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TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 4.5. DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1. ADMINISTRATIVE DIRECTOR -- ADMINISTRATIVE RULES
ARTICLE 5.5.1 UTILIZATION REVIEW STANDARDS

§ 9792.11 Investigation Procedures: Labor Code §4610 Utilization Review Violations

(a) To carry out the responsibilities mandated by Labor Code section 4610(i), the Administrative Director, or his or her designee, shall investigate the utilization review process of any employer, insurer or other entity subject to the provisions of section 4610, which investigation shall include but not be limited to review of the practices, files, documents and other records, whether electronic or paper, of the claims administrator and any other person responsible for utilization review processes.

(b) Notwithstanding Labor Code section 129 (a) through (d) and section 129.5 subdivisions (a) through (d) and sections 10105, 10106, 10106.1, 10107, 10107.1, 10108, 10110, 10111, 10111.1, 10111.2, and 10112 of Title 8 of the California Code of Regulations, the Administrative Director, or his or her designee, may conduct an utilization review process investigation pursuant to Labor Code section 4610, which may include but is not limited to an audit of files and other records.

(c) An utilization review investigation may, in the discretion of the Administrative Director, or his or her designee, be conducted as an independent investigation, or may be conducted concurrently with a Labor Code section 129 and 129.5 routine, target or full audit.

(d) Administrative penalties may be assessed pursuant to this section for any failure to comply with Labor Code section 4610, or sections 9792.6 through 9792.10 of Title 8, California Code of Regulations.

(e) The Administrative Director, or his or her designee, may also utilize the provisions of Government Code sections 11180 through 11191 to carry out these responsibilities.

(f) This section shall also apply to any Labor Code section 4610 utilization review investigation conducted on or after (***OAL TO INSERT EFFECTIVE DATE***):

(g) The Administrative Director, or his or her, designee, may conduct an utilization review investigation based on any complaint or by selection of any employer, insurer or other entity subject to Labor Code section 4610, including but not limited to selection from the list of known claim adjusting locations;

(h) The Administrative Director, or his or her designee, may conduct an utilization review investigation by selection of a claims administrator or other person performing utilization review services for the employer;

(i) Notwithstanding the language within the audit regulations referring to investigation and/or audit pursuant to Labor Code sections 129 and 129.5, and in the discretion of the Administrative Director, or his or her designee, the following audit regulations beginning with Article 1 through Article 6 may also apply to investigations or audits conducted pursuant to Labor Code section 4610: 10100.2; 10101, 10101.1; 10102; 10103.2; 10104; 10106.5; 10107(a), (b), (c)(2), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m); 10109; and 10113 through 10114.4.

(j) Any claims administrator or other person performing utilization review services for an employer shall provide the Administrative Director, or his or her designee, the current legal name, address, and phone number of the employer, upon request.

(k) If the date or deadline to perform any act related to the investigation of utilization review practices, the assessment of penalties under this article, or the manner to contest a penalty assessment falls on a weekend or holiday, the act may be performed on the first business day after the weekend or holiday.

(*l*) For the purpose of assessing administrative or civil penalties, if the claims administrator or other person performing utilization review services for the employer does not record the date a document is received, it shall be deemed received on the same day as the latest date the sender wrote on the document for information conveyed by telephone or facsimile. Documents sent via US mail shall be deemed received no later than five calendar days after the latest date the sender wrote on the document.

(m) Where an injured worker's refusal to cooperate in the utilization review process has prevented the claims administrator from determining whether there is a legal obligation to perform an act, the Administrative Director, or his or her designee, may forego a penalty assessment for any related act or omission.

(n) If more than one claims administrator or other person has been responsible for a claim file, utilization review file or other file that is being investigated or audited, penalties may be assessed against each such person for any violation that occurred during the time each claims administrator or other person had responsibility for the file or for the utilization review process.

(o) The claims administrator is liable for all penalty assessments, except that if the subject of the investigation or audit is acting as an agent for another entity, the principal of that agent is jointly and severally liable with the claims administrator for all penalty assessments except civil penalties imposed under

Labor Code Section 4610 and Labor Code Section 129.5(e). This paragraph does not prohibit an agent and its principal allocating the administrative penalty liability between them.

(p) Successor liability may be imposed on a claims administrator, or other person responsible for administering the utilization review process, that has merged with, consolidated, or otherwise continued the business of a corporation or other business entity that is a responsible party and failed to meet its obligations under Divisions 1 and 4 of the Labor Code or regulations of the Administrative Director. The surviving claims administrator, or other person responsible for administering the utilization review process, shall assume and be liable for all the liabilities, obligations and penalties of the prior corporation or business entity. Successor liability will be imposed if there has been a substantial continuity of business operations and/or the new business uses the same or substantially the same work force.

(q) Within five (5) business days of receipt of an Order to Show Cause re: Assessment of Administrative Penalties under section 9792.13 of these regulations, the claims administrator, or other person responsible for performing utilization review processes for the employer, shall serve by certified mail a complete copy of the order on the employer, if different than the claims administrator.

Authority: Sections 133, 4610, and 5307.3, Labor Code.
Reference: Sections 129, 129.5, 4062, 4600, 4600.4, 4604.5 and 4610 and 4614, Labor Code.

§ 9792.12 Penalty Schedule for Labor Code §4610 Utilization Review Violations

(a) **Single Instance Penalties**. Notwithstanding Labor Code section 129.5(c)(1) through (c)(3), the penalty for each failure to comply with the utilization review process required by Labor Code section 4610 and the applicable regulations is:

(1) $ 50,000 for failure to establish or maintain an utilization review process in compliance with Labor Code section 4610.

(2) $ 10,000 for failure to have as the medical director of the utilization review process a physician who holds an unrestricted license to practice medicine in the state of California issued pursuant to section 2050 or section 2450 of the Business and Professions Code.

(3) $ 5,000 for a decision to modify or deny a request for authorization in whole or in part based on the opinion of a licensed physician regarding a medical treatment, procedure, service or product outside of the physician's license or scope of practice.

(4) $ 5,000 if the request for medical treatment authorization is modified or denied by any person other than a licensed medical director or physician reviewer, who is competent to evaluate the specific clinical issues involved in the medical treatment, procedure, service or product for which authorization is requested.

(5) $ 5,000 if the request for medical treatment authorization is delayed by any person other than a licensed medical director or physician reviewer.

(6) $ 5,000 for failing to respond to the request for authorization by the employee's physician.

(7) $ 5,000 in the case of concurrent review, for denying authorization of or discontinuing medical care, prior to notifying the employee's physician of the decision, discussing reasonable options for a care plan and making a good faith effort to agree on a care plan as required by Labor Code section 4610(g)(3)(B).

(8) $ 2,500 for failing to state the area(s) of professional licensure, jurisdiction(s) of licensure, areas of certified specialty and of practice, the phone number, and the hours of availability, each of which must be current, for the medical director or for any reviewing physician, in any written communication to the requesting physician or the provider of goods or services identified in the request for authorization, which denies, delays or modifies the requested medical treatment, service or product.

(9) $ 2,500 for failure to maintain telephone and facsimile access from 9:00 AM to 5:30 PM Pacific Time, on normal business days, for health care providers to request authorization for medical services; or to have a facsimile number available for physicians to request authorization for medical services; or, to maintain a process to receive communications from health care providers requesting authorization for medical services after normal business hours.

(10) $ 1,000 for failure to file with the Administrative Director a complete and current copy of the utilization review plan or a letter in lieu of a utilization review plan as required by section 9792.7(c) of these regulations.

(11) $ 1,000 for each instance in which an expedited review decision is requested and appropriate, for the failure to make a decision in a timely fashion appropriate for the nature of the employee's condition and not in excess of 72 hours after receipt of the information reasonably necessary to make the determination.

(12) $ 1,000 for each failure to notify the requesting physician, the provider of services or goods identified in the request for authorization, the injured employee, and his or her attorney, if any, that additional information is needed in order to make a decision in compliance with the timeframes contained in section 9792.9 of these regulations.

(13) $ 500 for failure to include any one or more of the following items in the written decision modifying, delaying or denying authorization for medical services which is provided to the requesting physician, the provider of goods or services identified in the request for authorization, the injured worker, and his or her attorney, if any:

(A) The date on which the decision was made;

(B) A description of the specific course of treatment or the medical services for which authorization was requested;

(C) A specific description of the course of treatment and medical services approved, if any.

(D) A specific description of the course of treatment and each medical service delayed, modified or denied in whole or part.

(E) A clear and concise explanation of the reasons for the decision to delay, modify or deny each item requested.

(F) A description of the medical criteria or guidelines relied upon in making the decision and a copy of the relevant page(s) or section(s) of such guidelines or criteria.

(G) The clinical reasons regarding medical necessity.

(H) A clear statement that any dispute shall be resolved in accordance with the provisions of Labor Code section 4062 and that an objection to the utilization review decision must be communicated by the injured worker or the injured worker's attorney, if any, to the claims administrator in writing within 20 calendar days of receipt of the decision. It shall further state that the 20-day time limit may be extended for good cause or by mutual agreement of the parties. The letter shall further state the injured worker may file an Application for Adjudication of Claim and Request for Expedited Hearing, DWC Form 4, showing a bona fide dispute as to entitlement to medical treatment in accordance with sections 10136(b)(1), 10400, and 10408.

(I) The following mandatory language:

"If you want further information, you may contact the local DWC Information and Assistance office by calling [enter district Information & Assistance office telephone number closest to the injured worker] or you may receive recorded information by calling 1-800-736-7401.

“You may also consult an attorney of your choice. Should you decide to be represented by an attorney, you may or may not receive a larger award, but, unless you are determined to be ineligible for an award, the attorney's fee will be deducted from any award you might receive for disability benefits. The decision to be represented by an attorney is yours to make, but it is voluntary and may not be necessary for you to receive your benefits."

(J) The name of the physician reviewer relied on to make the decision modifying, delaying or denying the requested treatment authorization, along with the reviewing physician’s current area(s) of certified specialty, area(s) of practice, address, telephone number, and hours of availability.

(14) $500 for each failure to include in the utilization review plan any one or more of the following items of required information:

(A) The name, medical license number, and current areas of certified specialty and practice, of the employed or designated medical director, who holds an unrestricted license to practice medicine in the state of California issued pursuant to section 2050 or section 2450 of the Business and Professions Code.

(B) A description of the process whereby requests for authorization are reviewed, and decisions on such requests are made, and a description of the process for handling expedited reviews.

(C) A description of the specific criteria utilized in the review and throughout the decision-making process, including treatment protocols or standards used in the process for both routine and non-routine reviews, and as otherwise required by section 9792.7 of these regulations.

(D) A description of the qualifications and functions of the personnel involved in decision-making and implementation of the utilization review plan and process.

(E) A description, if applicable, of any prior authorization process in the utilization review plan or process.

(15) For each denial of authorization on the basis of lack of information without documentation reflecting an attempt to obtain the necessary information from the requesting physician, the reviewing physician, the provider of goods or services identified in the request for authorization, or other person having the information:

(A) $1,000 for concurrent authorization;

(B) $ 500 for prospective authorization

(C) $ 250 for retrospective authorization;

(16) For each failure to timely pay a bill for medical treatment authorized through the utilization review process, when the bill remains unpaid at the time the claims administrator is notified that the claim file was selected for investigation or audit:

(A) $ 100 for each unpaid bill of $100 or less, excluding interest and penalty;

(B) $ 200 for each unpaid bill of more than $100, but not more than $500 excluding interest and penalty;

(C) $ 300 for each unpaid bill of more than $500, but not more than $1,000, excluding interest and penalty;

(D) $ 500 for each unpaid bill of more than $1,000, excluding interest and penalty.

(17) $ 10 for each failure to document in the claim file any communication required under Labor Code section 4610 or sections 9792.6 through 9792.10 of these regulations.

(b) Multiple Instance Penalties. For each group of violations as set forth below:

(1) For prospective or concurrent review, for each failure of the claims administrator to make a decision within 5 working days from the date of receipt of the information necessary to make the determination, and in no event more than 14 calendar days from the date of the request for authorization of medical services made by the employee's physician or by the provider of services or goods identified in the request for authorization:

(A) $ 200 for 10 or fewer violations;

(B) $ 800 for 11 to not more than 20 violations;

(C) $ 3,200 for 21 to not more than 40 violations;

(D) $ 6,400 for more than 40 violations.

(2) For prospective or concurrent review, for each failure of the claims administrator to communicate to the requesting physician the decision to approve

the requested authorization within 24 hours of the decision, as required by Labor Code section 4610(g)(3)(A):

(A) $ 100 for 10 or fewer violations;

(B) $ 400 for 11 to not more than 20 violations;

(C) $ 1,600 for 21 to not more than 40 violations;

(D) $ 3,200 for more than 40 violations.

(3) For each failure of the claims administrator to send written communication of the decision to modify, delay or deny in whole or in part the requested medical services, to the requesting physician, the provider of goods or services identified in the request for authorization, to the injured employee, and to his her attorney, if any, within twenty four (24) hours of making the decision, for concurrent review, or within two business days for prospective review:

(A) $ 200 for 10 or fewer violations;

(B) $ 800 for 11 to not more than 20 violations;

(C) $ 3,200 for 21 to not more than 40 violations;

(D) $ 6,400 for more than 40 violations.

(4) For retrospective review, for each failure of the claims administrator to communicate a decision to the requesting physician, the provider of goods or services identified in the request for authorization, to the injured worker, and to his or her attorney, if any, within 30 calendar days of receipt of the information that is reasonably necessary to make the determination:

(A) $ 100 for 10 or fewer violations;

(B) $ 400 for 11 to not more than 20 violations;

(C) $ 1,600 for 21 to not more than 40 violations;

(D) $ 3,200 for more than 40 violations.

(5) For each failure by the claims administrator to disclose each of the following types of information required by Labor Code section 4610(f)(4) in the communications regarding the decision:

i) for approved requests, the specific medical treatment service approved;

ii) for decisions to modify, delay or deny the requested medical services, a clear and concise statement of the reasons for the decision, the criteria or guidelines used, and the clinical reasoning regarding medical necessity for the decision

(A) $ 200 for 10 or fewer violations;

(B) $ 800 for 11 to not more than 20 violations;

(C) $ 3,200 for 21 to not more than 40 violations;

(D) $ 6,400 for more than 40 violations.

(6) For each failure by the claims administrator to provide written notice immediately to the requesting physician, to the injured employee, and to his or her attorney, if any, that a decision on the request for authorization cannot be made within fourteen (14) days for prospective and concurrent reviews, or within thirty (30) days for retrospective reviews for one of the reasons stated in Labor Code section 4610(g)(5):

(A) $ 100 for 10 or fewer violations;

(B) $ 400 for 11 to not more than 20 violations;

(C) $ 1,600 for 21 to not more than 40 violations;

(D) $ 3,200 for more than 40 violations.

(7) For each instance in which a claims administrator, in reliance on Labor Code section 4610(g)(5), delays making or communicating a timely decision or extends the time for decision pursuant to section 9792.9 of these regulations on a request for authorization for medical services, and the claims administrator cannot provide documentation showing one of the following events occurred prior to or at the time the claims administrator communicated this reason for delay under Labor Code section 4610(g)(5):

i) the claims administrator had not received all of the information reasonably necessary and requested;

ii) the employer or claims administrator has requested a consultation by an expert reviewer;

iii) the physician reviewer has requested an additional examination or test be performed

(A) $ 200 for 10 or fewer violations;

(B) $ 800 for 11 to not more than 20 violations;

(C) $ 3,200 for 21 to not more than 40 violations;

(D) $ 6,400 for more than 40 violations.

(8) For each instance in which the claims administrator communicates a written decision in reliance on Labor Code section 4610(g)(5) to delay or extend the time for making a decision on a request for authorization for medical services, but fails to state one or more of the following, as appropriate, to explain the delay:

i) specifying the information reasonably necessary and requested but not received;
ii) the name of the expert reviewer to be consulted;
iii) the additional test(s) or examination(s) to be performed;
iv) the anticipated date on which a decision will be made.

(A) $ 200 for 10 or fewer violations;

(B) $ 800 for 11 to not more than 20 violations;

(C) $ 3,200 for 21 to not more than 40 violations;

(D) $ 6,400 for more than 40 violations.

(9) Following a delay or extension of time in reliance on Labor Code section 4610(g)(5), for each failure to make a decision to approve, modify, delay or deny the requested for medical services within 5 working days for prospective or concurrent review or 30 calendar days for retrospective review :

(A) $ 200 for 10 or fewer violations;

(B) $ 800 for 11 to not more than 20 violations;

(C) $ 3,200 for 21 to not more than 40 violations;

(D) $ 6,400 for more than 40 violations.

(10) Following a delay or extension of time in reliance on Labor Code section 4610(g)(5), for each failure to communicate the decision in a timely manner to the requesting physician, the provider of goods or services identified in the request for authorization, the injured worker, and his or her attorney, if any:

(A) $ 200 for 10 or fewer violations;

(B) $ 800 for 11 to not more than 20 violations;

(C) $ 3,200 for 21 to not more than 40 violations;

(D) $ 6,400 for more than 40 violations.

(11) For each failure by the claims administrator to disclose or otherwise make available the Utilization Review criteria or guidelines to the public if requested as required by Labor Code section 4610, subdivision (f)(4):

(A) $ 100 for 10 or fewer violations;

(B) $ 400 for 11 to not more than 20 violations;

(C) $ 1,600 for 21 to not more than 40 violations;

(D) $ 3,200 for more than 40 violations.

(c) The Administrative Director, or his or her designee, may assess both an administrative penalty under Labor Code section 4610 and a civil penalty under subdivision (e) of Labor Code section 129.5 based on the same violation(s).

(1) For the first investigation finding violations, the administrative penalty assessments under this section shall not exceed $50,000;

(2) For a second or subsequent investigation finding violations of the same subsections of Labor Code section 4610 or these regulations, the administrative penalty assessments under this section shall be doubled, but not to exceed $100,000;

(3) Nothing in these regulations will bar the assessment of a separate civil penalty under Labor Code section 129.5(e).

Authority: Sections 133, 4610, and 5307.3, Labor Code.
Reference: Sections 129, 129.5, 4062, 4600, 4600.4, 4604.5, 4610 and 4614, Labor Code.

§ 9792.13 Administrative Penalties Pursuant to Labor Code §4610 - Order to Show Cause, Notice of Opportunity to be Heard, Decision and Order, and Appeal Procedure.

(a) Pursuant to Labor Code section 4610(i), the Administrative Director shall issue an Order to Show Cause Re: Assessment of Administrative Penalty and Notice of Hearing when the Administrative Director, or his or her designee (the investigating unit of the Division of Workers' Compensation), has reason to believe that an employer, insurer or third party administrator has failed to

meet any of the requirements of Labor Code section 4610 or any regulation adopted by the Administrative Director pursuant to the authority of section 4610:

(b) The order shall be in writing and shall contain all of the following:

(1) Notice that an administrative penalty may be assessed;

(2) The basis for the assessment, including a statement of the alleged violations and the amount of each proposed penalty;

(3) Notice of the date, time and place of a hearing. Continuances will not be allowed without a showing of good cause.

(c) The order shall be served personally or by registered or certified mail.

(d) Within 30 calendar days after the date of service of the Order to Show Cause Re Assessment of Administrative Penalties Pursuant to Labor Code section 4610(i), the employer, insurer or third party administrator may file, as the Respondent, with the Administrative Director an Answer to the Order to Show Cause, in which the Respondent may:

(1) Admit or deny in whole or in part any of the allegations set forth in the Order to Show Cause;

(2) Set forth any affirmative and other defenses;

(3) Set forth the legal and factual bases for each defense.

(e) Failure to timely file an Answer shall constitute a waiver of the Respondent's right to an evidentiary hearing. Unless set forth in the Answer, all defenses to the Order to Show cause shall be deemed waived. If the Answer is not timely filed, within ten (10) days of the date for filing the Answer, the Respondent may file a written request for leave to file an Answer. The Respondent may also file a written request for leave to assert additional defenses. The Administrative Director may grant relief upon a showing of good cause.

(f) The Answer shall be in writing signed by, or on behalf of, the employer, insurer or third party administrator, and shall state the Respondent's mailing address. It need not be verified or follow any particular form. In the event the Respondent is not the employer, the employer's address shall be provided and the employer shall be included on the proof of service.

(1) The Respondent must file the original and one copy of the Answer on the Administrative Director and concurrently serve one copy of the Answer on the

investigating unit of the Division of Workers Compensation (DWC) (the Administrative Director's designee). The original and all copies of any filings required by this section shall have a proof of service attached.

(g) At any time before the hearing, the Administrative Director may file or permit the filing of an amended complaint or supplemental Order to Show Cause. All parties shall be notified thereof. If the amended or supplemental Order to Show Cause presents new charges, the Administrative Director shall afford the Respondent a reasonable opportunity to prepare its defense, and the Respondent shall be entitled to file an amended Answer.

(h) At the Administrative Director's discretion, the Administrative Director may proceed with an informal pre-hearing conference with the Respondent in an effort to resolve the contested matters. If any or all of the charges or proposed penalties in the Order to Show Cause or the amended or supplemental Order to Show Cause remain contested, those contested matters shall proceed to an evidentiary hearing.

(i) Whenever the Administrative Director's Order to Show Cause has been contested, the Administrative Director may appoint a Hearing Officer to preside over the hearing. The Administrative Director's, and any appointed Hearing Officer's, authority includes, but is not limited to: conducting a prehearing settlement conference; setting the date for an evidentiary hearing and any continuances; issuing subpoenas for the attendance of any person residing anywhere within the state as a witness or party at any pre-hearing conference and hearing; issuing subpoenas duces tecum for the production of documents and things at the hearing; presiding at the hearings; administering oaths or affirmations and certifying official acts; ruling on objections and motions; issuing prehearing orders; and preparing a Recommended Determination and Opinion based on the hearing.

(j) The Administrative Director, or his or her appointed Hearing Officer, shall set the time and place for any prehearing conference on the contested matters in the Order to Show Cause, and shall give reasonable written notice to all parties.

(k) The prehearing conference may address one or more of the following matters:

(1) Exploration of settlement possibilities;

(2) Preparation of stipulations;

(3) Clarification of issues;

(4) Rulings on identity and limitation of the number of witnesses;

(5) Objections to proffers of evidence;

(6) Order of presentation of evidence and cross-examination;

(7) Rulings regarding issuance of subpoenas and protective orders;

(8) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing;

(9) Any other matters as shall promote the orderly and prompt conduct of the hearing.

(l) The Administrative Director, or the appointed Hearing Officer, shall issue a prehearing order incorporating the matters determined at the prehearing conference. The Administrative Director, or the appointed Hearing Officer, may direct one or more of the parties to prepare the prehearing order.

(m) Not less than 30 calendar days prior to the date of the evidentiary hearing, the Respondent shall file and serve the original and one copy of a written statement with the Administrative Director, or the appointed Hearing Officer, specifying the legal and factual bases for its Answer and each defense, list all witnesses the Respondent intends to call to testify at the hearing, and append copies of all documents and other evidence the Respondent intends to introduce into evidence at the hearing. A copy of the written statement and its attachments shall also concurrently be served on the investigating unit of the Division of Workers Compensation. If the written statement and supporting evidence are not timely filed and served, the Administrative Director, or the appointed Hearing Officer, shall dismiss the Answer and issue a written Determination based on the evidence provided by the investigating unit of the Division of Workers Compensation. Within ten (10) calendar days of the date for filing the written statement and supporting evidence, the Respondent may file a written request for leave to file a written statement and supporting evidence. The Administrative Director, or the appointed Hearing Officer, may grant the request, upon a showing of good cause. If leave is granted, the written statement and supporting evidence must be filed and served no later than ten (10) calendar days prior to the date of the hearing.

(n) Oral testimony shall be taken only on oath or affirmation.

(o)(1) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence.

(2) In the absence of a contrary order by the Administrative Director, or the appointed Hearing Officer, the investigating unit of the DWC shall present evidence first.

(3) The hearing need not be conducted according to the technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

(4) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case to the Administrative Director, or to the appointed Hearing Officer, or on reconsideration.

(5) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(p) The written affidavit or declaration of any witness may be offered and shall be received into evidence provided that (i) the witness was listed in the written statement pursuant to section 9792.13(m);, (ii) the statement is made by affidavit or by declaration under penalty of perjury, (iii) copies of the statement have been delivered to all opposing parties at least 20 days prior to the hearing, and (iv) no opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The Administrative Director, or the appointed Hearing Officer, shall disregard any portion of the statement received pursuant to this regulation that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(q) The Administrative Director, or the appointed Hearing Officer, shall issue a written Determination and Order Assessing Penalty, if any, including a statement of the basis for the Determination and each penalty assessed, within 60 days of the date the case was submitted for decision, which shall be served on all parties. This requirement is directory and not jurisdictional.

(r) The Administrative Director shall have ten (10) calendar days to adopt or modify the Determination and Order Assessing Penalty issued by an appointed Hearing Officer. In the event the Determination and Order of the appointed Hearing Officer is modified, the Administrative Director shall include a statement of the basis for the Final Determination and Order

Assessing Penalty. If the Administrative Director does not act within ten (10) calendar days, then the Determination and Order Assessing Penalty shall be deemed the Final Determination and Order Assessing Penalty adopted by the Administrative Director.

(s) The Final Determination and Order Assessing Penalty, if any, shall become the final for the purposes of review within twenty (20) days of the date it was served or deemed adopted, unless the aggrieved party files a timely petition for reconsideration or other appeal. A timely filed petition for reconsideration or appeal shall toll the period for paying any penalty assessed. All findings and assessments in the Final Determination and Order Assessing Penalty not contested in the petition for reconsideration or other appeal shall become final as though no petition or appeal was filed.

(t) At any time prior to the date the Final Determination and Order Assessing Penalty becomes final, the Administrative Director, or appointed Hearing Officer, may correct the Determination for clerical, mathematical or procedural error or amend the Determination or Order Assessing Penalty for good cause.

(u) Penalties assessed in a Final Determination and Order Assessing Penalty shall be paid within thirty (30) calendar days of the date the Determination and Order became final.

Authority: Sections 133, 4610, and 5307.3, Labor Code.
Reference: Sections 129, 129.5, 4062, 4600, 4600.4, 4604.5, 4610 and 4614, Labor Code.