to pay sanctions under certain circumstances. Prior to this rulemaking, § 10340 listed actions that could be taken only by the Appeals Board, and not by a judge. Included on that list were "[o]rders in disciplinary proceedings against attorneys or other agents." This could have been interpreted as precluding a judge from finding an attorney in contempt or awarding sanctions. The WCAB has concluded that it is necessary for judges to have the power to hold attorneys in contempt in order maintain control over the proceedings. The WCAB also concluded that parties should be able to have the issue of sanctions determined initially by a

judge and that they should not be required to initiate proceedings before the Appeals Board itself in order to obtain a decision on that issue.

Specific Purpose and Basis of Amendments to Section 10340

The WCAB has amended § 10340 to specifically exclude sanctions and contempt from the list of actions that may be taken only by the Appeals Board. This change was necessary in order to insure that § 10340 is not misinterpreted as precluding a judge from finding an attorney in contempt or awarding sanctions under Labor Code § 5813.

Nonsubstantive Changes

There was an additional nonsubstantive change to § 10340 to conform to modern standards of English usage.

6. Section Adopted: 10341.

Problem Addressed

At times, the Appeals Board issues en banc decisions to achieve consistency in the resolution of issues that are expected to arise repeatedly. The Policy and Procedure Manual provides that en banc decisions are legal precedent that is binding on panels of the Appeals Board and on judges but prior to this rulemaking there was no regulation providing that en banc decisions are legal precedent.

Specific Purpose and Basis of Section 10341

The WCAB has adopted § 10341, which provides that en banc decisions are legal precedent that is binding on panels of the Appeals Board and on judges. This section is needed in order that cases arising throughout the state will be resolved consistently.

7. Section Amended: 10346.

Problems Addressed

Prior to this rulemaking, § 10346 provided that the presiding workers' compensation judge, hereafter "presiding judge," was responsible for the assignment of cases for trial in each office. That section provided for reassignment of cases where a judge died, was absent for an extended period of time, or was disqualified. The January 2002 draft of the RAND report recommended that "[b]etter procedures should be put in place to encourage and facilitate the shifting of overbooked cases to available judges on trial day." But there was no provision in § 10346 allowing reassignment where the judge assigned to the case was busy trying another case or unable to handle the case for any other reason.

Prior to this rulemaking, § 10346 specified that the presiding judge was responsible for the assignment of cases for trial. However, it has long been the policy and practice of the WCAB that the presiding judge is responsible for all case assignments, whether for trial, conference, or other actions.

It has long been the policy of the WCAB that settlements (Compromise and Releases, and Stipulations with Request for Award) be promptly acted upon by a judge but there was never a procedure to be followed by presiding judges to ensure that settlements were acted upon in a timely manner.

Specific Purpose and Basis of Amendments to Section 10346

The WCAB has amended § 10346 to add unavailability of the judge assigned for trial as one of the reasons that presiding judge may reassign a case. This change was needed in order to allow a case to be reassigned on the day of trial where the assigned judge is busy trying another case, is ill, or for some other reason is not able to conduct a trial in the case that day.

The WCAB has amended § 10346 to delete the wording that limits the presiding judge's responsibility for assigning cases to those cases that are being assigned for trial. Thus, the regulation will provide that the presiding judge is responsible for all case assignments in the office. This change was necessary to conform to the WCAB's policy and practice.

The WCAB has amended § 10346 to renumber the current text as subsection (a) and add a new subsection (b) that provides that any settlement that has not been approved, disapproved, or noticed for trial within 45 days of filing shall be transferred to the presiding judge for review. This change was necessary so that the presiding judge can determine whether the judge to whom the case was assigned has acted in accordance with the policy of the WCAB.

Nonsubstantive Changes

There were additional nonsubstantive changes to conform to modern standards of English usage.

8. Section Adopted: 10347.

Problems Addressed

In some district offices of the WCAB, cases have been assigned to the same judge for both the mandatory settlement conference and the trial, while in other district offices cases have been assigned for trial to a judge different than the judge who conducted the mandatory settlement conference. The RAND study concluded that assigning cases to the same judge for both the mandatory settlement conference and the trial created an opportunity for judges to manipulate their calendars. The RAND study recommended that different judges be assigned to conduct the mandatory settlement conference and the trial in larger district offices due to the problems inherent in managing large offices. In addition, as part of this rulemaking, the WCAB adopted § 10417, which allows a party or attorney to personally file a Declaration of Readiness and immediately be notified of the date of the mandatory settlement conference by the calendar clerk. If this were allowed at a district office where the same judge conducted both the mandatory settlement conference and the trial, a party or attorney would be able to select the trial judge by advising the calendar clerk that he or she was only available on the days that the judge held mandatory settlement conferences.

Specific Purpose and Basis of Section 10347

The WCAB has adopted § 10347, which requires that, where practicable, cases be assigned to different judges for the mandatory settlement conference and the trial. This change will prevent judges from manipulating their calendars and preclude parties or attorneys from selecting the trial judge by using the procedure under § 10417 in which they are notified of the date of the mandatory settlement conference upon personally filing a Declaration of Readiness.

9. Section Amended: 10348.

Problem Addressed

Prior to this rulemaking, § 10348 provided that, where a case was set for trial, the judge to whom the case was assigned had full power and authority to hear and determine all issues of fact and law, and to issue any interim, interlocutory and final orders, findings, decisions and awards that

may be necessary. There was no provision establishing the power or authority of a judge to whom a case was assigned for conference or other actions.

Specific Purpose and Basis of Amendments to Section 10348

The WCAB has amended § 10348 to delete the language that limits the application of the section to cases assigned for trial, making it applicable to any case assigned to a judge. This change was necessary to clarify the extent of the judge's authority when cases are assigned for conference or other actions, and to conform to current practice.

Nonsubstantive Changes

There were additional nonsubstantive changes to conform to modern standards of English usage.

10. Section Adopted: 10349.

Problem Addressed

The WCAB's Rules of Practice and Procedure provide that a notice of intention shall issue or may be issued under certain circumstances. A notice of intention is used to insure that the parties have an opportunity to be heard if they object to a proposed action. The use of a notice of intention requires that the notice be drafted, signed, and served on the parties, that the judge retain the file for a period of time, that the judge review the file subsequently, and that an order be drafted, signed, and served on the parties. In many instances where a notice of intention is not required by the regulations, judges have simplified the process: instead of a notice of intention, they issue an order with a clause that provides that the order will be rendered null and void if an objection showing good cause is filed within a prescribed period. This simplified process allows them to avoid retaining the file, reviewing the file again, and drafting, signing, and serving a second document on the parties. However, prior to this rulemaking, this simplified process could not be used where the regulations required that a notice of intention be issued.

Specific Purpose and Basis of Section 10349

The WCAB has adopted § 10349, which provides that an order with a clause rendering it null and void if an objection showing good cause is filed within ten days is deemed to be equivalent to a 10-day notice of intention. This change was needed in order to allow judges, where a notice of intention is now required by the regulations, to use a simplified process that avoids retaining the file, reviewing the file again, and drafting, signing, and serving a second document.

11. Section Amended: 10351.

Problems Addressed

Prior to this rulemaking, § 10351 allowed a pro tempore judge to conduct conferences, including conference pre-trials, rating pre-trials, and standby calendars. The term "conference pre-trials" was outdated and had never been defined. Under § 10301, amended as part of this rulemaking, a case that would have been set for a conference pre-trial in the past will be set for a status conference. The WCAB has also amended the definition of the term "rating pre-trial" in § 10301 to become "rating mandatory settlement conference," consistent with amendments to the Labor Code effective January 1, 1990. In addition, the WCAB has deleted the definition of the term "standby calendar" in § 10301 as unnecessary because only one district office of twenty-six is known to use standby calendars and it can continue to do so where the parties consent without the need for regulations establishing the procedure.

Specific Purpose and Basis of Amendments to Section 10351

The WCAB has amended § 10351 to substitute the terms "mandatory settlement conference," "rating mandatory settlement conference," and "status conference" for the terms "conference pre-trial," "rating pre-trial," and "standby calendar." This change was necessary because the new terms are currently used in the Labor Code and regulations adopted as part of this rulemaking, and the other terms will no longer be used or defined in the regulations.

Nonsubstantive Changes

There were additional nonsubstantive changes for clarity and to conform to modern standards of English usage.

12. Section Amended: 10353.

Problems Addressed

Prior to this rulemaking, there was no regulation specifying the actions that a judge may take at a mandatory settlement conference where the judge determines that a case is not ready to proceed to trial. And in such a case, there was no regulation requiring that the reasons for the action taken be noted in the minutes so there may be no record of the reasons. In addition, at times, parties did not receive notice of what occurred at a mandatory settlement conference.

Specific Purpose and Basis of Amendments to Section 10353

The WCAB has amended § 10353 to specify that, upon a showing of good cause, a judge may continue a case to another mandatory settlement conference on a date certain, continue it to a status conference on a date certain, or take the case off calendar. The amendments also require the judge to note the reason for his or her action in the minutes and require that the minutes be served on all parties and lien claimants, and their representatives. These amendments are necessary in order to specify the actions that a judge may take at a mandatory settlement conference, to insure that the reasons for the action are part of the record, and to insure that the parties receive notice of what occurred at the mandatory settlement conference.

Nonsubstantive Changes

Other nonsubstantive changes included deleting references to settlement conference referees because the Division no longer employs referees, renumbering the section to divide it into subsections (a) through (c), changes in references to subsections of Labor Code § 5502, which has been renumbered effective January 1, 2003, and correction of a duplicated word error.

13. Section Amended: 10364.

Problem Addressed

The rights of lien claimants have always been considered to be secondary to those of the injured worker. However, at times, an injured worker may resolve his or her case, or choose not to pursue a case, but a lien remains outstanding and the lien claimant wishes to proceed. Prior to this rulemaking, the regulations did not specify the rights of a lien claimant to proceed with the case in such a situation.

Specific Purpose and Basis of Amendments to Section 10364

The WCAB has amended § 10364 to provide that a lien claimant may become a party where the applicant has resolved his or her case by way of a compromise and release, or where the applicant chooses not to proceed with the case. By becoming a party, the lien claimant may then pursue the

case by following the procedures set forth in the regulations. This change was necessary to clarify the rights and obligations of lien claimants when the applicant is no longer involved in the case.

14. Section Amended: 10390.

Problems Addressed

Prior to this rulemaking, by its terms, § 10390 applied to both petitions for reconsideration and petitions for removal but that section referenced only § 10840, concerning petitions for reconsideration, and did not reference § 10843, concerning petitions for removal.

Prior to this rulemaking, § 10390 provided that a petition that was sent to the wrong district office was not to be deemed filed, was not to be acknowledged, and was not to be returned to the party attempting to file it, but this section did not specify what was to be done with the documents.

Specific Purpose and Basis of Amendments to Section 10390

The WCAB has amended § 10390 to include references to § 10843 of the regulations, which is applicable to petitions for removal. Prior to this rulemaking, § 10390 was applicable to both petitions for reconsideration and petitions for removal but it referenced only § 10840, which is applicable to petitions for reconsideration. This change was necessary to clarify that the provisions of § 10840 are applicable when a petition for reconsideration is filed and the provisions of § 10843 are applicable when a petition for removal is filed.

The WCAB has amended § 10390 by adding language allowing the WCAB to discard improperly filed documents. This change was necessary both to specify what may be done with improperly filed documents as well as to provide notice to the regulated public.

15. Section Adopted: 10391.

Problems Addressed

Settlement documents in workers' compensation cases frequently must be signed by three persons, the injured worker, his or her attorney, and the attorney or representative of the defendant. In some cases, the settlement document is signed by additional defendants or lien claimants. Mailing the settlement document to each person for his or her signature is time consuming and unnecessary due to modern technological advances, particularly fax machines. In addition, some attorneys' offices are far from some of the district offices at which the attorneys appear and it is inconvenient and burdensome for them to travel or send someone to those district offices to file original documents when they could fax a copy to a local attorney service that would file the faxed copy for them. However, even in the absence of regulations allowing the filing of copies of documents, attorneys occasionally attempt to file documents by faxing them to a WCAB fax machine. To allow parties to file documents by sending them to the WCAB's fax machine would be both burdensome to the WCAB's clerical staff and costly to the WCAB.

Specific Purpose and Basis of Section 10391

The WCAB has adopted § 10391, which allows parties to file copies of specified documents, including settlements, rather than the original documents. This is a convenience to the regulated public in that it allows documents to be circulated for signature rapidly by fax instead of by mail. It is also a convenience to the members of the regulated public who need to immediately file a document at a distant district office to be able to fax it to an attorney service for filing rather than traveling to the district office to file or sending someone from their office to file it. § 10391 also specifies that documents may not be filed by faxing them to a WCAB fax machine. This is necessary in order for the WCAB to avoid the costs of paper for incoming faxes as well as the

additional burden on the clerical staff. In addition, if the accuracy or reliability of a filed copy of a document is challenged, this section places the burden of proof on the filing party to show that the copy is an accurate representation of the original document. This provision is necessary to reduce the litigation that could arise due to the WCAB's acceptance of copies of documents.

16. Section Amended: 10392.

Problem Addressed

Where a double-spaced document contains a long quotation, it is customary to single-space the quotation for ease in reading and to save space. However, prior to this rulemaking, § 10392 required that all petitions, pleadings, and briefs be double-spaced, which included any quotations.

Specific Purpose and Basis of Amendments to Section 10392

The WCAB has amended § 10392 to allow quotations in a petition, pleading, or brief to be single-spaced. This change was needed in order to save space in documents, make documents more readable, and conform to the custom of the regulated public.

Nonsubstantive Changes

There was also a nonsubstantive change to conform to modern standards of English usage.

17. Section Amended: 10395.

Problems Addressed

District offices of the WCAB receive a great deal of mail. Some of the documents received by district offices need not be filed. The filing of those documents unnecessarily increases the burden on the clerical staff. Prior to this rulemaking, § 10395 listed certain documents that need not be filed but the WCAB determined that two additional types of documents should be added to that list: proofs of service, where service was ordered pursuant to § 10500, and medical reports where filing was not required by § 10608 or § 10615.

Prior to this rulemaking, § 10395 provided that documents improperly sent to a district office were not to be deemed filed, were not to be acknowledged, and were not to be returned to the party attempting to file them, but this section did not specify what was to be done with the documents.

Specific Purpose and Basis of Amendments to Section 10395

Section 10395 includes a list of documents that shall not be filed or sent to the WCAB. The WCAB has amended § 10395 by adding two items to that list: proofs of service, where service was ordered pursuant to § 10500, and medical reports where filing is not required by § 10608 or § 10615. This amendment is needed because the filing of these documents unnecessarily burdens the WCAB's clerical staff.

The WCAB has amended § 10395 by adding language allowing the WCAB to discard improperly filed documents. This change was necessary both to specify what may be done with improperly filed documents as well as to provide notice to the regulated public.

18. Section Amended: 10396.

Problems Addressed

Prior to this rulemaking, § 10396 required that each party and lien claimant in an active case notify the WCAB and the other parties of his or her current mailing address. A case that was inactive could become active in the future but there was no requirement that parties or lien claimants advise other parties of address changes so, upon activation of the case, there might not be any way to contact a party or lien claimant whose address had changed.

Because it is not economical for many lien claimants to appear at every hearing, as part of this rulemaking process the WCAB amended § 10770 to require that lien claimants provide the name and telephone number of a person who will be available with authority to resolve the lien. However, § 10770, as amended, does not require lien claimants to notify the parties or the WCAB when there is a change in the telephone number or the name of the person with authority.

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Specific Purpose and Basis of Amendments to Section 10396

The WCAB has amended § 10396 to require parties and lien claimants in inactive cases to notify other parties of any change of address. This change was necessary to insure that the parties are able to contact each other and the lien claimants so that cases can be resolved expeditiously.

The WCAB has amended § 10396 to require lien claimants to promptly notify the parties of a change in the identity or telephone number of the person with authority to resolve the lien and to notify the WCAB of the change after a Declaration of Readiness is filed. This change was necessary to insure that the parties are able to contact lien claimants so that lien claims can be resolved expeditiously.

Prior to this rulemaking, § 10396 included language that was intended for cases in which the injury occurred on or after January 1, 1990, and before January 1, 1994. The WCAB has deleted that language because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

Nonsubstantive Changes

The section was renumbered by dividing it into subsections (a) and (b).

19. Section Amended: 10400.

Problem Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Specific Purpose and Basis of Amendments to Section 10400

Prior to this rulemaking, § 10400 specified different procedures for the filing of claims in cases where the injury occurred prior to January 1, 1990, or on or after January 1, 1994, and cases

where the injury occurred on or after January 1, 1990, and before January 1, 1994. The WCAB has deleted the language that established the procedure for filing claims in cases in which the injury occurred during 1990 through 1993 because very few of those cases remain, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and WCAB staff.

Nonsubstantive Changes

There were additional nonsubstantive changes for clarity, to conform to current usage by the regulated public, and to conform to modern standards of English usage.

20. Section Amended: 10402.

Problem Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Specific Purpose and Basis of Amendments to Section 10402

The WCAB has amended § 10402 to delete the second paragraph, which required that a petition for appointment of a guardian ad litem be attached to any pre-application request filed by a minor or incompetent. The pre-application procedure applies only to cases in which the injury occurred during 1990 through 1993. The WCAB has eliminated the different procedure applicable to those cases because there are very few remaining cases in which the injury occurred during that period, and because having a different procedure for those few remaining cases causes unnecessary confusion among the regulated public and employees of the WCAB.

21. Section Amended: 10405.

Problems Addressed

Prior to this rulemaking, § 10405 applied to requests for findings of fact under three Government Code sections and four Labor Code sections. The three Government Code sections, §§ 21025.4, 21026 and 21363, were renumbered as §§ 21164, 21166, and 21537, respectively. In addition, there were two other similar Government Code sections, §§ 21363.3 and 21363.6 (which were renumbered as §§ 21540 and 21538, respectively), that were in effect at the time that § 10405 was promulgated but were apparently inadvertently overlooked. Moreover, another similar Government Code section, § 21540.5, and another similar Labor Code section, § 4800.5(d), were enacted after § 10405 was promulgated.

Specific Purpose and Basis of Amendments to Section 10405

The WCAB has amended § 10405 to delete the Government Code sections that have been renumbered (§§ 21025.4, 21026 and 21363), add references to the current sections (§§ 21164, 21166, and 21537), add references to the Government Code sections that were apparently overlooked when the regulation was originally promulgated (§§ 21540 and 21538), and add references to Government Code § 21540.5 and Labor Code § 4800.5(d), which are similar to the sections referenced in § 10405 but were enacted after the promulgation of that section. The inclusion of the additional section numbers was necessary in order to clarify the procedures

applicable to requests for findings of fact under those sections and to insure that all requests for findings of fact are treated similarly.

Nonsubstantive Changes

There was an additional nonsubstantive change to correct a capitalization error.

22. Section Repealed: 10406.

Problem Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Specific Purpose and Basis of the Repeal of Section 10406

The WCAB has repealed § 10406 because it is applicable only to cases in which the injury occurred during the period 1990 through 1993. The WCAB has eliminated the different procedure applicable to those cases because there are very few remaining cases in which the injury occurred during that period, and because having a different procedure for those few remaining cases causes unnecessary confusion among the regulated public and employees of the WCAB.

23. Section Amended: 10408.

Problems Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Prior to this rulemaking, § 10408 provided that venue selection should be made on the Application for Adjudication or on a separate attached document. However, no place was provided on the Application for Adjudication form for designating venue and the filing party seldom attached a separate document designating venue. Usually, the initial venue of a case was the district office of the WCAB in which the Application for Adjudication was filed but there was no regulation that specified that that office was the initial venue.

Specific Purpose and Basis of Amendments to Section 10408

The WCAB has amended § 10408 to delete the language that applies to cases in which the injury occurred during 1990 through 1993. The WCAB has eliminated the different procedure applicable to those cases because there are very few remaining cases in which the injury occurred during that period, and because having a different procedure for those few remaining cases causes unnecessary confusion among the regulated public and employees of the WCAB.

The WCAB has amended § 10408 by deleting the language that provides for designating venue on the Application for Adjudication or an attached document, and by adding a sentence specifying that the venue of a case is the district office in which the Application for Adjudication was filed pursuant

to Labor Code § 5501.5. This change was needed in order to specify the initial venue of a case in conformance with current practice.

Nonsubstantive Changes

Additional nonsubstantive changes included the deletion of superfluous language and deletion of subsection numbers.

24. Section Adopted: 10410.

Problem Addressed

Labor Code § 5501.5 provides that an Application for Adjudication of claim may be filed in the county where the injured worker resides, the county where the injury occurred, or the county where the injured worker's attorney's office is located. That section provides a procedure for objecting to the filing in the county where the attorney's office is located. However, that procedure involves the information request form, a form that is no longer in use due to the repeal of § 5401.5, effective January 1, 1994. As a result, there was no procedure specified in the Labor Code or the regulations for objecting to the filing of the Application for Adjudication in the county where the injured worker's attorney's office is located.

Specific Purpose and Basis of Section 10410

The WCAB has adopted § 10410, which provides a procedure for objecting to the filing of an Application for Adjudication in the county where the injured worker's attorney's office is located. This procedure is similar to the procedure specified in Labor Code § 5501.5, which is now outdated due to changes in procedures effective January 1, 1994. This regulation is necessary because, in its absence, there is no procedure specified in the Labor Code or the regulations for objecting to the filing of an Application for Adjudication in the county where the injured worker's attorney's office is located.

25. Section Adopted: 10411.

Problem Addressed

Labor Code § 5501.6 provides that a party may file a petition for change of venue but it does not specify where the petition should be filed, the time period for the filing of any objection to the petition, or time period within which action is to be taken on the petition.

Specific Purpose and Basis of Section 10411

The WCAB has adopted § 10411, which specifies that a petition for change of venue shall be filed at the office with venue, to specify that any objection to the petition must be filed within ten days, and to specify that the presiding judge must grant or deny the petition, or serve notice of a status conference on the petition within thirty days. These provisions are needed in order to insure that petitions for change of venue are filed at the proper district office, that a party opposing the petition has an opportunity to object, and that action will be promptly taken on the petitions.

26. Section Adopted: 10412.

Problem Addressed

Prior to this rulemaking, when a petition for change of venue was granted, the WCAB file was sent to the district office with venue but the file was returned to the original office after a decision had

issued. If subsequent proceedings became necessary, the parties would file documents at the office with venue, which then had to obtain the file from the original office. This caused delay and the WCAB incurred the costs of shipping files between offices.

Specific Purpose and Basis of Section 10412

The WCAB has adopted § 10412 to specify that the WCAB's file in a case shall be sent to the district office with venue when an order changing venue issues and to provide that the district office with venue shall retain custody of the file until 1) another order changing venue issues, or 2) the file is ready to be sent to the State Records Center or destroyed. This regulation is needed in order to avoid unnecessary delay and unnecessary costs involved in shipping files.

27. Section Amended: 10414.

Problems Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

*Prior to this rulemaking, § 10414 required that a Declaration of Readiness be filed before a case would be placed on calendar for "pre-trial conferences, regular hearing, or any other hearing." The term "pre-trial conference" is outdated and has never been defined. In addition, Labor Code § 5502 previously required that a case be set for a mandatory settlement conference before being set for "regular hearing" (trial). Moreover, § 10414 did not reference "status conferences" or "priority conferences," whose definitions have been added to § 10301.

Prior to this rulemaking, § 10414 required that the declarant state under penalty of perjury that he or she was presently ready to proceed to trial on the issues listed in the Declaration of Readiness. However, consistent with § 5502(c) effective, January 1, 2003, the WCAB will have two additional types of conferences, priority conferences and status conferences, at which it is contemplated that the parties will not necessarily be ready to proceed to trial.

Prior to this rulemaking, § 10414 required the presiding judge, or another judge, to review each Declaration of Readiness and determine whether the case would be set for hearing. Labor Code § 5502 requires that a mandatory settlement conference be set within thirty days of the filing of a Declaration of Readiness. Section 10544, in conjunction with Code of Civil Procedure § 1013(a), requires the WCAB to give parties fifteen days' notice of a hearing. Under § 10416, in conjunction with Code of Civil Procedure § 1013(a), a party is currently allowed eleven days to object to a Declaration of Readiness. This left, at most, four days, which could include a weekend, in which the clerical staff had to match any objection to the case file, the presiding judge, or his or her designee, had to review the declaration and the objection, and the calendar clerk had to assign a judge and hearing date, and send out the notice of hearing. Considering the volume of cases handled by the WCAB, this was a virtually impossible task.

Prior to this rulemaking, § 10414 provided that a false certification could give rise to proceedings for contempt. There was no mention of the possibility of a lesser penalty, specifically sanctions pursuant to Labor Code § 5813, effective July 16, 1993.

Prior to this rulemaking, § 10414 required that, if the injured worker was represented by an attorney, a Declaration of Readiness filed on his or her behalf was to be signed by the attorney. The WCAB saw no basis for treating other parties differently in this regard.

Prior to this rulemaking, the last sentence of § 10414 provided that nothing in that section prohibited the WCAB from setting a hearing on its own motion. The WCAB adopted § 10415, concerning Declarations of Readiness to Proceed to Expedited Hearing, but the last sentence of § 10414, by its terms, was inapplicable to § 10415.

Specific Purpose and Basis of Amendments to Section 10414

Prior to this rulemaking, § 10414 applied only to cases where the injury occurred prior to January 1, 1990, or on or after January 1, 1994. The WCAB has deleted the language limiting it to those cases. This change was necessary because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and WCAB staff.

The WCAB has deleted the references in § 10414 to "pre-trial conferences" and "regular hearings" and replaced them with "mandatory settlement conferences," "status conferences" and "priority conferences." These changes were necessary because the term "pre-trial conference" was not defined and cases must be set for a mandatory settlement conference before being set for a "regular hearing" (trial) pursuant to Labor Code § 5502. The term "mandatory settlement conference" was previously defined in § 10301 and the WCAB has added definitions of the terms "status conference" and "priority conference" to that section as part of this rulemaking.

The WCAB has amended the requirement that the declarant state under penalty of perjury that he or she is ready to proceed to trial on the issues listed in the Declaration of Readiness to exclude Declarations of Readiness requesting status conferences and priority conferences. Those conferences have been defined as part of this rulemaking, consistent with Labor Code § 5502(c), effective January 1, 2003, and it is anticipated that the parties will not necessarily be ready to proceed to trial when those conferences are requested.

The WCAB has deleted from § 10414 the requirement that the presiding judge to review Declarations of Readiness and determine whether the case will be set for hearing. The time requirements for setting cases and sending notices of hearing make it virtually impossible to review the large number of Declarations of Readiness received in a timely manner. Any objections to a Declaration of Readiness can be considered by the judge at the time of the mandatory settlement conference or other conference.

The WCAB has added language to § 10414 specifying that a false certification may give rise to sanctions under Labor Code § 5813. Section 10414 already provides that a false certification may give rise to contempt. To impose sanctions requires less complex proceedings and is a lesser penalty than contempt, which is quasi-criminal in nature.

The WCAB has amended § 10414 to require that, where a party is represented by an attorney, a Declaration of Readiness filed on behalf of the party be signed by the attorney. That section already requires the attorney sign the Declaration of Readiness if the party is the injured worker. The WCAB finds no basis for treating the parties differently in this regard.

The WCAB has amended the last sentence of § 10414 to state that nothing in the Rules of Practice and Procedure prohibits the WCAB from setting a hearing on its own motion. This change was necessary in order to clarify that § 10415 and other sections do not prohibit the WCAB from setting a hearing on its own motion.

Nonsubstantive Changes

There was an additional nonsubstantive deletion for consistency with the definitions in § 10301.

28. Section Adopted: 10415.

Problem Addressed

Labor Code § 5502(b) requires that a priority calendar be established for issues requiring expedited hearing and decision. Prior to this rulemaking, the regulations did not establish the procedure to be followed by a party seeking an expedited hearing nor did they specify whether the WCAB could set an expedited hearing on its own motion.

Specific Purpose and Basis of Section 10415

The WCAB has adopted § 10415 to provide that an expedited hearing will be set only where a Declaration of Readiness to Proceed to Expedited Hearing has been filed or on its own motion. This regulation is necessary to establish the procedures to be followed by a party seeking an expedited hearing, and to clarify that the WCAB can set an expedited hearing on its own motion.

29. Section Amended: 10416.

Problems Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Prior to this rulemaking, § 10416 allowed six days to object to a Declaration of Readiness filed in a case in which the Application for Adjudication is filed after January 1, 1991, which now includes almost every case. The WCAB concluded that six days did not allow parties sufficient time to respond to a Declaration of Readiness. In addition, extending the time period to file an objection became more important in light of the amendment to § 10416, adopted as part of this rulemaking, to provide that a party who does not object to a Declaration of Readiness shall be deemed to have waived any objections.

Prior to this rulemaking, § 10416 provided that a false certification could give rise to proceedings for contempt. There was no mention of the possibility of a lesser penalty, specifically sanctions pursuant to Labor Code § 5813, effective July 16, 1993.

Prior to this rulemaking, § 10416 required that, if the injured worker is represented by an attorney, an objection to a Declaration of Readiness filed on his or her behalf was to be signed by the attorney. The WCAB found no basis for treating other parties differently in this regard.

Prior to this rulemaking, § 10416 required the presiding judge, or another judge, to review objections to Declarations of Readiness and make an appropriate decision. In addition, § 10414 required the presiding judge, or another judge, to review each Declaration of Readiness and determine whether the case will be set for hearing. But, for the reasons discussed above under § 10414, the WCAB concluded that this is a virtually impossible task and therefore amended § 10414. The WCAB concluded that any objections to a Declaration of Readiness could be considered by the judge at the time of the mandatory settlement conference or other conference. However, the WCAB was concerned that the prior language of § 10416 might be interpreted by some members of the regulated community as requiring a judge to review and act upon the objection prior to the mandatory settlement conference or other conference.

In many cases, a party receiving a Declaration of Readiness will not file an objection but will, for the first time, raise objections at the time of the mandatory settlement conference. This deprives the party filing the Declaration of Readiness of notice of the objection until the time of the mandatory settlement conference. It also prevents the parties from curing any problems prior to

the mandatory settlement conference, thus making it more likely that a continuance of the conference will be necessary.

Specific Purpose and Basis of Amendments to Section 10416

Prior to this rulemaking, § 10416 applied to cases where the injury occurred prior to January 1, 1990, or on or after January 1, 1994. The WCAB deleted the language limiting its to those cases. This change was necessary because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and WCAB staff.

The WCAB has amended § 10416 to provide that an objection to a Declaration of Readiness shall be filed within ten, rather than six, days after the Declaration of Readiness is filed, as was required prior to January 1, 1991, because a limit of six days does not allow parties sufficient time to respond. Moreover, an increase in the period to respond was necessary because the WCAB also amended § 10416 to provide that a party who does not object to a Declaration of Readiness shall be deemed to have waived any objections.

Section 10416 previously provided that a false certification could give rise to contempt. The WCAB added language to § 10416 specifying that a false certification may give rise to sanctions under Labor Code § 5813. To impose sanctions requires less complex proceedings and is a lesser penalty than contempt, which is quasi-criminal in nature.

The WCAB amended § 10416 to require that, where a party is represented by an attorney, a Declaration of Readiness filed on behalf of the party be signed by the attorney. That section already required the attorney sign the Declaration of Readiness if the party is the injured worker. The WCAB found no basis for treating the parties differently in this regard.

The WCAB amended § 10416 to delete language requiring the presiding judge, or another judge, to rule on objections to Declarations of Readiness and make an appropriate disposition. The WCAB concluded that any objections to a Declaration of Readiness can be considered by the judge at the time of the mandatory settlement conference or other conference and, as part of this rulemaking, the WCAB amended § 10414 to delete the requirement that Declarations of Readiness be reviewed prior to the setting of hearing. The WCAB was concerned that the current language of § 10416 may be interpreted by some members of the regulated community as requiring a judge to review and act upon the objection prior to the mandatory settlement conference or other conference.

Prior to this rulemaking, § 10416 provided that a party who failed to object to a Declaration of Readiness may be deemed to have waived any objection to proceeding on the issues listed in the Declaration. The WCAB has amended § 10416 to provide that a party who fails to object to a Declaration of Readiness shall be deemed to have waived any objection, absent extraordinary circumstances. This change was necessary so that the party filing the Declaration of Readiness will receive notice of any objections prior to mandatory settlement conference. This will allow the parties to cure problems prior to the mandatory settlement conference, making it less likely that a continuance of the conference will be necessary.

Nonsubstantive Changes

Additional nonsubstantive revisions include a change in capitalization for consistency and changes for clarity, conciseness, and to conform to modern standards of English usage.

30. Section Adopted: 10417.

Problem Addressed

In some areas of the state, attorneys regularly appear at a number of district offices of the WCAB. When a Declaration of Readiness is filed, a hearing may be scheduled at the same time that another hearing is scheduled at another district office. This requires the attorney to request a continuance of one of the cases, and requires the WCAB to review the request, reschedule the hearing, and send out a new notice of hearing.

Specific Purpose and Basis of Section 10417

The WCAB has adopted § 10417, which will require each district office to establish a procedure that allows a party or attorney to personally file up to five Declarations of Readiness per day and be immediately notified of the hearing date. The party filing the Declaration of Readiness is then responsible for notifying the other parties of the hearing. This procedure is expected to reduce the number of requests for continuance because the party or attorney filing the Declaration of Readiness will have the opportunity to advise the calendar clerk of any calendar conflicts before being assigned a hearing date. Moreover, this procedure may also reduce the WCAB's postage costs because § 10500 has been amended to delete the requirement that the WCAB send notice of the first mandatory settlement conference.

31. Section Renumbered and Amended: 10418.

Problems Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, § similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Prior to this rulemaking, § 10418 required that a party scheduling a medical examination notify all of the other parties, or their attorneys or representatives, of the examination. However, when an employer or insurance carrier schedules a medical examination, the injured worker's attorney needs notification but the injured worker also needs notification so that he or she can attend the examination. And when an injured worker schedules the examination, the attorney for the employer or insurance carrier needs notification but the claims adjuster also needs notification in order to be able to authorize any referrals made by the examining doctor, and to anticipate payment of the doctor's bill, and possibly an interpreter's bill, so that payment can be made promptly.

Specific Purpose and Basis of Amendments to Section 10418

Prior to this rulemaking, the first paragraph of § 10418 applied to cases where the injury occurred prior to January 1, 1990, or on or after January 1, 1994, and the second paragraph applies to cases where the injury occurred during 1990 through 1993. The WCAB deleted the limiting language in the first paragraph and deleted the entire second paragraph because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and WCAB staff.

The WCAB has amended § 10418 to require that a party scheduling a medical examination notify all other parties and their attorneys or representatives, in order to insure that everyone involved in the case is aware of the appointment.

Nonsubstantive Changes

Section 10418 was renumbered as § 10430 in order to allow insertion of a new § 10417. There were additional nonsubstantive changes for clarity and to conform to modern standards of English usage.

32. Section Amended: 10445.

Problem Addressed

Prior to this rulemaking, § 10445 provided that a petition alleging serious and willful misconduct could be dismissed if the claim of misconduct is not stated with sufficient particularity. However, a motion to dismiss a petition on the ground that the facts are not stated with sufficient particularity is in the nature of a demurrer, which is not permitted under § 10490, or a petition for judgment on the pleadings, which is inconsistent with § 10490, as amended in this rulemaking, as well as custom and practice.

Specific Purpose and Basis of Amendments to Section 10445

The WCAB has deleted the language in § 10445 that permits dismissal of a petition for serious and willful misconduct on the ground that the claim of misconduct is not stated with sufficient particularity. This change was necessary because a motion to dismiss a petition on the ground that the facts are not stated with sufficient particularity is in the nature of a demurrer, which is prohibited by § 10490, or a petition for judgment on the pleadings, which is inconsistent with § 10490, as amended in this rulemaking, as well as custom and practice.

Nonsubstantive Changes

There was an additional nonsubstantive change to correct a punctuation error.

33. Section Amended: 10447.

Problem Addressed

Prior to this rulemaking, § 10447 provided that a petition alleging discrimination could be dismissed if the claim of discrimination is not stated with sufficient particularity. However, a motion to dismiss a petition on the ground that the facts are not stated with sufficient particularity is in the nature of a demurrer, which is not permitted under § 10490, or a petition for judgment on the pleadings, which is inconsistent with § 10490, as amended in this rulemaking, as well as custom and practice.

Specific Purpose and Basis of Amendments to Section 10447

The WCAB has deleted the language in § 10447 that permits dismissal of a petition alleging discrimination on the ground that the claim of discrimination is not stated with sufficient particularity. This change was necessary because a motion to dismiss a petition on the ground that the facts are not stated with sufficient particularity is in the nature of a demurrer, which is prohibited by § 10490, or a petition for judgment on the pleadings, which is inconsistent with § 10490, as amended in this rulemaking, as well as custom and practice.

Nonsubstantive Changes

There was an additional nonsubstantive change to the title of the section so that the title more accurately describes the contents of the section.

34. Section Amended: 10450.

Problems Addressed

When petitions are filed in the wrong district office, it causes an unnecessary increase in the staff time required to process the petition, unnecessary postage costs, and it is likely to result in unnecessary delay in acting upon the petition.

At times, parties attach to petitions copies of documents that have previously been filed. This causes the file to require more storage space unnecessarily and can make it more difficult to find other documents in the file.

Specific Purpose and Basis of Amendments to Section 10450

The WCAB has amended § 10450 to require that petitions be filed at the district office with venue. This requirement is necessary to avoid the additional staff time needed to process the petitions and reduce postage costs. It is also likely to result in more expeditious action on the petitions.

The WCAB has also added language to § 10450 stating that documents that have been previously filed should not be attached to a petition, and allowing the WCAB to discard any such document. This amendment was necessary in order to allow the WCAB to reduce the space required to store files and to give notice to the regulated public that such documents may be discarded.

35. Section Amended: 10453.

Problems Addressed

Section 10453 allows a party a right to automatic reassignment of a case to a different judge. Prior to this rulemaking, that section specified that the right may be exercised by the filing of an affidavit but that a party may make an oral motion in lieu of filing an affidavit where the case is assigned to a judge for trial during a conference. Most cases now are assigned to a judge for trial at the time of a mandatory settlement conference. In addition, the WCAB concluded that the requirement that an affidavit be filed is unnecessary and merely creates a burden on the regulated public.

Prior to this rulemaking, § 10453 did not mention lien claimants. In the past, questions have arisen as to whether a lien claimant can exercise the right to automatic reassignment. As part of this rulemaking, the WCAB amended the definition of the term "party" to include lien claimants where the injured worker has resolved his or her case, or where the injured worker chooses not to proceed with the case. The WCAB concluded that, inasmuch as the defendants can exercise the right to automatic reassignment where a lien claimant is the opposing party, fairness requires that lien claimants who have become parties be allowed to exercise the right to automatic reassignment if that right has not been previously exercised by the injured worker and if no testimony has previously been taken.

Labor Code § 5502(b) requires that a priority calendar be established for cases requiring expedited hearing and decision. Because that section was enacted after § 10453 was adopted, prior to this rulemaking § 10453 made no mention as to whether a party may exercise the right to automatic reassignment of a case where the judge has been assigned to conduct an expedited hearing.

Prior to this rulemaking, § 10453 was unclear in two respects. That section allowed a party to exercise the right to automatic reassignment once. The section was interpreted as allowing the defendants collectively the right to one automatic reassignment, but the regulation did not specifically so state. In addition, that section provided that, where the parties are given notice of a trial while they are present at a conference, a party "may" exercise the right to reassignment at that time. But it is common practice to require the parties to exercise the right or waive it at the time of the conference because allowing the right to be exercised subsequently would require rescheduling hearings.

Prior to this rulemaking, § 10453 provided that the right to automatic reassignment of a case may be exercised by an oral motion if the parties are present at a "Conference Hearing, including Conference Pre-Trial, Rating Pre-Trial or Standby Calendar." As part of this rulemaking, the WCAB eliminated standby calendars from the regulations as unnecessary because only one district office of twenty-six is known to use standby calendars and that office can continue to do so where the parties consent without the need for regulations establishing the procedure. In addition, the term "conference pre-trial" was not defined in the regulations and the WCAB renamed "rating conference" as "rating mandatory settlement conference" for consistency with Labor Code § 5502.

The January 2002 draft of the RAND report recommends that "[b]etter procedures should be put in place to encourage and facilitate the shifting of overbooked cases to available judges on trial day." As part of this rulemaking, the WCAB amended § 10346 to allow reassignment of a case on the day of trial where the assigned judge is unavailable. However, § 10453 made no provision for the exercise of the right of automatic reassignment where the parties first learn the identity of the trial judge on the day of the trial.

Specific Purpose and Basis of Amendments to Section 10453

The WCAB has deleted the requirement that an affidavit be filed in order to exercise the right to have a case automatically reassigned to another judge for trial. At present, in most cases, notice of trial is given to the parties at a mandatory settlement conference and the right is exercised by oral motion, and without the filing of an affidavit. The WCAB concluded that the filing of an affidavit is unnecessary and that requiring one to be filed merely creates a burden on the regulated public.

The WCAB has amended § 10453 to allow lien claimants to exercise the right to automatic reassignment of a case where the lien claimant has become a party under definition of that term adopted in this rulemaking, where no testimony has been taken, and where the injured worker has not previously exercised the right to automatic reassignment. Where there is more than one lien claimant, the right may be exercised once, by any one of the lien claimants. This change was made because fairness requires that, where the defendants are allowed the right and lien claimants are their only remaining opposition, lien claimants also be able to exercise the right.

The WCAB has amended § 10453 to specify that a party may exercise the right to automatic reassignment of a case that is assigned to a judge for either a trial or an expedited hearing. An expedited hearing is a form of trial but with certain limitations and requirements specified in Labor Code § 5502(b), which was enacted after the adoption of § 10453. Thus, this change was made to clarify that the section is applicable to all trials, whether or not they are expedited hearings.

The WCAB has amended § 10453 to specify that the defendants in a case are entitled to exercise the right to automatic reassignment once, and that the right may be exercised by any of them. The WCAB has also amended that section to provide that, where the parties are given notice of a trial while they are present at a conference, the right to automatic reassignment must be exercised immediately by oral motion. Both of these amendments were necessary to clarify areas in which the section was unclear so that the section conforms to current practice. Moreover, it should be noted that it is necessary to require that parties exercise the right or waive it at the time of a conference because allowing the right to be exercised subsequently would require rescheduling hearings.

The WCAB has amended § 10453 to delete the term "standby calendar." The WCAB eliminated the reference to standby calendars as unnecessary because only one district office of twenty-six is known to use standby calendars and that office can continue to do so where the parties consent without the need for regulations establishing the procedure. The WCAB also deleted the terms "conference pre-trial" and "rating pre-trial," and substituted "mandatory settlement conference" and "rating mandatory settlement conference," consistent with Labor Code § 5502 as it now exists,

and adds "priority conference" and "status conference," consistent with amendments to § 5502, effective January 1, 2003.

The WCAB has amended § 10453 to add language that will allow a party to exercise the right to automatic reassignment if the case is reassigned on the day of trial. As part of this rulemaking, the WCAB has amended § 10346 to allow reassignment of cases on the day of trial if the assigned judge is unavailable and the change to this section was needed for consistency.

Nonsubstantive Changes

There were additional nonsubstantive changes to § 10453 for clarity, conciseness, to conform to modern standards of English usage. In addition, the title was amended to conform to the content of the section.

36. Section Adopted: 10454.

Problem Addressed

At times, the Appeals Board reverses a decision of a judge and remands the case for further proceedings. Where the judge's opinion as to the credibility of a party was a significant factor in the original decision, there can be a perception that the party cannot receive a fair trial if the case is remanded to the same judge.

Specific Purpose and Basis of Section 10454

The WCAB has adopted § 10454 to provide a right of automatic reassignment, in addition to the right allowed under § 10453, that may be exercised by the party filing a petition for reconsideration where a decision in a case has been reversed by the Appeals Board on an issue of statute of limitations, jurisdiction, employment, or injury arising out of and in the course of employment, and remanded to the trial level. This rule is necessary to avoid any perception that the party cannot receive a fair trial because the case is remanded to the same judge and that judge has already formed an opinion as to the party's credibility. The WCAB concluded that the cases involving listed issues are the cases most likely to be remanded and involve an issue of credibility of a party.

37. Section Amended: 10462.

Problem Addressed

Section 10462 requires that a petition to terminate liability for continuing temporary disability indemnity be filed within ten days of the termination of the payments. However, prior to this rulemaking the regulations did not specify the consequences for failing to file the petition in a timely manner.

Specific Purpose and Basis of Amendments to Section 10462

The WCAB added a sentence to § 10462 stating that the failure to file a petition to terminate liability for temporary disability indemnity within ten days of the termination of payments may affect the right to credit for an overpayment of temporary disability indemnity. This change is needed to clarify the consequences of filing the petition late.

Nonsubstantive Changes

There was a nonsubstantive change to conform to modern standards of English usage.

38. Section Amended: 10464.

Problems Addressed

Prior to this rulemaking, § 10464 required that a petition to terminate liability for temporary disability indemnity contain certain information including the amount of disability indemnity paid and the date to which such payments have been made. As part of this rulemaking, the WCAB amended other sections to require that defendants provide computer printouts of benefits to injured workers under certain circumstances. If such a printout were attached to a petition to terminate liability for temporary disability indemnity, it would provide more information and could be less burdensome to the defendant than complying with the previous requirements.

Prior to this rulemaking, § 10464 required that a petition to terminate liability for temporary disability indemnity include a statement that an order terminating liability will issue unless an objection is filed within 14 days after service of the petition. However, that statement is inaccurate because the WCAB has discretion as to whether to issue an order terminating liability for temporary disability indemnity.

Specific Purpose and Basis of Amendments to Section 10464

The WCAB has amended § 10464 to delete the requirements that a petition to terminate liability for temporary disability indemnity include the amount of disability indemnity paid and the date to which such payments have been made, and add a requirement that a computer printout be attached, showing the dates and amounts of disability indemnity paid and the periods covered. This amendment will provide more information to the WCAB and may be less burdensome to the defendant.

The WCAB has amended § 10464 to require that a petition to terminate liability for temporary disability indemnity include a statement that an order terminating liability may, rather than will, issue unless an objection is filed within 14 days after service of the petition. This change was necessary to accurately reflect the WCAB's discretion to grant or deny the petition.

Specific Technologies or Equipment

This regulation requires that defendants have a computer, a printer, and a computer program that stores claims information and allows that information to be printed out. However, claims administrators are already required to store claims information on computers by Title 8, California Code of Regulations, § 9702 (Rules of the Administrative Director.)

Nonsubstantive Changes

There were additional nonsubstantive changes to renumber the subsections of § 10464, for clarity, to correct a punctuation error, and to conform to modern standards of English usage.

39. Section Amended: 10466.

Problem Addressed

Petitions to terminate liability for temporary disability indemnity are filed relatively infrequently and objections to those petitions are filed less frequently. Prior to this rulemaking, where an objection was filed, this section required that the case should be heard expeditiously but, in the absence of a Declaration of Readiness, such a case could easily be overlooked.

Specific Purpose and Basis of Amendments to Section 10466

The WCAB has amended § 10466 to require that a Declaration of Readiness to Proceed to Expedited Hearing be filed with any objection to a petition to terminate liability for temporary disability indemnity, and to provide that such cases will be set for expedited hearing. Other language of the section that was made superfluous by this change has been deleted. This change was necessary in order to insure that issues of liability for continuing temporary disability indemnity be resolved expeditiously.

Nonsubstantive Changes

Other nonsubstantive changes were made for clarity and to conform to modern standards of English usage.

40. Section Repealed: 10470.

Problem Addressed

This regulation primarily concerns the filing and service of medical reports. The WCAB has a limited clerical staff that must handle large quantities of mail. In order to reduce the burden on its clerical staff, the WCAB is has amended § 10608 concerning the procedures for filing medical reports. In light of those changes, § 10470 became unnecessary.

Specific Purpose and Basis of the Repeal of Section 10470

The WCAB has repealed § 10470 because it becomes unnecessary with the adoption of the changes to § 10608.

41. Section Amended: 10480.

Problems Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Prior to this rulemaking, § 10480 required the filing of the Answer within six days of the service of a Declaration of Readiness, referring to § 10414. As part of this rulemaking, the WCAB has adopted § 10415 concerning the new Declaration of Readiness to Proceed to Expedited Hearing, which should also initiate the time period for filing an Answer.

Prior to this rulemaking, § 10480 required the filing of the Answer within six days of the service of a Declaration of Readiness. The WCAB has determined that requiring that an Answer be filed within six days is unduly burdensome and that parties should be allowed ten days to file an Answer.

Specific Purpose and Basis of Amendments to Section 10480

Prior to this rulemaking, the first paragraph of § 10480 applied to cases where the injury occurred prior to January 1, 1990, or on or after January 1, 1994, and the second paragraph applied to cases where the injury occurred during 1990 through 1993. The WCAB has deleted the limiting language in the first paragraph and deleted the entire second paragraph because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to

have a different procedure in those few cases caused confusion among the regulated public and WCAB staff.

The WCAB has added a reference to § 10415, a section adopted as part of this rulemaking concerning Declarations of Readiness to Proceed to Expedited Hearing. This amendment was necessary in order to clarify that the time period for filing an Answer begins to run upon the filing of both a Declaration of Readiness to Proceed and a Declaration of Readiness to Proceed to Expedited Hearing.

The WCAB has amended §10480 to allow parties to file an Answer within ten days, rather than six days, after the service of a Declaration of Readiness or Declaration of Readiness to Proceed to Expedited Hearing. The WCAB determined that requiring that an Answer be filed within six days was unduly burdensome and that parties should be allowed ten days to file an Answer.

42. Section Amended: 10490.

Problem Addressed

Demurrers, judgments on the pleadings, and summary judgments are commonly used in civil courts but have never been allowed in workers' compensation proceedings. Prior to this rulemaking, § 10490 prohibited the filing of demurrers but the regulations did not specifically prohibit the filing of petitions for judgment on the pleadings or petitions for summary judgment.

Specific Purpose and Basis of Amendments to Section 10490

The WCAB has amended § 10490 to provide that petitions for judgment on the pleadings and petitions for summary judgment are not permitted. This change brings the regulation into conformance with common practice and provides notice to the regulated public that petitions for judgment on the pleadings and petitions for summary judgment will not be granted.

Nonsubstantive Changes

There was an additional nonsubstantive change for clarity. In addition, the title was amended to conform to the content of the section.

43. Section Amended: 10500.

Problems Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Prior to this rulemaking, § 10500 provided that affixing an identification number (case number) on an Application for Adjudication after filing constitutes service of a conformed copy in accordance with Labor Code § 5501. However, the WCAB concluded that it is not the affixing of the number but the notice to the parties of the case number that serves the purpose intended by § 5501.

Prior to this rulemaking, § 10500 provided that the WCAB may designate a party or lien claimant to serve notices of hearing, orders and awards on the other parties. However, at hearings, it is usually a representative of the party or lien claimant who appears. Section 10500 did not specify

whether or not the WCAB could designate a representative of a party to serve a notice, order, or award.

At times, after a party has been designated to serve a document, the party will file a proof of service. In most cases, the proof of service does not need to be a part of the WCAB's file and processing the proof of service is an unnecessary addition to workload of the clerical staff.

Prior to this rulemaking, § 10500 required that the WCAB serve notice of the first mandatory settlement conference in each case. As part of this rulemaking, the WCAB has adopted a walk-through calendaring procedure, § 10417, in which a party or attorney may personally file up to five Declarations of Readiness per day and be immediately notified of the hearing date. Under this procedure, the party filing the Declaration of Readiness is then responsible for notifying the other parties of the hearing. Where this procedure is used, it is unnecessary for the WCAB to incur the postage costs of sending a second notice of the hearing.

Specific Purpose and Basis of Amendments to Section 10500

Prior to this rulemaking, § 10500 specified a different standard for the filing of Applications for Adjudication in cases where the injury occurred prior to January 1, 1990, or on or after January 1, 1994, and cases where the injury occurred on or after January 1, 1990, and before January 1, 1994. That language also contemplated the use of different forms for the two different periods. The WCAB has deleted that language because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

The WCAB has amended § 10500 to provide that notification of the parties of the case number assigned to the Application for Adjudication constitutes service of a conformed copy in accordance with Labor Code § 5501, rather than the affixing of the case number. The WCAB concluded that the amended language is more consistent with the purpose intended by § 5501 than the previous language.

The WCAB has amended § 10500 to specify that a representative of a party or lien claimant may be designated to serve a notice, order, or award under that section. This change was necessary to clarify who may be designated to serve those documents.

The WCAB has amended § 10500 by adding a requirement that, where a party has been designated to serve a document, the party shall retain the proof of service and shall not file it unless ordered to do so. This change will assist in reducing the workload of the clerical staff.

The WCAB has amended § 10500 to delete the requirement that the WCAB send notice of the first mandatory settlement conference. This change was needed so that the WCAB can avoid the unnecessary postage costs of sending a second notice of hearing in cases where a party uses the walk-through calendaring procedure permitted by § 10417, adopted as part of this rulemaking.

Nonsubstantive Changes

Additional nonsubstantive revisions included changes for clarity, error correction, consistency of capitalization, to conform to common usage in the regulated community, to delete the references to settlement conference referees because they are no longer employed by the Division, and to delete language that has been moved to § 10886.

44. Section Amended: 10501.

Problems Addressed

Labor Code § 4706.5 provides that, where a work-related injury causes death and the employee leaves no dependents, the employer or insurance carrier shall pay an amount equal to a death benefit to the Department of Industrial Relations. Prior to this rulemaking, § 10501 required that the Department's Non-Dependency Death Unit (now Death Without Dependents Unit) be served with a copy of any Application for Adjudication, compromise and release, or stipulations with request for award in a death case unless the deceased left a surviving minor child. The WCAB has concluded that the Death Without Dependents Unit should be served only in cases where there is a bona fide issue as to partial or total dependency, even if there is no surviving minor child.

Prior to this rulemaking, § 10501 required that, in certain cases, any Application for Adjudication, compromise and release, or stipulations with request for award be served on the Department's Non-Dependency Death Unit (now Death Without Dependents Unit). However, that section did not specify who was responsible for serving the document on the Unit.

Specific Purpose and Basis of Amendments to Section 10501

The WCAB has amended § 10501 to require that a party filing an Application for Adjudication, compromise and release, or stipulations with request for award in a death case where there is a bona fide issue as to partial or total dependency, serve a copy of the document on the Death Without Dependents Unit. This change was necessary in order to require service of the documents only in the cases in which the Death Without Dependents Unit needs to be notified of the filing.

The WCAB has amended § 10501 to specify that the party filing the Application for Adjudication, compromise and release, or stipulations with request for award is responsible for serving the document on the Death Without Dependents Unit. This change was necessary to insure that the requirements of the section can be enforced.

Nonsubstantive Changes

Additional nonsubstantive amendments included a change to use the current name of the Death Without Dependents Unit rather than the unit's prior name, a change to the title of the section to be consistent with the change in the name of the unit, and changes for clarity and to conform to modern standards of English usage.

45. Section Amended: 10505.

Problem Addressed

Prior to this rulemaking, § 10505 provided that service of a document may be made by mail or by personal service. Because it is expeditious, many parties and lien claimants now fax documents to each other but, in order to effect service according to § 10505, they must mail another copy of the document or personally serve it.

Specific Purpose and Basis of Amendments to Section 10505

The WCAB has amended § 10505 to allow parties to serve each other by fax where it is authorized or requested by the receiving party or lien claimant. This change was necessary in order to allow the parties and lien claimants to serve each other in a more expeditious manner, without requiring them to serve duplicate copies by mail. However, this change does not require anyone to purchase fax equipment.

46. Section Adopted: 10506.

Problems Addressed

Some district offices of the WCAB maintain mailboxes for outgoing mail and allow parties and attorneys to personally obtain their mail from the mailboxes. This procedure saves the Division the postage costs of mailing the documents. However, there is no regulation allowing this procedure. Moreover, when this occurs, it is unclear whether a party or attorney would be deemed to have been served personally or by mail for purposes of calculating the time period within which a response, objection, or appeal must be filed.

Specific Purpose and Basis of Section 10506

The WCAB has adopted § 10506, which allows consenting parties, lien claimants, and attorneys to obtain their mail from mailboxes maintained by district offices of the WCAB for outgoing mail. This section provides that a person obtaining his or her mail in this fashion will be deemed to have been served by mail on the date specified on the document. This section is needed to permit this procedure, which saves the Division the postage costs, and to establish the time period within which a response, objection, or appeal must be filed.

47. Section Amended: 10507.

Problems Addressed

When § 10507 was adopted it was intended to refer to the time requirements of Code of Civil Procedure § 1013 but the word "time" was erroneously omitted.

As part of this rulemaking, the WCAB has adopted § 10506, which allows service by fax but there is no regulation specifying whether the period after service in which an act is required will be extended.

Specific Purpose and Basis of Amendments to Section 10507

The WCAB has amended § 10507 to specify that the time requirements of Code of Civil Procedure § 1013(a) govern service by mail and by fax. Section 1013(a) sets forth the time limits for service by mail so this section applies those same time limits to service by fax. These changes were necessary in order to correct an error of omission and clarify that it is only the time requirements of § 1013(a) that are applicable, and because, as part of this rulemaking, the WCAB adopted § 10506, allowing service by fax in some circumstances, so the regulations must specify a rule for computing any period after service in which an act is required.

Nonsubstantive Changes

An additional nonsubstantive change was made to the title to conform to the change in the content of the section.

48. Section Amended: 10514.

Problem Addressed

At times, parties file documents that need not be in the WCAB's file, including proofs of service. This causes an unnecessary increase in the workload of the clerical staff.

Specific Purpose and Basis of Amendments to Section 10514

The WCAB has amended § 10514 to specify that a proof of service is to be filed with the documents to which it pertains, and to provide that a proof of service filed at any other time may be discarded. This change was necessary in order to reduce the workload of the clerical staff and give notice to the regulated public that improperly filed proofs of service may be discarded.

Nonsubstantive Changes

Additional nonsubstantive revisions include changes in capitalization for consistency, and a change for conciseness.

49. Section Amended: 10536.

Problem Addressed

Prior to this rulemaking, § 10536 provided that certain medical examiners who were subpoenaed for cross-examination were to be paid at the reasonable and customary rate for the time expended. Since § 10536 was originally adopted, the Administrative Director has adopted regulations concerning the fees payable to medical examiners.

Specific Purpose and Basis of Amendments to Section 10536

The WCAB has amended § 10536 to provide that the fees paid to the specified medical examiners shall be in accordance with the regulations of the Administrative Director. This change was necessary so that the fees payable to medical examiners will be consistent under the regulations of the Administrative Director and the WCAB.

Nonsubstantive Changes

Additional nonsubstantive revisions included the deletion of language that is confusing and unnecessary, and changes for conciseness and clarity, and to conform to modern standards of English usage.

50. Section Amended: 10541.

Problem Addressed

Most of the definitions of the terms used in these rules are in § 10301, but prior to this rulemaking the definition of the term "hearing" was in the first sentence of § 10541. In addition, that definition lacked specificity.

Specific Purpose and Basis of Amendments to Section 10541

The WCAB has amended § 10541 by deleting the definition of the term "hearing" in that section and adding a new, more specific definition of that term to § 10301. This change was needed to clarify the definition of the term and to consolidate the definitions used in the regulations in one section for ease of reference by the regulated public.

Nonsubstantive Changes

Additional nonsubstantive changes were made for clarity, conciseness and consistency of capitalization. Also, the title of the section was amended to more accurately describe the contents of the section.

51. Section Amended: 10544.

Problem Addressed

The January 2002 draft of the RAND report recommended that “[b]etter procedures should be put in place to encourage and facilitate the shifting of overbooked cases to available judges on trial day.” Prior to this rulemaking, § 10544 required ten days’ notice of a hearing and that any notice of a regular hearing (trial) list the name of the judge to whom the case was assigned. Where the judge assigned for trial became ill or was otherwise unavailable, RAND recommended reassigning the case to another judge but § 10544 required ten days’ notice of the hearing, including the name of the judge, so either party could object to reassignment and compel the case to be continued.

Specific Purpose and Basis of Amendments to Section 10544

The WCAB has deleted the requirement that the name of the trial judge appear on the notice of a trial. The WCAB expects that the name of the trial judge will continue to routinely appear on notices of trial but this change was needed to allow cases to be reassigned on the day of trial if the assigned trial judge is unavailable. Any party who has not exercised the right to automatic reassignment under § 10453 may exercise that right if the case is reassigned on the day of trial.

Nonsubstantive Changes

There was an additional nonsubstantive change in capitalization for consistency.

52. Section Amended: 10548.

Problems Addressed

Prior to this rulemaking, § 10548 provided that continuances were not favored but did not specify how continuances could be avoided when the assigned judge was not available.

At times, parties reach an agreement to settle a case prior to a scheduled hearing. In such circumstances, they will often request that the case be taken off calendar so that they can avoid an unnecessary appearance. However, on occasion those requests to take the case off calendar have been denied.

Specific Purpose and Basis of Amendments to Section 10548

The WCAB added a new sentence to § 10548 that provides that reassignment under § 10346 shall be used where possible to avoid continuances. This change will clarify that the WCAB’s policy is to avoid continuances by reassigning cases, in conformance with the recommendations of the RAND report.

The WCAB has renumbered this section by designating the previously-existing section, amended as set forth above, as subsection (a), and has added a new subsection (b), which provides that where the parties represent that a case has been settled, the case shall be taken off calendar and no appearances shall be required. This change was necessary to clarify the regulations to reflect the WCAB’s policy that unnecessary appearances should not be required.

Nonsubstantive Changes

Language concerning submission of cases at a single trial was deleted from § 10548 but almost identical language was added to § 10560. There was also a nonsubstantive grammatical change and the title was amended to conform to the content of the section.

53. Section Adopted: 10555.

Problem Addressed

Assembly Bill 749, recently signed by the Governor, amended Labor Code § 5502 to add a new subsection (c), which requires that a priority calendar be established for cases in which the injured worker is represented by an attorney and the issues in dispute are employment or injury arising out of and in the course of employment. This amendment is effective January 1, 2003. There was no regulation implementing the new subsection.

Specific Purpose and Basis of Section 10555

The WCAB has adopted § 10555, which provides that a priority conference will be set upon the filing of a Declaration of Readiness requesting a priority conference that shows that the injured worker is represented by an attorney and that the issues in dispute include employment and/or injury arising out of and in the course of employment. This section further provides that the judge may continue a case set for priority conference to a status conference upon a showing of good cause, that the parties shall be prepared at each priority or status conference to set the matter for trial or provide a plan to complete discovery, that the priority and status conferences in a case shall be conducted by the same judge to the extent possible, and that the case shall be set for trial as expeditiously as possible when discovery is complete or when the judge determines that the parties have had sufficient time to complete reasonable discovery. This regulation is necessary to implement newly enacted Labor Code § 5502(c), effective January 1, 2003.

54. Section Amended: 10560.

Problem Addressed

Generally, it is the policy of the WCAB to try all issues in a case in a single trial. But in a few cases, it may be preferable to bifurcate the case and try only some of the issues. However, the regulations do not provide for that contingency.

Specific Purpose and Basis of Amendments to Section 10560

The WCAB has deleted from § 10548 a sentence stating that the parties are expected to submit for decision all issues in a single trial and add almost identical language to § 10560. In addition, the WCAB has added another sentence allowing the judge to bifurcate the issues in a case upon a showing of good cause. This change was needed to establish a standard for determining when it is appropriate to bifurcate a case and to provide notice to the regulated public of that standard.

Nonsubstantive Changes

The WCAB has deleted the existing language of § 10560 as superfluous in light of other sections, particularly § 10548 and the language that was added to § 10353(b). In addition, the title of the section was amended to conform to the content of the section.

55. Section Amended: 10561.

Problem Addressed

Labor Code § 5813 provides that a judge may order sanctions where a party engages in bad-faith tactics that are frivolous or solely intended to cause unnecessary delay. Prior to this rulemaking, § 10561, which implements Labor Code § 5813, included a list of specific acts that violate § 5813. Failure to timely serve evidentiary documents is a significant problem that causes unnecessary delay but was not included in the list in § 10561 of acts that violate § 5813.

Specific Purpose and Basis of Amendments to Section 10561

The WCAB added failure to timely serve evidentiary documents to the list of acts that violate Labor Code § 5813. This change was necessary in order to enforce the regulations requiring service of evidentiary documents and to provide notice to the regulated public that failure to comply with those regulations is a violation of § 5813.

Nonsubstantive Changes

There were additional nonsubstantive changes for clarity, conciseness, and to conform to modern standards of English usage.

56. Section Amended: 10562.

Problems Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Prior to this rulemaking, § 10562 provided that, where a party fails to appear at a trial or mandatory settlement conference, upon a showing of good cause, the judge could take the case off calendar or continue it to a date certain. However, that section did not specify what the judge could do if a party failed to appear at a conference that is not a mandatory settlement conference.

As part of this rulemaking, the WCAB adopted regulations to implement its policy that a lien claimant should appear at conferences and trials, or have someone available by telephone with settlement authority. However, there were no regulations that specify what action a judge could take if a lien claimant failed to comply.

Lien claims that remain unresolved after the conclusion of the injured worker's portion of the case have been a significant problem in workers' compensation for a number of years. But where a lien claimant fails to appear at a trial, the most practical course of action may be to defer the lien and try the remaining issues. However, this course of action leaves the lien unresolved after the conclusion of the rest of the case.

Specific Purpose and Basis of Amendments to Section 10562

Prior to this rulemaking, § 10562 included provisions applicable to cases where the injury occurred prior to January 1, 1990, or on or after January 1, 1994, and other provisions applicable to cases where the injury occurred during 1990 through 1993. The WCAB deleted the first paragraph of the section and other language in the section that referred to a different procedure for cases between 1990 and 1993 because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

The WCAB has amended § 10562 to delete the words "mandatory settlement" before the word "conference" so as to allow a judge to take a case off calendar or continue it where a party fails to appear at all types of conferences, not only mandatory settlement conferences. This change was necessary so that the regulations would specify that those options are available to the judge when a party fails to appear at any conference, and to give notice to the regulated public that those options are available.

The WCAB has added subsection (d) to § 10562, which provides that, where a lien claimant fails to appear at a conference or have someone with settlement authority available by telephone, the

judge may dismiss the lien after issuing a ten-day notice of intention, or may set the case for trial. The WCAB has also added subsection (e), which provides that, where a lien claimant fails to appear at a trial or have someone with settlement authority available by telephone, the judge may dismiss the lien after issuing a ten-day notice of intention, or hear the evidence and, after issuing a ten-day notice of intention to submit the case, issue a decision, or defer the issue of the lien and submit the case on the remaining issues. These changes were necessary to specify the options available to a judge when a lien claimant fails to appear and to provide notice to the regulated public of those options.

The WCAB has added subsection (f) to § 10562, which provides that, where a lien claim issue has been deferred by a judge, upon issuing his or her decision the judge shall issue a notice of intention to order payment of the lien in full or in part, issue a notice of intention to disallow the lien, or set the case for a lien conference. This rule is necessary to insure that lien claims are resolved and that there is an end to the problem of cases with unresolved lien claims outstanding for long periods.

Nonsubstantive Changes

This section was renumbered to divide the current text, as amended, into subsections (a) through (c). Additional nonsubstantive changes were made for clarity, conciseness, and to conform to modern standards of English usage.

57. Section Amended: 10563.

Problems Addressed

In order for lien claims to be resolved, it is necessary for lien claimants to appear at mandatory settlement conferences and trials, or have someone with authority to resolve the lien available by telephone. However, there was no regulation requiring that a lien claimant appear or have someone available by telephone.

Prior to this rulemaking, § 10563 required that injured workers be present at every conference. This can be disruptive to the schedules of injured workers, particularly the work schedule of a worker who has returned to work. The WCAB has determined that an injured worker's presence is necessary at mandatory settlement conferences but it may not be necessary at other types of conferences.

Specific Purpose and Basis of Amendments to Section 10563

The WCAB has amended § 10563 to require that any lien claimants whose liens have not been resolved or withdrawn either appear at mandatory settlement conferences and trials or have someone with authority to settle the lien available by telephone. This change was needed in order to promote the resolution of lien claims at the same time the other issues in the case are resolved.

The WCAB has amended § 10563 to delete the requirement that the injured worker be present at conferences other than mandatory settlement conferences. This change was needed in order to avoid inconveniencing injured workers by compelling them to attend conferences when their presence is not necessary. If an injured worker's presence is necessary at a conference other than a mandatory settlement conference, the notice of hearing can be used to notify the worker that he or she is required to attend.

Nonsubstantive Changes

Additional nonsubstantive revisions included a change in a reference to a subsection of Labor Code § 5502 that has been renumbered effective January 1, 2003, and changes for clarity.

58. Section Amended: 10564.

Problems Addressed

Section 10564 concerns the appointment of interpreters and the fixing of their fees. Prior to this rulemaking, that section referred to Government Code §§ 11513 and 68566. The portions of § 11513 that related to interpreters were deleted from § 11513 and renumbered as other Government Code sections in 1995. Section 68566 merely sets forth who is a certified interpreter. Meanwhile, in 1994, the Administrative Director adopted regulations concerning interpreters, specifically Title 8, California Code of Regulations, § 9795.1 et seq.

Specific Purpose and Basis of Amendments to Section 10564

The WCAB has amended § 10564 by deleting the references to the Government Code and adding a reference to the Administrative Director's regulations. This change was necessary because one of the Government Code sections is no longer applicable and the other is of minimal relevance, and because it is necessary for the WCAB's regulations to be consistent with those of the Administrative Director.

Nonsubstantive Changes

Additional nonsubstantive changes were made to delete a reference to a section of the Labor Code that has been repealed, for consistency in capitalization, consistency with the Labor Code, and to conform to modern standards of English usage.

59. Section Amended: 10578.

Problem Addressed

Labor Code § 5313 and § 10566 of the Rules of Practice and Procedure require the preparation of a summary of evidence after a case has been heard. Section 10578 provides for exceptions to the requirement that a summary of evidence be prepared. One of those exceptions was upon the filing of an ex parte order, but that procedure has fallen into disuse.

Specific Purpose and Basis of Amendments to Section 10578

The WCAB has deleted the provision in § 10578 that excuses the preparation of a summary of evidence upon the filing of an ex parte order because that procedure has fallen into disuse.

Nonsubstantive Changes

There was an additional nonsubstantive change in grammar.

60. Section Amended: 10582.

Problems Addressed

Prior to this rulemaking, § 10582 provided that an inactive case "will" be returned to the active calendar upon the filing of a Declaration of Readiness. Providing that a case "will" be returned to the active calendar gave the WCAB no discretion to reject Declarations of Readiness with obvious flaws or errors.

Prior to this rulemaking, § 10582 provided that a case could be dismissed if it was not activated for hearing within one year after the filing of the Application for Adjudication, after notice and

opportunity to be heard. The WCAB has adopted § 10349, which provides that an order with a clause rendering the order null and void if an objection showing good cause is filed within ten days shall be deemed equivalent to a 10-day notice of intention. However, the WCAB has concluded that this type of order should not be used to dismiss a case, because an unrepresented injured worker who lacks understanding of workers' compensation procedures could erroneously conclude that his or her case has been dismissed when he or she actually has an opportunity to object to dismissal.

Specific Purpose and Basis of Amendments to Section 10582

The WCAB has amended § 10582 to provide that an inactive case "may," rather than "will," be returned to the active calendar upon the filing of a Declaration of Readiness. This change was needed in order that the WCAB will have discretion to reject Declarations of Readiness with obvious flaws or errors.

The WCAB has amended § 10582 to provide that a case may be dismissed after issuance of a notice of intention to dismiss, but not by an order with a clause rendering the order null and void if an objection showing good cause is filed. This change was necessary because, as part of this rulemaking, the WCAB adopted § 10349, which provides that an order with a clause rendering the order null and void if an objection showing good cause is filed within ten days shall be deemed equivalent to a 10-day notice of intention. But the WCAB concluded that a notice of intention to dismiss should be issued before dismissing a case in order to insure that an unrepresented injured worker who lacks understanding of workers' compensation procedures does not erroneously conclude that his or her case has been dismissed when he or she actually is being given an opportunity to object to dismissal.

Nonsubstantive Changes

There were nonsubstantive changes in capitalization for consistency.

61. Section Adopted: 10590.

Problem Addressed

Prior to this rulemaking, § 10591 governed all consolidations where cases are assigned to two or more offices. However, the WCAB concluded that different problems are encountered in consolidating cases involving the same injured worker than are encountered in cases involving a number of injured workers. The WCAB therefore concluded that different procedures are needed for each situation.

Specific Purpose and Basis of Section 10590

The WCAB has adopted § 10590 (after renumbering the previous § 10590) to provide that any request to consolidate cases involving the same injured worker where the cases are assigned to different district offices shall first be referred to the presiding judges of the offices to which the cases are assigned and, if the presiding judges cannot agree, the conflict shall be resolved by the court administrator. The position of court administrator is established by Labor Code § 138.1, effective January 1, 2003. This change was necessary to allow the most efficient handling of requests for consolidation of cases involving the same injured worker where the cases assigned to different district offices.

62. Section Amended: 10591.

Problems Addressed

Prior to this rulemaking, § 10591 governed all consolidations where cases were assigned to two or more offices. However, the WCAB has concluded that different problems are encountered in consolidating cases involving the same injured worker than are encountered in cases involving a number of injured workers. The WCAB has therefore concluded that different procedures are needed for each situation.

Prior to this rulemaking, § 10591 provided that requests for consolidation of cases assigned to different district offices shall be referred to the Assistant Chief or his or her designee. However, the position of Assistant Chief no longer exists.

Specific Purpose and Basis of Amendments to Section 10591

The WCAB has amended § 10591 to specify that it applies only to consolidation of cases involving two or more injured workers. This change was necessary in order to be able to specify different procedures for handling consolidation of cases involving the same injured worker and cases involving two or more injured workers.

Prior to this rulemaking, § 10591 provided that requests for consolidation of cases assigned to different district offices were to be referred to the Assistant Chief or his or her designee, but that position no longer exists. The WCAB has amended § 10591 to provide that requests for consolidation of cases involving two or more injured workers where the cases are assigned to different district offices shall be referred to the court administrator. The position of Assistant Chief was the highest-ranking judicial supervisory position in the workers' compensation system. Effective January 1, 2003, the court administrator is the administrator of the workers' compensation adjudicatory process at the trial level so that person will assume responsibilities formerly held by the Assistant Chief.

Nonsubstantive Changes

Language concerning consolidation of cases assigned to one district office was deleted from § 10591 and added to § 10589 (formerly § 10590). The title of the section was changed to conform to the changes in the content of the section.

63. Section Amended: 10592.

Problems Addressed

Prior to this rulemaking, § 10592 required that separate pleadings be filed in each case consolidated for hearing. However, the WCAB has concluded that separate pleadings are not necessary in every case.

Prior to this rulemaking, § 10592 required that, in consolidated cases, the WCAB make sufficient copies of minutes of hearing, summaries of evidence, and opinions for filing and service in each of the cases. It is the WCAB's custom and practice to serve those documents in all cases, not only in consolidated cases, and the filing of those documents is a matter of internal procedure for which a regulation is unnecessary.

Specific Purpose and Basis of Amendments to Section 10592

The WCAB has amended § 10592 by deleting the requirement that separate pleadings be filed in each case consolidated for hearing. This change was made because the WCAB has concluded that separate pleadings are not necessary in every case.

The WCAB has amended § 10592 by deleting the requirement that, in consolidated cases, the WCAB make sufficient copies of minutes of hearing, summaries of evidence, and opinions for filing and service in each of the cases. This requirement is unnecessary because it is the WCAB's custom

and practice to serve those documents in all cases, not only in consolidated cases, and the filing of those documents is a matter of internal procedure.

Nonsubstantive Changes

There were additional nonsubstantive changes for clarity.

64. Section Amended: 10601.

Problems Addressed

Prior to this rulemaking, § 10601 required that, where a party intended to offer a document into evidence, it be served on all adverse parties. At times, parties offered videotapes into evidence but the rule did not specify that videotapes must be served on adverse parties.

Prior to this rulemaking, § 10601 provided that a party intending to offer a document into evidence must serve it on adverse parties at least twenty days prior to the hearing. However, Labor Code § 5502 provides that discovery closes at the time of the mandatory settlement conference.

Specific Purpose and Basis of Amendments to Section 10601

The WCAB has amended § 10601 to specify that videotapes are considered documents that must be served on adverse parties. This change was necessary to specify that this is the duty of any party intending to offer a videotape into evidence.

The WCAB has amended § 10601 to require that parties serve documents that they intend to offer into evidence on adverse parties no later than the mandatory settlement conference. This change was necessary for consistency with Labor Code § 5502, which provides that discovery closes at the time of the mandatory settlement conference.

Nonsubstantive Changes

The title of the section was amended to more accurately describe the contents of the section.

65. Section Adopted: 10605.

Problem Addressed

Some insurance companies have begun storing their records electronically by scanning documents when they are received, destroying the original document, and printing out a reproduction of the document if one is needed. However, prior to this rulemaking, the regulations contemplated that parties would offer original documents into evidence.

Specific Purpose and Basis of Section 10605

The WCAB has adopted § 10605, which provides that a reproduction of a document is admissible into evidence where the reproduction was made and preserved as part of the records of a business and the technology used does not permit alteration of the document. This regulation also allows the original document to be admitted into evidence if it still exists, and allows the WCAB to require the introduction of a hard copy printout of the document. These provisions are necessary in order to allow insurance companies and employers to take advantage of modern electronic document storage systems. This section also places the burden of proof on the filing party to show that the copy is an accurate representation of the original document if the accuracy or reliability of a filed copy of a document is challenged. This provision is necessary to reduce the litigation that could arise due to allowing the admission of reproductions of documents.

66. Section Amended: 10606.

Problem Addressed

Prior to this rulemaking, § 10606 required that, where a party wished to present the testimony of a medical witness, the party file and serve notice of it at least ten days before the hearing. But this requirement has been rendered unnecessary by Labor Code § 5502, which requires that parties disclose the names of all witnesses at the time of the mandatory settlement conference.

Specific Purpose and Basis of Amendments to Section 10606

The WCAB has amended § 10606 to delete the requirement that a party file and serve notice of its intention to present a medical witness at least ten days prior to the hearing. This requirement is no longer necessary because § 5502 requires that the names of all witnesses be disclosed at the time of the mandatory settlement conference.

Nonsubstantive Changes

There were additional nonsubstantive changes for clarity and to conform to modern standards of English usage.

67. Section Adopted: 10607.

Problems Addressed

When a workers' compensation claim is not resolved within a short period after the worker's injury, it can be difficult to determine whether the worker has been paid all of the benefits to which he or she is entitled without access to a listing of the benefits paid. It is also helpful for the parties to have access to a listing of benefits paid when it is time to resolve a case. All large companies now use computers for record storage and it is a simple matter to have a computer print out a list of the benefits that have been paid to an injured worker.

Specific Purpose and Basis of Section 10607

The WCAB has adopted § 10607, which requires defendants to provide an injured worker with a computer printout of benefits paid within twenty days after the worker requests a printout. The section places limits on the frequency of such requests. The section also requires that defendants have a computer printout of benefits paid available for inspection at mandatory settlement conferences. This section is necessary in order to assist injured workers in receiving the benefits to which they are entitled in a timely manner and to assist the parties in resolving cases.

Specific Technologies or Equipment

The regulation requires that defendants have a computer, a printer, and a computer program that stores claims information and allows that information to be printed out. However, claims administrators are already required to store claims information on computers by Title 8, California Code of Regulations, § 9702 (Rules of the Administrative Director.)

68. Section Amended: 10608.

Problems Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

In order for parties and lien claimants to be adequately prepared to assert their claims, they must be able to obtain copies of medical reports obtained by other parties. Prior to this rulemaking, § 10608 included a requirement for service of medical reports in cases of injury during 1990 through 1993, and § 10615 included a requirement for service of reports after a final decision issued but there was no rule applicable in all circumstances.

Prior to this rulemaking, § 10608 required that a Declaration of Readiness be accompanied by the medical reports in possession of the filing party, and that other parties file and serve on opposing parties the medical reports in their possession. As part of this rulemaking, the WCAB adopted § 10415, which requires the filing of a Declaration of Readiness to Proceed to Expedited Hearing in order for an expedited hearing to be scheduled. Section 10608 did not specify whether medical reports are to be filed with a Declaration of Readiness to Proceed to Expedited Hearing, or whether the other parties are required to file or serve the medical reports in their possession.

Prior to this rulemaking, § 10608 required that, after a party files a Declaration of Readiness, all other parties must file and serve on opposing parties all medical reports in their possession. The service on opposing parties is necessary but the WCAB concluded that the immediate filing of the reports is unnecessary in many situations and causes a burden on the WCAB's clerical staff. The WCAB concluded that, after a Declaration of Readiness has been filed, the immediate filing of medical reports by the opposing parties is only necessary when an objection to the Declaration of Readiness is filed, and that filing of medical reports at the next hearing is sufficient when there is no objection to the Declaration of Readiness. In addition, the filing of medical reports is necessary when a compromise and release or stipulations with request for award is filed.

Specific Purpose and Basis of Amendments to Section 10608

Prior to this rulemaking, § 10608 included language that applies different procedures to cases where the injury occurred prior to January 1, 1990, or on or after January 1, 1994, and cases where the injury occurred during 1990 through 1993. The WCAB deleted that language because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

The WCAB has amended § 10608 to add a requirement that a party who receives a request for service of medical reports from another party or lien claimant shall serve the reports within six days of the request and shall serve copies of any subsequently received report within six days of receipt of the report. At the same time, the WCAB has deleted language from § 10608 that included a similar requirement for cases involving injuries occurring during 1990 through 1993, and language from § 10615 that included a similar requirement for service of reports after a final decision. These changes were necessary so that a single rule for service of medical reports is applicable in all situations, and for clarity and conciseness.

The WCAB has amended § 10608 to provide that medical reports shall accompany a Declaration of Readiness to Proceed to Expedited Hearing and that, after the filing of a Declaration of Readiness to Proceed to Expedited Hearing, all other parties are required to serve on opposing parties copies of medical reports in their possession. This change was necessary to clarify that the same rules are applicable to Declarations of Readiness seeking an expedited hearing as to other Declarations of Readiness.

The WCAB has deleted the requirement that medical reports in the possession of a party be filed within six days after an opposing party has filed a Declaration of Readiness to Proceed, and added a requirement that they be filed either with any objection to a Declaration of Readiness to Proceed or Declaration of Readiness to Proceed to Expedited Hearing, or at the next hearing. The WCAB added a requirement that all medical reports that have not been previously filed be filed with the filing of a compromise and release or stipulations with request for award. The WCAB also added language to § 10608 allowing the WCAB to discard any improperly filed medical report. These changes were necessary to insure that the WCAB has the medical reports needed when WCAB action is required, to reduce the burden on the WCAB's clerical staff, and to give notice to the regulated public that improperly filed documents may be discarded.

Nonsubstantive Changes

Section 10608 was renumbered by dividing it into subsections (a) through (f). The title was amended to more accurately describe the content of the section. And there were additional changes for clarity and conciseness, and to conform to modern standards of English usage.

69. Section Repealed: 10609.

Problems Addressed

Prior to this rulemaking, §10609 provided that, where it is proposed that a lien claim be reduced or disallowed, copies of all medical reports were to be served on the lien claimant. The procedure of proposing reduction or disallowance of a lien claim is used infrequently. Moreover, under the amendments to § 10608, lien claimants are able to obtain copies of medical reports by requesting them.

Specific Purpose and Basis of the Repeal of Section 10609

The WCAB has repealed § 10609 because the procedure is used infrequently and because the amendments to § 10608 include a satisfactory procedure for lien claimants to obtain copies of medical reports.

70. Section Repealed: 10610.

Problem Addressed

Prior to this rulemaking, § 10610 provided that, where a medical report is served twenty or more days before a hearing, the right to cross-examine a physician concerning the report may be deemed waived unless the physician is produced or good cause is shown. However, physicians are seldom cross-examined at hearing.

Specific Purpose and Basis of the Repeal of Section 10610

The WCAB has repealed § 10610. The procedure referred to in this section has fallen into disuse and the WCAB concluded that this section was no longer necessary.

71. Section Amended: 10615.

Problem Addressed

Prior to this rulemaking, § 10615 set forth requirements for filing and serving documents on other parties. But the amendments to § 10608 adequately provide for the situations specified in §

10615. However, there was no regulation specifying that the parties have a continuing duty to serve medical reports on each other or on lien claimants.

Specific Purpose and Basis of Amendments to Section 10615

The WCAB has amended § 10615 by deleting the current text of that section and adding language specifying that the parties have a continuing duty to serve medical reports on each other and on any lien claimant requesting service. The deleted language is no longer necessary in light of the amendments to § 10608. The added language is needed to clarify the responsibilities of the parties. The title of the section was amended to conform to its content.

72. Section Amended: 10616.

Problem Addressed

Some employers provide mental health services to their employees through an employee assistance program. The intent of these programs is that information received from an employee is confidential. However, if the employee discloses information concerning an industrial injury, prior to this rulemaking, § 10616 could have been interpreted as requiring the employer to file and serve the treatment records, breaching the intended confidentiality.

Specific Purpose and Basis of Amendments to Section 10616

The WCAB has amended § 10616 to provide that records of an employee assistance program need not be filed or served unless the WCAB orders it. This change was necessary to preserve the confidentiality of employee assistance program records.

Nonsubstantive Changes

There were additional nonsubstantive revisions to delete a reference to § 10609, which the WCAB has repealed, and a change to conform to modern standards of English usage.

73. Section Amended: 10622.

Problems Addressed

Prior to this rulemaking, § 10622 pertained to the failure to comply with a number of other rules and mentioned in particular the failure to comply with the rule on inspection of X-rays pursuant to § 10620. The WCAB has moved the text of § 10620 to § 10618. Moreover, the rule on inspection of X-rays is used infrequently and the WCAB concluded that the language of § 10622 is adequate to enforce that rule without specific mention of it.

Specific Purpose and Basis of Amendments to Section 10622

The WCAB has amended § 10622 to delete the references to § 10620 and the rule on inspection of X-rays. This change was made because the WCAB moved the text of § 10620 to § 10618, and because the rule on inspection of X-rays is used infrequently, and the WCAB has concluded that the language of § 10622 is adequate to enforce that rule without specific mention of it.

Nonsubstantive Changes

There were additional nonsubstantive changes for clarity and conciseness.

74. Section Amended: 10626.

Problem Addressed

Prior to this rulemaking, § 10626 provided that parties and their attorneys were entitled to examine and make copies of records of physicians, hospitals, and dispensaries. However, Labor Code § 3762, effective January 1, 1994, provides that an insurer is prohibited from disclosing certain medical information concerning an injured worker's condition.

Specific Purpose and Basis of Amendments to Section 10626

The WCAB has amended § 10626 by adding a clause limiting its application to circumstances that do not violate Labor Code § 3762. This change was necessary so that the regulation would be consistent with the Labor Code.

Nonsubstantive Changes

There were additional nonsubstantive changes for clarity and conciseness, and to conform to modern standards of English usage.

75. Section Amended: 10632.

Problem Addressed

The purpose of § 10632 is to provide that, where Labor Code § 4065 is applicable, the judge is to receive into evidence the ratings proposed by the parties. In addition, prior to this rulemaking, that section provided that the reports of the treating physician(s) and qualified medical examiner(s) be admitted into evidence. However, the WCAB considered the latter requirement to be superfluous and inappropriate because it is the option of the parties to determine what evidence they wish to present in support of their contentions.

Specific Purpose and Basis of Amendments to Section 10632

The WCAB has amended § 10632 to delete the language requiring that the reports of the treating physician(s) and qualified medical examiner(s) be admitted into evidence. That language was superfluous and inappropriate because it is the option of the parties to determine what evidence they wish to present in support of their contentions.

76. Section Repealed: 10700.

Problem Addressed

By its terms, § 10700 applies to cases in which the injury occurred prior to January 1, 1991. There are very few remaining cases to which this regulation could apply and the procedure referred to is no longer in use.

Specific Purpose and Basis of the Repeal of Section 10700

The WCAB has repealed § 10700 because there are very few remaining cases to which this regulation could apply and the procedure referred to in the regulation is no longer in use.

77. Section Repealed: 10715.

Problem Addressed

Section 10715 applies to cases in which the injury occurred prior to January 1, 1991. There are very few remaining cases to which this regulation could apply and the procedure referred to is no longer in use.

Specific Purpose and Basis of the Repeal of Section 10715

The WCAB has repealed § 10715 because there are very few remaining cases to which this regulation could apply and the procedure referred to in the regulation is no longer in use.

78. Section Amended: 10718.

Problem Addressed

Prior to this rulemaking, § 10718 prohibited the parties to a case from communicating ex parte with an independent medical examiner. However, the WCAB may determine in a particular case that an ex parte contact can assist in resolving the case more expeditiously without compromising the examiner's independence or adversely affecting the rights of the other parties.

Specific Purpose and Basis of Amendments to Section 10718

The WCAB has amended § 10718 to add a provision allowing a party to contact an independent medical examiner ex parte when ordered to do so by the WCAB. This change was necessary to allow ex parte contact where it can assist in resolving a case more expeditiously without compromising the examiner's independence or adversely affecting the rights of the other parties.

Nonsubstantive Changes

There were additional nonsubstantive changes for clarity and conciseness, and to delete outdated terminology and reference the applicable sections of the Labor Code.

79. Section Repealed: 10722.

Problems Addressed

Prior to this rulemaking, § 10722 provided that reports of independent medical examiners, agreed medical examiners, or Medical Bureau examiners were to be deemed in evidence without further order. To the extent that this section referred to independent medical examiners and Medical Bureau examiners, it was outdated in that it applied only to cases involving injuries occurring prior to January 1, 1991, of which there are very few left. To the extent that it referred to the reports of agreed medical examiners, it was improper in that there was no opportunity for a party to object to the admission of a report. The second paragraph of § 10722, dealing with service on lien claimants, was made superfluous by the amendment of § 10608 as part of this rulemaking.

Specific Purpose and Basis of the Repeal of Section 10722

The WCAB has repealed § 10722 because the portion of that section dealing with independent medical examiners and Medical Bureau examiners was outdated in that it applied only to cases involving injuries occurring prior to January 1, 1991, of which there are very few left, because the portion dealing with the admission of the reports of agreed medical examiners was improper in that there was no opportunity for a party to object to admission of the reports, and because the portion dealing with service on lien claimants was made superfluous by the amendment of § 10608 as part of this rulemaking.

80. Section Amended: 10740.

Problem Addressed

Section 10740 allows a commissioner or presiding judge to order a transcript of a hearing. The deputy commissioners of the WCAB are actively involved in the business of the WCAB but, prior to this rulemaking, they were not permitted to order a transcript.

Specific Purpose and Basis of Amendments to Section 10740

The WCAB has amended § 10740 to provide that a deputy commissioner may order a transcript of a hearing. This change was needed for the efficient operation of the Appeals Board.

81. Section Amended: 10750.

Problem Addressed

Some members of the regulated public mistakenly believe that any document in the WCAB's file is evidence that may be considered in making a decision.

Specific Purpose and Basis of Amendments to Section 10750

The WCAB has amended § 10750 to specify that documents that are in the WCAB's file but have not been received in evidence are not part of the evidentiary record. This change was necessary to clarify which documents may be considered in making a decision.

Nonsubstantive Changes

Additional nonsubstantive revisions were made for clarity and consistency of capitalization.

82. Section Adopted: 10751.

Problem Addressed

It has been the practice of the WCAB that the legal file includes the record of proceedings and when a compromise and release or stipulations with request for award is approved, the medical reports are moved to the legal file. However, prior to this rulemaking, there was no regulation specifying the contents of the WCAB's legal file. It is necessary to specify the contents of the legal file because, as part of this rulemaking, the WCAB has amended § 10753 to allow a party or a party's attorney to inspect the medical reports and the legal file, but allow any other person to inspect only the legal file.

Specific Purpose and Basis of Section 10751

The WCAB has adopted § 10751, which provides that the WCAB's legal file includes the record of proceedings and when a compromise and release or stipulations with request for award is approved, the medical reports are transferred to the legal file. This regulation is necessary in order to specify the contents of the WCAB's legal file and conform the WCAB's regulations to actual practice. Specifying the contents of the legal file is necessary because, as part of this rulemaking, the WCAB has amended § 10753 to allow a party or a party's attorney to inspect the medical reports and the legal file, but allow any other person to inspect only the legal file.

83. Section Amended: 10753.

Problems Addressed

Prior to this rulemaking, § 10753 provided that a file that had been transferred to a records storage center would be made available for inspection by a person who was not a party or a party's attorney only by order of a judge upon a showing of good cause. The WCAB has determined that a showing of good cause is unnecessary and that an order of a judge is also unnecessary. However, the Division incurs costs in retrieving a file from storage so the Administrative Director has prescribed fees to be charged if someone other than a party or his or her attorney wishes to review the file.

It has been the practice of the WCAB to allow a party or a party's attorney to review the WCAB's legal file and the medical reports in the WCAB's file, and to allow any other person to review only the WCAB's legal file. However, prior to this rulemaking, there was no regulation prescribing this procedure.

Prior to this rulemaking, § 10753 provided that certain documents could be retained in the WCAB's file folder for the sake of convenience but that they were not a part of the file and could be removed from the file before it was made available for inspection. Included among those documents were reports from the Medical Bureau and independent medical examiner's reports that had been received but not served. However, the Medical Bureau no longer exists. And the authority to order an independent medical examination was changed to an authority to appoint a qualified medical examiner by an amendment to Labor Code § 5703.5, effective January 1, 1991.

Specific Purpose and Basis of Amendments to Section 10753

The WCAB has amended § 10753 to delete the requirement that a person other than a party or a party's attorney who wishes to review a file that is in storage show good cause and obtain an order of a judge, and to add a requirement that the person pay the fee prescribed by the Administrative Director. This change was necessary to bring the WCAB's regulations into conformance with the regulations of the Administrative Director, and to relieve the regulated public of the burden of meeting unnecessary requirements.

The WCAB has amended § 10753 to allow a party or a party's attorney to review the WCAB's legal file and the medical reports in the WCAB's file, and to allow any other person to review only the WCAB's legal file. This amendment was necessary to bring the regulations into conformance with the WCAB's practice.

The WCAB has amended § 10753 to delete the reference to the Medical Bureau and to substitute the term "Qualified Medical Examiner" for "Independent Medical Examiner." These changes were necessary because the Medical Bureau no longer exists, and the authority to order an independent medical examination was changed to an authority to appoint a qualified medical examiner by an amendment to Labor Code § 5703.5, effective January 1, 1991.

Nonsubstantive Changes

There were additional nonsubstantive changes for clarity, conciseness, and to conform to modern standards of English usage.

84. Section Amended: 10758.

Problem Addressed

The Division of Workers' Compensation has serious budget problems. Many offices are understaffed and a hiring freeze, as well as a lack of appropriated funds, prevents the Division from filling vacant positions. Most district offices store files for approximately five years, after which the files are sent to the state records center for storage. The cost of storing files at the records center

is significant and, if it is not eliminated, will require layoffs of employees who are needed to provide essential services.

Specific Purpose and Basis of Amendments to Section 10758

The WCAB has amended § 10758 to reduce the time that a file must be kept from fifteen years to five years. This change was necessary in order to save storage expenses so that the Division is not required to lay off employees who are needed to provide essential services.

Nonsubstantive Changes

There were additional nonsubstantive changes for clarity and to conform to modern standards of English usage.

85. Section Amended: 10770.

Problems Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Prior to this rulemaking, § 10770 required that lien claims be filed in writing. However, the Division of Workers' Compensation has allowed lien claims to be filed electronically for a number of years.

Where a lien claim has been filed electronically, the parties are frequently unaware of it and neither the parties nor the WCAB has any documents supporting the lien claim. It is therefore difficult to resolve the lien claim and this may cause delay in resolving the underlying case.

Frequently, the parties are able to resolve the case in chief at the time of a mandatory settlement conference or trial, but a lien claim remains outstanding. Commonly, one of the attorneys present will try to contact the lien claimant by telephone in order to resolve the lien claim. However, in many cases, neither the parties nor the WCAB have the lien claimant's telephone number or the name of the person who has authority to resolve the lien on behalf of the lien claimant.

Prior to this rulemaking, § 10770 provided that amendments to lien claims were to be filed only upon the filing of a compromise and release or stipulations with request for award, or when a hearing was scheduled. That section did not specify what was to be done with amendments to lien claims that were improperly sent to the WCAB.

Prior to this rulemaking, § 10770 required that the WCAB notify lien claimants when a compromise and release or stipulations with request for award were filed but the number of cases handled by the WCAB was so great that it did not have the resources to provide that notification.

Specific Purpose and Basis of Amendments to Section 10770

Prior to this rulemaking, § 10770 specified different procedures for the filing of lien claims in cases where the injury occurred prior to January 1, 1990, or on or after January 1, 1994, and cases where the injury occurred on or after January 1, 1990, and before January 1, 1994. The WCAB has deleted the language that establishes the procedure for filing lien claims in cases in which the injury occurred during 1990 through 1993 because very few of those cases remain, and because

continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

The WCAB has amended § 10770 to allow lien claims to be filed electronically as approved by the Administrative Director. The prior requirement to file a full statement or itemized voucher with the lien claim has been limited to those lien claims that are filed in writing. These changes were necessary to conform the regulations to current practice.

The WCAB has amended § 10770 to require that lien claimants whose lien claims are filed electronically file a full statement or itemized voucher supporting the lien upon the filing of a Declaration of Readiness, compromise and release, or stipulations with request for award, or upon receipt of a notice of hearing unless the lien claimant advises in writing or electronically that the lien has been resolved or withdrawn. In addition, the WCAB has amended § 10770 to specify that all lien claimants (which includes those whose liens are filed electronically) are required to serve on all parties and their attorneys or representatives a full statement or itemized voucher in support of the lien claim. These changes were necessary to insure that the WCAB has sufficient information to deal with lien claims, and so that delays in resolving lien claims and the underlying cases can be avoided.

The WCAB has amended § 10770 to require that lien claimants provide the name, mailing address, and daytime telephone number of a person who will have authority to resolve the lien claim on behalf of the lien claimant, and who will be available at the time of all conferences and trials. As part of this rulemaking, the WCAB has amended § 10563 to require that the representative of the lien claimant with settlement authority be present at conferences and trials, or available by telephone. These changes were necessary in order to insure that lien claims are resolved expeditiously.

The WCAB has amended § 10770 to allow the WCAB to discard improperly filed amendments to lien claims. This change was necessary both to specify what may be done with improperly filed documents as well as to provide notice to the regulated public.

The WCAB has amended § 10770 to delete the requirement that the WCAB notify lien claimants when a compromise and release or stipulations with request for award are filed. This change was necessary because the number of cases handled by the WCAB is so great that it does not have the resources to provide that notification. As part of this rulemaking, the WCAB has amended § 10886 to require that the parties provide notice to lien claimants of the filing of a compromise and release or stipulations with request for award.

Nonsubstantive Changes

Additional nonsubstantive changes included moving a sentence from subsection (e) to subsection (a), moving requirements concerning service of amendments to liens on the parties from subsection (e) to subsection (d), and changes for clarity.

86. Section Adopted: 10773.

Problem Addressed

At times, the WCAB has allowed law firm employees who are not attorneys to represent parties. However, prior to this rulemaking, there was no regulation specifying the exact circumstances under which a law firm employee could represent a party.

Specific Purpose and Basis of Section 10773

The WCAB has adopted § 10773, which provides that a law firm employee not holding current active membership in the State Bar may appear on behalf of the law firm if (1) the client has been

fully informed of the involvement of the law firm employee and that the person is not a member of the State Bar, (2) it is fully disclosed in all proceedings and documents that the person is not licensed to practice law, and (3) the attorney directly responsible for supervising the employee appearing is identified. This section also provides that a judge shall not approve any compromise and release or stipulations with request for award signed by such an employee without the specific written authorization of the attorney responsible for supervising employee. The adoption of this regulation was necessary to specify the circumstances under which a law firm employee who is not an attorney may appear before the WCAB.

87. Section Amended: 10779.

Problem Addressed

Prior to this rulemaking, § 10779 provided that an attorney who had been disbarred or suspended for reasons other than nonpayment of State Bar fees, or who had resigned while disciplinary action was pending would be deemed unfit to appear before the WCAB. The State Bar may place an attorney on involuntary inactive enrollment status for similar reasons but § 10779 did not preclude an attorney who was placed on involuntary inactive enrollment status from appearing before the WCAB.

Specific Purpose and Basis of Amendments to Section 10779

The WCAB has amended § 10779 to include attorneys placed on involuntary inactive enrollment status among those who are deemed unfit to practice before the WCAB. This change was necessary for consistency because the State Bar may place an attorney on involuntary inactive enrollment status for reasons that are similar to those for disbaring or suspending an attorney.

Nonsubstantive Changes

There were additional nonsubstantive changes to conform to modern standards of English usage.

88. Section Amended: 10780.

Problem Addressed

Prior to this rulemaking, § 10780 provided that, where a request for dismissal of a case made by any party other than the injured worker, an order of dismissal would issue only after service of a notice of intention to dismiss. As part of this rulemaking, the WCAB has adopted § 10349, which provides that an order with a clause rendering the order null and void if an objection showing good cause is filed within ten days shall be deemed equivalent to a 10-day notice of intention. However, the WCAB concluded that this type of order should not be used to dismiss a case, because an unrepresented injured worker who lacks understanding of workers' compensation procedures could erroneously conclude that his or her case has been dismissed when he or she actually has an opportunity to object to dismissal.

Specific Purpose and Basis of Amendments to Section 10780

The WCAB has amended § 10780 to add language specifying that a case may not be dismissed by an order with a clause rendering the order null and void if an objection showing good cause is filed. This change was necessary because the WCAB has adopted § 10349, which provides that an order with a clause rendering the order null and void if an objection showing good cause is filed shall be deemed equivalent to a notice of intention. The WCAB concluded that a notice of intention to dismiss should be issued before dismissing a case in order to insure that an unrepresented injured worker who lacks understanding of workers' compensation procedures does not erroneously

conclude that his or her case has been dismissed when he or she actually is being given an opportunity to object to dismissal.

89. Section Amended: 10820.

Problems Addressed

Prior to this rulemaking, § 10820 required that a person requesting a certified copy of an award or other final order state whether or not payments had been made under award or order and the amount of the payments. In addition, § 10820 required that good cause be shown in order to obtain a certified copy. The WCAB has concluded that these requirements are unnecessary.

Specific Purpose and Basis of Amendments to Section 10820

The WCAB has amended § 10820 to delete the requirement that a person requesting a certified copy of an award or other final order state whether or not payments have been made under award or order and the amount of the payments, and the requirement that good cause be shown. The WCAB has concluded that these requirements are unnecessary.

Nonsubstantive Changes

There were additional nonsubstantive changes to correct a punctuation error, for conciseness, and to conform to modern standards of English usage.

90. Section Amended: 10843.

Problems Addressed

Prior to this rulemaking, § 10843 provided that petitions to remove and responses were to be filed at the district office of the WCAB from which relief was sought. However, that section did not specify what would occur if a petition for removal were filed at the wrong district office.

Prior to this rulemaking, § 10843 had been interpreted to require that, where a party filed a petition to remove but later withdrew it, the file had to be sent from the district office to the Appeals Board in San Francisco where an order of dismissal would issue, and then the file had to be returned to the district office for any further proceedings.

Prior to this rulemaking, § 10843 provided that the filing of a petition to remove did not terminate the judge's authority to proceed in a case or require the judge to continue or cancel a previously scheduled hearing. However, petitions to remove are rare and without consulting with an experienced individual, a judge who must act on a petition to remove may not be able to accurately foresee all of the consequences of each of the available options.

Specific Purpose and Basis of Amendments to Section 10843

The WCAB has amended § 10843 to provide that a petition to remove that is sent to the wrong district office (an office other than the one from which relief is sought) shall not be accepted for filing nor considered to have been filed, and may be discarded. This change was necessary to specify what occurs if a petition for removal is filed at the wrong district office and to provide notice to the regulated public.

The WCAB has amended § 10843 to provide that, where a party withdraws a petition to remove, the petition shall be deemed automatically dismissed, requiring no further action by the Appeals Board. This change was needed to avoid unnecessary transfers of case files and the resulting delay in any pending proceedings.

The WCAB has amended § 10843 to provide that, after a petition to remove has been filed, the judge shall consult with the presiding judge prior to taking any action. This change was needed because, without consulting with an experienced individual, a judge who must act on a petition to remove may not be able to accurately foresee all of the consequences of each of the available options.

Nonsubstantive Changes

Nonsubstantive changes included renumbering the section by dividing into subsections (a) through (e), and renumbering current paragraphs (a) and (b) as (1) and (2). Other nonsubstantive revisions included changes for clarity, consistency, and conciseness.

91. Section Amended: 10850.

Problem Addressed

Petitions for reconsideration, petitions for removal, and petitions for disqualification are reviewed by the Appeals Board in San Francisco. Prior to this rulemaking, § 10850 set forth the requirements for service of petitions for reconsideration but there was no regulation setting forth the requirements for service of petitions for removal or petitions for disqualification.

Specific Purpose and Basis of Amendments to Section 10850

The WCAB has amended § 10850 to include petitions for removal and petitions for disqualification so that the requirements for service of petitions for reconsideration, petitions for removal, and petitions for disqualification are the same. This change was necessary because there are no other regulations setting forth the requirements for service of petitions for removal or petitions for disqualification.

Nonsubstantive Changes

There was an additional nonsubstantive change for clarity and conciseness.

92. Section Amended: 10859.

Problem Addressed

Prior to this rulemaking, § 10859 provided that a judge could amend or rescind an award or order within fifteen days after a petition for reconsideration was filed. However, the wording of that section did not consider the fact that the judge had no authority to amend or rescind the award or order if the petition for reconsideration was not filed timely.

Specific Purpose and Basis of Amendments to Section 10859

The WCAB has amended § 10859 to specify that a judge may amend or rescind an award or order within fifteen days after a petition for reconsideration is filed where the petition is filed timely. This change was necessary to insure that judges only amend or rescind awards or orders when they have authority to do so.

Nonsubstantive Changes

There was an additional nonsubstantive change, deleting the references to settlement conference referees because they are no longer employed by the Division.

93. Section Amended: 10860.

Problems Addressed

When the Appeals Board decides to affirm a decision of a judge, it is more efficient to adopt the judge's report as the decision of the Appeals Board than to draft a separate decision. The Appeals Board can only adopt the judge's report as its decision if the report addresses all of the contentions in the petition. However, prior to this rulemaking, § 10860 did not specify that a judge's report must address each of the contentions in the petition.

The WCAB generally requires that a judge's report on a petition for reconsideration, removal, or disqualification be sent with the WCAB's file to the Appeals Board in San Francisco within fifteen days after the petition is filed unless an extension of time is granted. However, there was no regulation specifying this deadline and many members of the regulated public were unaware of it so they may have delayed in filing answers to those petitions.

Specific Purpose and Basis of Amendments to Section 10860

The WCAB has amended § 10860 to provide that a judge's report on a petition for reconsideration, petition for removal, or petition for disqualification shall discuss each contention raised by the petition. This change was necessary in order to insure that the report of a judge can be adopted the Appeals Board as its own decision in cases in which the Appeals Board decides to affirm the judge's decision.

The WCAB has amended § 10860 to require that a judge's report on a petition for reconsideration, removal, or disqualification be sent with the WCAB's file to the Appeals Board in San Francisco within fifteen days after the petition is filed unless an extension of time is granted. This change was necessary to specify the deadline and to notify the regulated public of the deadline so that answers to those petitions may be filed timely.

Nonsubstantive Changes

There were additional nonsubstantive changes for conciseness and to conform to modern standards of English usage.

94. Section Amended: 10865.

Problems Addressed

Prior to this rulemaking, § 10865 set forth the procedures for seeking reconsideration of a decision of an arbitrator under Labor Code § 3201.5(a)(1). However, the Legislature recently added § 3201.7, effective January 1, 2003, which provides for arbitration under other specified circumstances.

Prior to this rulemaking, § 10865 required that a petition for reconsideration of an arbitrator's decision under Labor Code § 3201.5(a)(1) identify the date of the decision. However, that section did not require that such a petition identify itself as a petition for reconsideration of an arbitrator's decision nor did it require that the petition contain information identifying the injured worker.

When the Appeals Board decides to affirm a decision of an arbitrator, it is more efficient to adopt the arbitrator's opinion as the decision of the Appeals Board than to draft a separate decision. The Appeals Board can only adopt the arbitrator's opinion as its decision if the opinion addresses all of the contentions in the petition. However, prior to this rulemaking, § 10865 did not specify that an arbitrator's opinion must address each of the contentions in the petition.

Specific Purpose and Basis of Amendments to Section 10865

The WCAB has amended § 10865 to provide that the section is applicable to arbitrators' decisions under § 3201.7(a)(1). This change was necessary in order to specify the procedures applicable when a party is seeking reconsideration of a decision of an arbitrator under Labor Code § 3201.7(a)(1). The title of the section was also amended to conform to this change.

The WCAB has amended § 10865 to require that a petition for reconsideration from a decision of an arbitrator under Labor Code § 3201.5(a)(1) or 3201.7(a)(1) be captioned so as to identify itself as a petition for reconsideration under one of those sections, and that it include the injured worker's name, date of birth, and social security number. This change was necessary for the efficient handling of those petitions by the Appeals Board.

The WCAB has amended § 10865 to provide that an arbitrator's opinion after a petition for reconsideration shall set forth the rationale for the decision as to each contention raised by the petition. This change was necessary in order to insure that the opinion of an arbitrator can be adopted by the Appeals Board as its own decision in cases in which the Appeals Board decides to affirm the arbitrator's decision.

Nonsubstantive Changes

There were additional nonsubstantive changes for consistency and to conform to modern standards of English usage.

95. Section Amended: 10866.

Problems Addressed

Labor Code §§ 5900 through 5911 govern the procedure for seeking reconsideration of a decision of a judge. The WCAB adopted regulations, §§ 10840 and 10842, to implement that procedure. Prior to this rulemaking, § 10866 provided that Labor Code §§ 5900 through 5911 were applicable to a party seeking reconsideration of a decision of an arbitrator under Labor Code §§ 5270 through 5275, but that regulation did not specify that §§ 10840 and 10842 were also applicable.

Prior to this rulemaking, § 10867 required that an arbitrator was to prepare a report on any petition for reconsideration of his or her decision. However, there was no regulation requiring that a petition for reconsideration of an arbitrator's decision, or an answer to the petition, be served on the arbitrator.

Specific Purpose and Basis of Amendments to Section 10866

The WCAB has amended § 10866 to provide that §§ 10840 and 10842 of the WCAB's regulations are applicable to petitions for reconsideration of a decision of an arbitrator under Labor Code §§ 5270 through 5275. This change was necessary in order to clarify that the rules applicable to petitions for reconsideration of a judge's decision are also applicable to a petition for reconsideration of a decision of an arbitrator.

The WCAB has amended § 10866 to provide that the parties are required to serve the arbitrator with any petition for reconsideration of the arbitrator's decision and any answer to the petition. This change was necessary to insure that the arbitrator has the petition and any answer available so that he or she can prepare a report, as required by § 10867.

96. Section Amended: 10867.

Problems Addressed

Prior to this rulemaking, § 10867 provided that, when a petition for reconsideration of a decision of an arbitrator was filed, the arbitrator was to forward the file and his or her report to the presiding judge, who was to forward the file and report to the Appeals Board. This section did not clearly specify that it was the arbitrator's file that was referred to and it did not require that the WCAB file be sent to the Appeals Board with the arbitrator's report.

Specific Purpose and Basis of Amendments to Section 10867

The WCAB has amended § 10867 to specify that, when a petition for reconsideration of a decision of an arbitrator has been filed, the arbitrator shall forward his or her file and report to the presiding judge, who shall forward the arbitrator's file and report and the WCAB's file to the Appeals Board. This change was necessary to clarify exactly which files are to be forwarded and to insure that the Appeals Board has the WCAB file available when it reviews a petition for reconsideration.

97. Section Repealed: 10868.

Problem Addressed

Prior to this rulemaking, § 10868 concerned the procedure for reconsideration of a decision of a settlement conference referee. However, the Division of Workers' Compensation no longer employs settlement conference referees.

Specific Purpose and Basis of the Repeal of Section 10868

The WCAB has repealed § 10868, concerning the procedure for reconsideration of a decision of a settlement conference referee. That section no longer serves any purpose because the Division of Workers' Compensation no longer employs settlement conference referees.

98. Section Repealed: 10869.

Problem Addressed

Prior to this rulemaking, § 10869 concerned the report of a settlement conference referee after a petition for reconsideration of his or her decision. However, the Division of Workers' Compensation no longer employs settlement conference referees.

Specific Purpose and Basis of the Repeal of Section 10869

The WCAB has repealed § 10869, concerning the report of a settlement conference referee after a petition for reconsideration of his or her decision. That section no longer serves any purpose because the Division of Workers' Compensation no longer employs settlement conference referees.

99. Section Amended: 10878.

Problem Addressed

WCAB case files are normally initiated by the filing of an Application for Adjudication. However, in some cases, the case is settled before an Application for Adjudication is filed and the case file is initiated by the filing of a settlement document, either a compromise and release or stipulations with request for award. Prior to this rulemaking, § 10878 provided that the filing of a compromise and release constituted the filing of an Application for Adjudication, provided that the case could then, in the WCAB's discretion, be set for hearing, specified certain rights of the parties under those circumstances, and provided that the WCAB could thereafter approve or disapprove the

compromise and release, or issue a findings and award after a hearing had been held and the case submitted for decision. However, neither § 10878 nor any other regulation contained similar provisions for cases in which the case file was initiated by the filing of stipulations with request for award.

Specific Purpose and Basis of Amendments to Section 10878

The WCAB has amended § 10878 to include the filing of stipulations with request for award as constituting the filing of an Application for Adjudication. The section also provides that the case may then, in the WCAB's discretion, be set for hearing, specifies certain rights of the parties under those circumstances, and provides that the WCAB may thereafter approve or disapprove the settlement, or issue a findings and award after a hearing has been held and the case submitted for decision. The title of the section was amended to conform to its contents. This change was necessary to conform the regulation to current practice.

Nonsubstantive Changes

There was an additional nonsubstantive change to conform to modern standards of English usage.

100. Section Amended: 10882.

Problem Addressed

Cases may be settled by a compromise and release or by stipulations with request for award. Prior to this rulemaking, § 10882 provided that the WCAB was to inquire into the adequacy of compromise and releases but neither § 10882 nor any other regulation contains similar provisions for cases in which the case was settled by way of stipulations with request for award.

Specific Purpose and Basis of Amendments to Section 10882

The WCAB has amended § 10882 to include a duty to inquire into the adequacy of stipulations with request for award. The title of the section was amended to conform to its contents. This change was necessary to conform the regulation to current practice.

101. Section Amended: 10886.

Problems Addressed

Prior to this rulemaking, § 10886 established a procedure under which a compromise and release or stipulations with request for award that proposed disallowance of a lien had to be served on the lien claimant with all documentary evidence and summaries of evidence. That procedure also included the opportunity for the lien claimant to file an objection to the disallowance of its lien. However, this procedure was used infrequently. On the other hand, it is necessary for all lien claimants to be provided with notice that a compromise and release or stipulations with request for award has been filed in order to insure that lien claims are resolved promptly but, as part of this rulemaking, the WCAB repealed the requirement in § 10770 that the WCAB notify lien claimants of the filing of a compromise and release or stipulations with request for award due to a lack of resources.

Specific Purpose and Basis of Amendments to Section 10886

The WCAB has amended § 10886 to delete the provisions concerning the proposed disallowance of lien claims, objections thereto, and service of evidence on lien claimants, leaving a requirement that the parties serve all compromise and releases and stipulations with request for award on lien claimants. The deletions were needed to eliminate an infrequently used procedure. The remaining

portions of the section are require that lien claimants be notified of settlements, which is necessary in order to insure that lien claims will be promptly resolved.

Nonsubstantive Changes

Language concerning disallowance or reduction of lien claims that was deleted from § 10500 was added to this section for better organization. Other nonsubstantive revisions included changes for clarity and conciseness.

102. Section Adopted: 10888.

Problem Addressed

It has generally been the policy of the WCAB that unresolved lien claims should not prevent resolution of the injured worker's portion of a case. This policy means that lien claims may be left unresolved after a settlement of an injured worker's case has been approved. There has been a significant problem of lien claims that remained unresolved, sometimes for years, after the conclusion of the injured worker's portion of the case.

Specific Purpose and Basis of Section 10888

The WCAB has adopted § 10888, which requires that the parties make a good faith effort to resolve any unresolved lien claims prior to approval of a compromise and release or stipulations with request for award. If the settlement is approved and lien claims remain unresolved, § 10888 requires that the judge either set a conference concerning the lien claims, or issue a notice of intention to order payment of the lien claim in full or in part, or a notice of intention to disallow the lien claim. Section 10888 further provides that a lien conference may be continued once but the case must then be set for trial. These changes were necessary to insure prompt resolution of lien claims.

103. Section Adopted: 10890.

Problem Addressed

Action on settlements and petitions can be expedited by allowing a party or parties to "walk through" the settlement or petition and immediately obtain an order or award from a judge. Prior to this rulemaking, parties were allowed to walk through settlements but there was no regulation concerning walk through documents so there was no uniformity among the district offices in the way such documents were handled.

Specific Purpose and Basis of Section 10890

The WCAB has adopted § 10890, which defines a walk-through document as one presented to a judge for immediate action, provides that most walk-through documents may be presented to a judge during conference and mandatory settlement conference calendars, provides that parties may walk through compromise and releases, stipulations with request for award, certain petitions for attorney's fees, petitions to compel attendance at a medical examination or deposition, and petitions to stay an action pending a hearing, specifies the actions that may be taken by a judge when presented with a walk-through document, specifies the district office or offices at which the document may be walked through, specifies the situations in which a document must be taken to a particular judge, requires that an unrepresented injured worker be present in order to walk through a settlement or that the injured worker has reviewed the settlement with an Information and Assistance officer, and provides that each district office will have clerical staff available during certain hours to obtain or create files. This regulation was necessary in order to establish a uniform walk-through procedure at all district offices.

104. Section Repealed: 10944.

Problem Addressed

Prior to this rulemaking, § 10944 required that thirty days' notice of hearing be given to the Subsequent Injuries Fund where the claim against the Fund was filed after the Application for Adjudication. The WCAB was not aware of any need for or benefit derived from this regulation, and it could cause delay in resolving cases.

Specific Purpose and Basis of the Repeal of Section 10944

The WCAB has repealed § 10944 because the WCAB was aware of no need for or benefit derived from this regulation, and it could cause delay in resolving cases.

105. Section Amended: 10946.

Problem Addressed

Prior to this rulemaking, § 10946 required the service of medical reports on the Subsequent Injuries Fund at least thirty days before a hearing. However, Labor Code § 5502 provides that discovery closes at the time of the mandatory settlement conference and, consistent with that section, as part of this rulemaking, the WCAB has amended § 10601, which is applicable to all other parties, to require service of documentary evidence no later than the mandatory settlement conference.

Specific Purpose and Basis of Amendments to Section 10946

The WCAB has amended § 10946 to delete the requirement that medical reports be served on the Subsequent Injuries Fund at least thirty days prior to a hearing and substitute a requirement that they be served no later than the mandatory settlement conference. This change was necessary for consistency with Labor Code § 5502 and the amendment to § 10601.

Nonsubstantive Changes

There were additional nonsubstantive changes to correct the title of the Division.

106. Section Amended: 10950.

Problems Addressed

Prior to this rulemaking, § 10950 provided that a party has 30 days in which to file an appeal of an order granting or denying a petition for an order requiring an injured worker to select an employer-designated physician. Generally, under the workers' compensation laws and regulations, the period to appeal a decision or order is twenty days. Having appeal periods of different lengths could cause confusion among the regulated public.

Prior to this rulemaking, § 10950 provided that, where a party appealed a decision issued under Title 8, California Code of Regulations, § 9786(e)(4) (Rules of the Administrative Director), the Appeals Board could refer the appeal to a judge for the taking of further evidence. However, the WCAB concluded that this procedure was superfluous because, in practice, cases arising under § 9786(e)(4) have already been heard and decided by a judge.

Specific Purpose and Basis of Amendments to Section 10950

The WCAB has amended § 10950 to provide that a party has 20, rather than 30, days to file an appeal of an order granting or denying a petition for an order requiring an injured worker to select an employer-designated physician. This change was needed because most other appeal periods under the workers' compensation laws are twenty days and having appeal periods of different lengths could cause confusion among the regulated public.

The WCAB has amended § 10950 to delete the provision allowing the Appeals Board to refer an appeal under Title 8, California Code of Regulations, § 9786(e)(4) to a judge for the taking of further evidence. That procedure was superfluous because, in practice, cases arising under § 9786(e)(4) have already been heard and decided by a judge.

Nonsubstantive Changes

Additional nonsubstantive revisions included reversing the order of the paragraphs in the section, renumbering the section by dividing it into subsections (a) and (b), correcting an error in the reference to a section of the Administrative Director's regulations, adjusting the subsection numbers in the references to that section of the Administrative Director's regulations to reflect the renumbering of that section, adding language to specify that the sections referenced are regulations of the Administrative Director, and specifying that appeals under new subsection (a) shall be referred to a judge without the need to refer the case to the Appeals Board, in conformance with current practice.

107. Section Amended: 10952.

Problems Addressed

Prior to this rulemaking, § 10952 provided that, if no Application for Adjudication had been filed, an Appeal of a Notice of Compensation Due would be assigned a new case number. However, the appeal might not include all of the information needed to create a computer record of the case.

Prior to this rulemaking, if an Appeal of a Notice of Compensation Due was filed, the file was likely to remain inactive, meaning that no action would be taken by the WCAB.

Specific Purpose and Basis of Amendments to Section 10952

The WCAB has amended § 10952 to require that an Appeal of a Notice of Compensation Due be accompanied by an Application for Adjudication if one has not already been filed. This change was necessary in order to provide the WCAB with sufficient information to create a computer record of the case.

The WCAB has amended § 10952 to require that an Appeal of a Notice of Compensation Due be accompanied by a Declaration of Readiness to Proceed. This change was necessary so that the WCAB's clerical staff will recognize that action on the file is necessary.

Nonsubstantive Changes

There were additional nonsubstantive changes for conciseness and for consistency with the definitions in § 10301.

108. Section Adopted: 10953.

Problem Addressed

Labor Code § 129.5 was recently amended to provide that insurers, self-insured employers, or third party administrators who receive a notice of penalty assessment under subsection (e) may file a request for a hearing before the WCAB. As amended, § 129.5 requires the WCAB to issue findings

and orders in these cases. Prior to this rulemaking, the WCAB had no regulations specifying how these appeals were to be handled.

Specific Purpose and Basis of Section 10953

The WCAB has adopted § 10953 to specify that an insurer, self-insured employer, or third party administrator appealing a notice of penalty assessment under Labor Code § 129.5(g) shall file a petition and Declaration of Readiness at the nearest district office of the WCAB or at the San Francisco district office if the petitioner is domiciled out of state, that the petitioner shall attach a copy of the notice of penalty assessment and any other evidence it wishes to submit, that the petitioner shall serve upon the Administrative Director copies of all documents filed, that the petitioner and the Administrative Director may stipulate to submit the matter without testimony at the mandatory settlement conference, and that, otherwise, the matter will be set for trial. This regulation is necessary in order to specify the procedures for appealing a notice of penalty assessment pursuant to Labor Code § 129.5(g), as amended, effective January 1, 2003.

109. Section Amended: 10955.

Problems Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Prior to this rulemaking, § 10955 did not provide for the situation where an appeal of a decision of the Rehabilitation Unit or an arbitrator appointed pursuant to Labor Code Sections 4645(b) or (c) was filed prior to the assignment of a case number. The appeal alone may not include the information needed to create a computer record of the case.

Prior to this rulemaking, § 10955 provided that, if an appeal of a decision of the Rehabilitation Unit or an arbitrator appointed pursuant to Labor Code Sections 4645(b) or (c) was filed, the file would not be set for hearing until a Declaration of Readiness to Proceed was filed. The WCAB has concluded that the parties should be ready to proceed on the issues involved in the appeal at the time the appeal is filed and that such cases should be set for hearing so that those issues can be resolved expeditiously.

Prior to this rulemaking, § 10955 required a party filing an appeal of a decision of the Rehabilitation Unit or an arbitrator appointed pursuant to Labor Code Sections 4645(b) or (c) to file an "appropriate" petition. The WCAB concluded that this language was insufficient to notify the regulated public what the WCAB expected a party to include in an appeal.

Specific Purpose and Basis of Amendments to Section 10955

Prior to this rulemaking, § 10955 established different procedures for rehabilitation appeals in cases where the injury occurred prior to January 1, 1990, or on or after January 1, 1994, and cases where the injury occurred during 1990 through 1993. The WCAB has deleted the language establishing a different procedure for cases in which the injury occurred during 1990 through 1993 because very few of those cases remain, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

The WCAB has amended § 10955 to require that an appeal of a decision of the Rehabilitation Unit or an arbitrator appointed pursuant to Labor Code Sections 4645(b) or (c) be accompanied by an

Application for Adjudication if one has not already been filed. This was necessary in order to provide the WCAB with sufficient information to create a computer record of the case.

The WCAB has amended § 10955 by deleting the language that provided that an appeal of a decision of the Rehabilitation Unit or an arbitrator appointed pursuant to Labor Code Sections 4645(b) or (c) would not be set for hearing until a Declaration of Readiness to Proceed was filed and added a requirement that an appeal be accompanied by a Declaration of Readiness. This change was necessary so that these hearings will be set and the appeals resolved expeditiously.

The WCAB has amended § 10955 to delete the requirement that a party appealing a decision of the Rehabilitation Unit or an arbitrator appointed pursuant to Labor Code Sections 4645(b) or (c) file an "appropriate" petition, and added a requirement that the party file a petition setting forth the reasons for the appeal. This change was necessary to specify what is required in a petition so that the regulated public is on notice as to what is expected.

Nonsubstantive Changes

There were additional nonsubstantive changes to delete language made obsolete by the amendment of Labor Code § 5275, effective January 1, 2003, to add the contents of § 10956, which was being repealed as part of this rulemaking, and to capitalize the title of an organizational component of the Division for consistency.

110. Section Repealed: 10956.

Problems Addressed

Prior to this rulemaking, § 10956 provided that, where a party filed an appeal of a decision of the Rehabilitation Unit, the opposing party could file and serve copies of documents that it deemed relevant within five days. However, the five-day time limit was not consistent with other provisions in the regulations regarding service; other regulations require service by the time of the mandatory settlement conference. In addition, the WCAB concluded that § 10956 should be consolidated with § 10955.

Specific Purpose and Basis of Repeal of Section 10956

The WCAB has repealed § 10956 and moved most of its provisions to § 10955. However, the WCAB has deleted the requirement that a party receiving an appeal of a decision of the Rehabilitation Unit file any documents it deems relevant within five days because the five-day time limit is not consistent with other time limits regarding service.

111. Section Repealed: 10960.

Problem Addressed

Prior to this rulemaking, § 10960 provided that §§ 10300 through 10958 applied to all cases regardless of the date of injury, while § 10961 made §§ 10960 through 10999 applicable to injuries occurring during 1990 through 1993. As part of this rulemaking, the WCAB repealed § 10961. With the repeal of § 10961, §10960 became superfluous because all of the regulations referred to apply regardless of the date of injury in the absence of the regulation. In addition, retaining that section could have caused confusion because it referred to §§ 10300 through 10958 but the regulations no longer include a similar reference to §§ 10995 through 10999.

Specific Purpose and Basis of Repeal of Section 10960

The WCAB has repealed § 10960 because, with the repeal of § 10961, §10960 became superfluous in that all of the regulations referred to in § 10960 are applicable to all cases, regardless of the date of injury. Moreover, § 10960 by itself could have caused confusion because it referred to §§ 10300 through 10958 but, with the repeal of § 10961, the regulations no longer include a similar reference to §§ 10995 through 10999.

112. Section Repealed: 10961.

Problem Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Specific Purpose and Basis of Repeal of Section 10961

Prior to this rulemaking, § 10961 made §§ 10960 through 10999 applicable to injuries occurring during 1990 through 1993. The WCAB has repealed § 10961 because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

113. Section Repealed: 10963.

Problem Addressed

Prior to this rulemaking, § 10963 provided that the title "Administrative Director of the Division of Industrial Accidents" would be changed to "Administrative Director of the Division of Workers' Compensation" in the regulations. However, as part of this rulemaking, the WCAB defined the term "Administrative Director" in § 10301 and updated all references to the Division of Industrial Accidents in these regulations.

Specific Purpose and Basis of Repeal of Section 10963

The WCAB has repealed § 10963 as unnecessary because, as part of this rulemaking, § 10301 was amended to define the term "Administrative Director" and all references to the Division of Industrial Accidents in these regulations were updated.

114. Section Repealed: 10966.

Problem Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Specific Purpose and Basis of Repeal of Section 10966

Prior to this rulemaking, § 10966 specified the procedure for further or supplemental proceedings in cases in which the injury occurred during 1990 through 1993. The WCAB has repealed § 10966 because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

115. Section Repealed: 10967.

Problem Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Specific Purpose and Basis of Repeal of Section 10967

Prior to this rulemaking, § 10967 specified the procedure for objecting to further or supplemental proceedings in cases in which the injury occurred during 1990 through 1993. The WCAB has repealed § 10967 because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

116. Section Repealed: 10987.

Problem Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Specific Purpose and Basis of Repeal of Section 10987

Prior to this rulemaking, § 10987 specified the procedure for obtaining attorneys fees in certain cases in which the injury occurred during 1990 through 1993. The WCAB HAS repealed § 10987 because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

117. Section Repealed: 10987.1.

Problem Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Specific Purpose and Basis of Repeal of Section 10987.1

Prior to this rulemaking, § 10987.1 was the Information Request Form. This form was used only in cases in which the injury occurred during 1990 through 1993. The WCAB has repealed § 10987.1 because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

118. Section Repealed: 10987.2.

Problem Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Specific Purpose and Basis of Repeal of Section 10987.2

Prior to this rulemaking, § 10987.2 was the Information Response Form. This form was used only in cases in which the injury occurred during 1990 through 1993. The WCAB has repealed § 10987.2 because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

119. Section Repealed: 10987.3.

Problem Addressed

The workers' compensation law was amended in 1989, effective January 1, 1990, and again in 1993, effective January 1, 1994. Prior to this rulemaking, similar procedures were used in cases with dates of injury before 1990 and after January 1, 1994; a different procedure was used in cases with dates of injury during 1990 through 1993. There are very few remaining cases in which the injury occurred during 1990 through 1993. Having a different procedure for the few remaining cases caused unnecessary confusion among the regulated public and employees of the WCAB.

Specific Purpose and Basis of Repeal of Section 10987.3

Prior to this rulemaking, § 10987.3 provided that the Information Request Form and the Information Response Form (§§ 10987.1 and 10987.2) applied only in cases in which the injury occurred during 1990 through 1993. The WCAB has repealed § 10987.3 because there are very few remaining cases in which the injury occurred during 1990 through 1993, and because continuing to have a different procedure in those few cases caused confusion among the regulated public and the WCAB's staff.

120. Section Amended: 10995.

Problem Addressed

Section 10995 concerns mandatory arbitration. Prior to this rulemaking, that section did not specify who was to provide the arbitrator with the materials necessary to fulfill his or her duties. This led to arbitrators improperly being given custody of the WCAB's case file.

Specific Purpose and Basis of Amendments to Section 10995

The WCAB has amended § 10995 to specify that the parties will provide the arbitrator with all necessary materials and that the WCAB file will remain in the custody of the district office. This change was necessary to insure that the arbitrator has the materials necessary to perform his or her duties and that the arbitrator is not improperly given custody of the WCAB's case file.

Nonsubstantive Changes

There were additional nonsubstantive revisions to delete language referring to Labor Code § 5275(a), subsections (3) and (4), which were repealed effective January 1, 2003, to change punctuation for consistency, and to conform to modern standards of English usage.

121. Section Amended: 10996.

Problems Addressed

Prior to this rulemaking, § 10996 did not require that an Application for Adjudication be filed with an arbitration submittal form or that an Application be on file when the arbitration submittal form was filed. That section provided that, if an Application for Adjudication had not been filed, the arbitrator's decision and record was to be filed and the presiding judge was to assign a case number. However, the information necessary to create a computer record of the case might not have been available in the arbitrator's file or the information might not have been easily accessible. The WCAB also concluded that it should keep a record of the case from the time that any proceedings are initiated, which includes the filing of the arbitration submittal form.

Section 10996 concerns voluntary arbitration. Prior to this rulemaking, that section did not specify who was to provide the arbitrator with the materials necessary to fulfill his or her duties. This led to arbitrator's improperly being given custody of the WCAB's case file.

Specific Purpose and Basis of Amendments to Section 10996

The WCAB has amended § 10996 to require that an Application for Adjudication be filed with an arbitration submittal form if one has not been previously filed, and to delete the language that provided for the situation in which an Application for Adjudication had not been filed at the time the arbitrator's decision is filed. This amendment was necessary so that the WCAB can keep records in cases in which arbitration is used.

The WCAB has amended § 10996 to specify that the parties will provide the arbitrator with all necessary materials and that the WCAB file will remain in the custody of the district office. This change was necessary to insure that the arbitrator has the materials necessary to perform his or her duties and that the arbitrator is not improperly given custody of the WCAB's case file.

Nonsubstantive Changes

Additional nonsubstantive revisions included the deletion of language that is confusing and unnecessary, changing a reference to a subsection of Labor Code § 5275 that has been renumbered effective January 1, 2003, and a change to conform to modern standards of English usage.

122. Section Amended: 10997.

Problem Addressed

Prior to this rulemaking, if the parties wished to request arbitration and the case was set for hearing before a judge, § 10997 required that the parties file an arbitration submittal form within six days after service of the notice of hearing. However, the WCAB concluded that this limitation was unnecessary.

Specific Purpose and Basis of Amendments to Section 10997

The WCAB has amended § 10997 to delete the requirement that, where the parties wish to request arbitration and the case is set for hearing before a judge, the parties file an arbitration submittal form within six days after service of the notice of hearing. The WCAB has concluded that this limitation is unnecessary.

Nonsubstantive Changes

Additional nonsubstantive changes included the deletion of language that is confusing and unnecessary

Nonsubstantive Changes:

1. Section Amended: 10306.

Section 10306 was amended to delete the reference to the formerly used index of cases and substitute a reference to the computer database that is currently used, and to clarify that the database is that of the Division of Workers' Compensation rather than the WCAB. There was an additional nonsubstantive change for clarity. The title of the section was amended to conform to its contents.

2. Section Amended: 10350.

Section 10350 was amended to substitute the current term "trial" for the former term "regular hearing" in the text and in the title of the section, consistent with the amendments to the definitions in Section 10301 and common usage by the regulated public.

3. Section Amended: 10360.

Section 10360 was amended to delete a reference to a section of the regulations that was repealed in 1996 and to conform to modern standards of English usage.

4. Section Amended: 10380.

Section 10380 was amended to delete the reference to settlement conference referees because referees are no longer employed by the Division of Workers' Compensation.

5. Section Amended: 10404.

Section 10404 was amended to conform to modern standards of English usage and to delete punctuation added in error.

6. Section Renumbered: 10407.

Section 10407 was renumbered as 10583 so that it is now located near other regulations on similar topics.

7. Section Renumbered and Amended: 10417.

Section 10417 was renumbered as § 10420 to allow the insertion of a new § 10417 and amended to delete references to the Labor Code that are not pertinent to the section, to delete language that was unnecessary because almost no cases remain from the period 1990 through 1993, and the WCAB has determined that those cases that remain should follow the same procedures as other cases, to correct an error in wording, and for clarity.

8. Section Amended: 10440.

The title of § 10440 was amended to more accurately describe the contents of the section.

9. Section Renumbered: 10454.

Section 10454 was renumbered as 10455 to allow the insertion of a new § 10454.

10. Section Amended: 10484.

Section 10484 was amended to use the term "proof" of service, which has a commonly understood meaning in the regulated community, in place of "statement" of service.

11. Section Amended: 10520.

Section 10520 was amended for conciseness.

12. Section Amended: 10534.

Section 10534 was amended for conciseness and to conform to modern standards of English usage.

13. Section Amended: 10566.

Section 10566 was amended to correct a punctuation error and to conform to modern standards of English usage.

14. Section Amended: 10580.

Section 10580 was amended to conform to modern standards of English usage.

15. Section Renumbered and Amended: 10590.

Section 10590 was renumbered as § 10589 to allow the insertion of a new § 10590. Language concerning consolidation of cases assigned to one district office was deleted from § 10591 and added to this section. Other nonsubstantive revisions include changes for conciseness and to conform to modern standards of English usage.

16. Section Amended: 10600.

Section 10600 was amended to conform to modern standards of English usage.

17. Section Amended: 10602.

Section 10602 was amended to correct an error, to update references to an organizational component of the Division, for consistency with Title 8, California Code of Regulations, § 10156 (Rules of the Administrative Director), for conciseness, and to conform to modern standards of English usage. In addition, the title of the section was amended to more accurately describe the contents of the section.

18. Section Amended: 10604.

Section 10604 was amended to conform to modern standards of English usage.

19. Section Amended: 10618.

The WCAB has repealed §§ 10619 and 10620, and consolidated the text of all three sections in a single section, § 10618. The title of § 10618 was amended to conform to the contents of the section. There was an additional nonsubstantive change in capitalization for consistency.

20. Section Repealed: 10619.

The WCAB has repealed § 10619 and added the text of that section to § 10618.

21. Section Repealed: 10620.

The WCAB has repealed § 10620 and added the text of that section to § 10618.

22. Section Amended: 10630.

Section 10630 was amended to conform to modern standards of English usage.

23. Section Amended: 10631.

Section 10631 was amended to conform to modern standards of English usage.

24. Section Amended: 10633.

Section 10633 was amended to correct a grammatical error.

25. Section Amended: 10754.

Section 10754 was amended to correct an error, specifically, the failure to pluralize "proceedings," and to conform to modern standards of English usage.

26. Section Amended: 10762.

Section 10762 was amended to accurately describe current practice.

27. Section Amended: 10771.

Section 10771 was amended for clarity and conciseness.

28. Section Amended: 10772.

Section 10772 was amended to correct an error of omission.

29. Section Amended: 10775.

Section 10775 was amended to delete references to settlement conference referees because they are no longer employed by the Division of Workers' Compensation.

30. Section Amended: 10776.

Section 10776 was amended to conform to modern standards of English usage.

31. Section Amended: 10828.

Section 10828 was amended to conform to modern standards of English usage.

32. Section Amended: 10842.

Section 10842 was amended for conciseness, and to conform to modern standards of English usage.

33. Section Amended: 10852.

Section 10852 was amended to substitute the terms "justify" and "justified" for "support" and "supported" to be consistent with Labor Code § 5903(c).

34. Section Amended: 10856.

Section 10856 was amended to conform to modern standards of English usage.

35. Section Amended: 10862.

Section 10862 was amended to conform to modern standards of English usage.

36. Section Amended: 10864.

Section 10864 was amended to conform to modern standards of English usage.

37. Section Amended: 10870.

Section 10870 was amended to conform to modern standards of English usage.

38. Section Amended: 10875.

Section 10875 was amended to change capitalization of certain words for consistency.

39. Section Amended: 10940.

Section 10940 was amended to correct the title of the Division.

40. Section Amended: 10942.

Section 10942 was amended to correct the title of the Division and the title of an organizational component.

41. Section Amended: 10957.

Section 10957 was amended to conform to the current title of an organizational component of the Division, and change capitalization for consistency.

42. Section Amended: 10958.

Section 10958 was amended to conform to the current title of an organizational component of the Division.

43. Section Repealed: 10964.

The WCAB has repealed § 10964 because the term "The Office of Benefit Determination" is no longer used.

44. Section Repealed: 10984.

Section 10984 was repealed as unnecessary in that there is no longer a Medical Bureau and all references to it in the regulations are being deleted.

45. Section Amended: 10998.

Section 10998 was amended to delete language made obsolete by the amendment of Labor Code § 5275, effective January 1, 2003.

46. Section Amended: 10999.

Section 10999 was amended to eliminate confusing and unnecessary language, and to conform to modern standards of English usage.

EFFECTIVE DATE:

Pursuant to Government Code Section 11343.4, the effective date of the sections that were repealed, amended and adopted as described above is **January 1, 2003**.

MAILING OF STATEMENT OF REASONS FOR REPEAL AND ADOPTION OF REGULATIONS:

This *Statement of Reasons for Repeal, Amendment and Adoption of Regulations*, and the text of the repealed, amended and adopted regulations, have been mailed to those persons on the mailing list of the Workers' Compensation Appeals Board, to all persons who requested notice of hearing pursuant to Labor Code Section 5307.4(d), and to those persons who submitted comments during the public comment period conducted during the rulemaking process.

Dated: _____

Merle Rabine, Chairman
Workers' Compensation Appeals Board