



California Workers' Compensation Institute  
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VIA E-MAIL

Division of Workers' Compensation  
P. O. Box 420603  
San Francisco, CA 94142  
Attn: DWC Forum

**Subject: Forum Comments**  
**Rules of the court administrator section 10210 - 10296**

**Introduction**

It is difficult to assess the validity of procedures proposed to implement an electronic management system that does not yet exist. Because we do not know how the actual system will function when it become operational, putting a procedure in place to use it seems to be a "what if" exercise.

Many of the members of CWCI have extensive experience developing, implementing, and maintaining electronic management systems. It is a monumental task. The attorneys I have spoken with are concerned that the proposed regulations issued separately by the DWC and the WCAB are premature and that an implementation date of July 1, 2008 only adds greater urgency to the process. The Institute recommends that these proposals be used by the court administrator and the Board to structure broad based discussions within the workers' compensation community.

**EAMS Advisory Committee:** As the administrative director has done for a number of very complex regulatory schemes, the Institute recommends that the DWC and the Board convene an advisory group to not only vet the proposed regulations but also study the functionality of the electronic system. The committee should involve representatives of all types of affected members of the workers' compensation community. We believe that this would be a very effective introduction to the system and could provide the Division and the Board with additional expertise and experience regarding the pitfalls and advantages of electronic adjudication management.

The advisory group could also advise the Division on the extent and scope of training that might be necessary for the community. Demonstrations of the system would help ensure a broader understanding of what will be required and

of what this system can offer the workers' compensation community. This will be a complicated transition for attorneys and for WCALJs. Those who have attempted a paperless environment know how anxiety-filled the process can be. Meetings with elements of the community, demonstrations of the functionality of the system, and open dialogue with the potential users could ultimately be as important to the process as the technical capabilities of the system.

**Beta Testing:** The materials provided state that the system will "go live" statewide in July. Those with experience implementing such comprehensive systems know the value of smaller testing of the system and the implementation procedures. Rolling out EAMS at a single Board for a testing period of as much as a year may be more prudent and useful to the Division and the community.

Claims administrators, attorney firms, medical providers, and lien claimants may be willing to participate in a specific test of this type and may be able to ensure an efficient and effective operation when the system goes live statewide.

**Staging the Implementation:** The implementation of a system as complicated as EAMS should be staged. While the community needs to understand the full scope of EAMS, a gradual implementation may avoid the potential chaos of going live all at once. This would alleviate, as well, the need to impose a comprehensive regulatory system to trigger all aspects of the system at one time. It may be possible to begin with a court calendaring system, followed by the Board issuing its decision online, electronic document filing, and then implement an online case file system over a period of a year or more.

**Implementation by the Workers' Compensation Community:** As difficult, time consuming and costly as it has been for the Division and the Board to develop EAMS to date, the Division must keep in mind that the rest of the workers' compensation community will be required to modify or update its systems to match the level of EAMS technology, train staff, and develop new workflows and procedures to assure the success of EAMS. For some this will not be difficult but EAMS encompasses the entire workers' compensation community, and some will be very far behind.

### **Technical Comments**

While the primary recommendation is to use these proposed regulations as the basis for a community-wide discussion of the Electronic Adjudication Management System and its implementation, the Institute will also provide some analysis of the specific proposed regulations.

### **Section 10210(c) Consistency**

This section is merely an example of the inconsistency found in the separate sets of proposed regulations. This definition could be combined and relate to both the Division's and the Board's files. Other regulations address the same or similar topic but fail to mirror the language provided elsewhere. Will these regulations be combined to eliminate the redundancy and inconsistent requirements?

**Section 10210(r) Hearing**

While section 10255 provided a process for requesting an emergency status conference that is not included, the definition of hearing or in section (ee), the definition of a status conference.

**Section (dd) S-signature**

While this definition may suffice for the Board's purposes, it might be appropriate to cite the Uniform Electronic Transactions Act, as well.

**Section 10218 Electronic FAX**

This is an example of the potential additional costs that may be incurred by these new procedures, as not all affected parties will have this technology.

**Section 10236(b) Accuracy**

While the party presenting a document has the ultimate burden of proof as to its authenticity and reliability, the party alleging that a document is defective should have to present some basis or good cause for that allegation.

**Section 10240 Return of Exhibits**

This section is a duplicate of section 10630 and should be merged or deleted.

**Section 10255 Emergency Status Conference**

This proposed regulation has nothing at all to do with the implementation of EAMS and should be deleted. The WCAB already has procedures in place to deal with potential emergency conference or hearing setting, so this would be redundant and unnecessary.

While the protection put in place by this regulation may seem adequate, the procedure essentially calls for adjudication within 24 hours and could lead to a violation of due process at the extreme.

**Conclusion**

Thank you for the opportunity to comment on these proposed regulations and we look forward to further discussions with the Division and the Board regarding these momentous changes.

Sincerely,

Michael McClain  
General Counsel

MMc/pm

cc: CWCI Legal Committee  
CWCI Claims Committee  
CWCI Medical Care Committee  
CWCI Return to Work Committee