

Forum 2

Article 4
Conduct of Parties, Attorneys and Representatives

~~10498~~ § 10485. **Special Requirements for Pleadings Filed or Served by Representatives. Attorneys or by Non-Attorney Employees of an Attorney or Law Firm.**

Comment [mwh1]: Rule 10498 will become rule 10485 with the non-substantive changes tracked below. We also propose adding a requirement that non-attorney representatives include pertinent information on pleadings.

(a) Where a party or lien claimant is represented by an attorney, all pleadings filed with the Workers' Compensation Appeals Board or served on any party, lien claimant, or other person shall include the name, State Bar number, law firm, if any, business address, and business telephone number of the attorney. If there is no designated space on the form for the requisite information, this subdivision shall not apply.

Comment [mwh2]: Added subsections.

Comment [DIR3]: Comma deleted for style.

Comment [DIR4]: Comma deleted for style.

Comment [mwh5]: Added from deleted third paragraph.

(b) If a non-attorney employee of an attorney or law firm is executing the pleading being filed or served, the pleading shall include a heading containing the non-attorney's name and the name, State Bar number, law firm, if any, business address, and business telephone number of the attorney primarily responsible for supervising the non-attorney.

Comment [DIR6]: Comma deleted for style.

~~For purposes of this section, "pleading" shall include, but is not limited to, any petition, answer, application for adjudication, declaration of readiness, subpoena, or subpoena duces tecum, but shall not include any pleading on a form approved by the Workers' Compensation Appeals Board and/or created by the Division of Workers' Compensation if there is no designated space on the form for the requisite information.~~

Comment [mwh7]: Removed language as unnecessary because pleading will be defined elsewhere.

(c) If a non-attorney representative is executing the pleading being filed or served, the pleading shall include a heading containing the representative's name, business address and business telephone number.

Comment [mwh8]: Added a requirement for non-attorney representatives to include pertinent information in pleadings for consistency with other requirements.

Article 5

Applications, Answers and Declarations of Readiness to Proceed

~~§10940, 10946.~~ **10458.** **Subsequent Injuries Benefits Trust Fund Application.**

Comment [mwh9]: Combined rules 10940 and 10946.

(a) All claims against the Subsequent Injuries Benefits Trust Fund shall be by an application in writing setting forth the date and nature of the industrial injury, together with all factors of disability alleged to have pre-existed said the injury. ~~Allegations of additional factors must be by amended application.~~

Comment [mwh10]: Subdivision (a) is the first paragraph of former rule 10940 with changes tracked to conform to style and as noted.

(b) All such applications ~~against the Subsequent Injuries Benefits Trust Fund~~ shall be filed with the ~~Appeals Board Workers' Compensation Appeals Board~~ district office having venue or in EAMS, and a copy shall be served by mail on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund, in accordance with ~~Sections 10505 and 10507 rules 10530 and 10540~~. Where joinder of the Subsequent Injuries Benefits Trust Fund has been ordered ~~by the workers' compensation judge or the Appeals Board~~, the applicant shall forthwith file and serve an application as provided herein.

Comment [mwh11]: In practice, an allegation of an additional factor of disability may be made by raising the issue prior to trial.

Comment [mwh12]: Subdivision (b) is the second paragraph of former rule 10940 with changes tracked to conform to style and as noted.

Comment [mwh13]: Changed to clarify where application should be filed.

Comment [DIR14]: Added correct name.

Comment [DIR15]: Added correct name.

Comment [WU16]: Removed unnecessary verbiage.

(c) ~~After~~ When such an application is filed ~~against the Subsequent Injuries Benefits Trust Fund~~, any party who has previously filed medical reports shall ~~forthwith~~ serve copies on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund, ~~and in no case~~ no later than thirty (30) days prior to the mandatory settlement conference or other hearing, unless service is waived by the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund.

Comment [mwh17]: Former rule 10946 with stylistic changes tracked below.

Comment [WU18]: Removed unnecessary verbiage.

Comment [DIR19]: Removed for style consistency.

Article 7
Petitions, Pleadings and Forms

§ ~~10451.3.~~ 10497. Petition for Costs.

Comment [mwh20]: Propose moving rule 10451.3 to 10497 with style changes tracked below.

(a) A petition for costs is a petition seeking reimbursement of an expense or payment for service that is not allowable as a lien against compensation under Labor Code section 4903. A petition for costs may be filed only by:

(1) an employee or the dependent of a deceased employee⁷;

Comment [mwh21]: Changed comma to semicolon to conform to style.

(2) a defendant⁷; or

Comment [mwh22]: Changed comma to semicolon to conform to style.

(3) an interpreter for services other than those rendered at a medical treatment appointment or medical-legal examination.

(b) The caption of the petition shall identify it as a "Petition for Costs."

(c) A petition for costs filed by an employee or a dependent may include, but is not limited to, a claim for reimbursement of payment(s) previously made directly to a provider for medical-legal goods or services, subject to any applicable official fee schedule.

(d) A petition for costs filed by an interpreter shall contain, in addition to the general factual allegations of the petition:

(1) a statement of the name(s) of any interpreter(s) who performed the services;

(2) a statement that the services were actually performed; and

(3) either:

(A) a statement of the certification number of the interpreter(s); or

(B) if not certified, a statement that specifies why a certified interpreter was not used and that sets forth the qualifications of the interpreter, including any qualifications for a non-certified interpreter established by the Rules of the Administrative Director.

Comment [mwh23]: Capitalization removed to conform to style.

(e) A petition for costs shall not be filed or served until at least 60 days after a written demand for the costs has been served on the defendant or the person or entity from whom the costs are claimed. The petition shall append:

(1) a copy of the written demand, together with a copy of its proof of service; and

(2) a copy of the response, if any. A petition that fails to comply with these provisions may be dismissed.

(f) A petition for costs submitted by any person or entity not listed in subdivision (a) shall be deemed dismissed by operation of law and shall not toll or extend any statute of limitations.

(g)(1) A petition for costs may be placed on calendar:

(A) on the filing of a declaration of readiness by an employee, a dependent, a defendant, or a petitioning interpreter that lists the petition as an issue; or

Comment [mwh24]: Comma deleted to conform to style.

(B) on the Workers' Compensation Appeals Board's own motion.

(2) Notwithstanding subdivision (g)(1), the Workers' Compensation Appeals Board may, at any time, issue a notice of intention to allow or disallow the costs sought by the petition, in whole or in part. The notice of intention shall give the petitioner and any adverse party no less than 15 calendar days to file written objection showing good cause to the contrary. If no timely objection is filed, or if the objection on its face fails to show good cause, the Workers' Compensation Appeals Board, in its discretion, may:

(A) issue an order regarding the petition for costs, consistent with the notice of intention; or

(B) set the matter for hearing.

(h) If the filing of a petition for costs, or the failure to promptly make good faith payments on the costs sought by the petition, was the result of bad faith actions or tactics, the Workers' Compensation Appeals Board may impose monetary sanctions and allow reasonable attorney's fees and costs, if any, under Labor Code section 5813 and section 10561. The amount of the attorney's fees, costs, and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after the effective date of this ~~section~~ rule, the monetary sanctions shall not be less than \$ 500.00.

Comment [mwh25]: Comma removed to conform to style.

Comment [mwh26]: "Section" replaced with "rule" to conform to style.

Comment [DIR27]: Added for consistency.

Article 8
Petitions Related to Administrative Orders

§ ~~10950~~ 10500. Petitions Appealing Related to Orders Issued by the Division of Workers' Compensation Administrative Director or the Director of Industrial Relations.

(a) After jurisdiction of the Workers' Compensation Appeals Board has been invoked pursuant to rule 10450, any aggrieved party may appeal or seek to enforce an order issued by the Division of Workers' Compensation Administrative Director or the Director of Industrial Relations pursuant to rules 10505, 10507, 10508 and 10509.

(b) Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal:

(1) The petition must be timely filed with the Workers' Compensation Appeals Board within the timeframe set forth in the applicable statutes and rules.

(2) The petition shall be filed in accordance with rules 10205.10, 10205.12 and 10528 at the district office having venue or in EAMS.

(3) The petition shall be served on all adverse parties, the employee and the Administrative Director or the Director as specified in the relevant rule.

(c) The petition shall set forth specifically and in full detail the factual and/or legal grounds upon which the petitioner considers the determination of the Administrative Director or the Director to be unjust or unlawful, and every issue to be considered. The petitioner shall be deemed to have finally waived all objections, irregularities and illegalities concerning the determination other than those set forth in the petition.

(d) ~~Except as provided in Rule 10953, The petitions shall be filed adjudicated by a workers' compensation judge in accordance with the~~

Comment [mwh28]: This is an expanded rule. We have attempted to encompass the requirements common to petitions appealing orders issued by the AD/Director, in order to remove repetitive verbiage from each rule in this Article.

Comment [mwh29]: All of these appeals should be filed after an Application for Adjudication of Claim has already been filed. Accordingly, we have included subdivision (a) in order to remove references to procedure if an application is not filed.

Comment [mwh30]: Similar language repeated in each rule now encapsulated in subdivision (b).

Comment [mwh31]: Similar language repeated in each rule now encapsulated in subdivision (c).

Comment [mwh32]: There are actually two rules involving petitions that are filed with us rather than the trial level. In subdivision (a), we have referenced only petitions that are filed at the trial level.

~~provisions of Article 9 (section 10290 et seq.) of the Rules of the Court Administrator. at the trial level of the Workers' Compensation Appeals Board utilizing the same procedures applicable to claims for ordinary benefits, including but not limited to the setting of a mandatory settlement conference and trial.~~

(e) Where a workers' compensation judge has ~~determined~~ issued a final decision, order or award, such an appeal, any aggrieved party may file a petition for reconsideration with the Workers' Compensation Appeals Board.

Comment [mwh33]: Added new language for improved precision.

§ 10505. Petition Appealing Denial of Return-to-Work Supplement.

(a) An injured worker may file a “Petition Appealing Denial of Return-to-Work Supplement” with the district office having venue or in EAMS.

(b) The petition shall be filed within 20 days of service of the decision denying the return-to-work supplement, in accordance with Director of Industrial Relations’ rule 17309 and Workers’ Compensation Appeals Board rule 10500.

(c) The petition and any additional documents or pleadings related to the petition shall be served on the Department of Industrial Relations Return-to-Work Supplement Program in accordance with Workers’ Compensation Appeals Board rule 10540(d).

(d) The petition shall be captioned “Petition Appealing Denial of Return-to-Work Supplement” and shall include the assigned ADJ number.

(e) The petition shall be based upon one or more of the grounds as prescribed for petitions for reconsideration in Labor Code section 5903.

(f) The Director may file an answer to the petition within 20 days of the date of service of the petition. A document cover sheet and a document separator sheet shall be filed with the answer, and “Return-to-Work Supplement Program Answer to Appeal” shall be entered into the document title field of the document separator sheet.

(g) The petition shall not be placed on calendar unless a declaration of readiness is filed. The declaration of readiness may not be filed until 30 days have elapsed from the service of the petition.

Comment [mwh34]:

In passing Senate Bill 863 (Statutes of 2012, Chapter 363), the Legislature created a return-to-work program to be administered by the Director of Industrial Relations. Labor Code section 139.48(b) provides: “Eligibility for payments and the amount of payments shall be determined by regulations adopted by the director...Determinations of the director shall be subject to review at the trial level of the appeals board upon the same grounds as prescribed for petitions for reconsideration.”

The Director adopted rule 17309 (set forth below) regarding the appeal process.

We propose adopting rule 10505 to set forth the requirements for a petition appealing the denial of a return to work supplement and the process for adjudication of such a petition.

17309. Appeal to the WCAB

An individual dissatisfied with any final decision of the Director on his or her application for the Return-to-Work Supplement may file an appeal at the Workers’ Compensation Appeals Board (WCAB) District Office. The appeal must contain the name of the individual, the ADJ number of the case in which a voucher was provided, and a clear and concise statement of the facts constituting the basis for the appeal. A copy of the appeal shall be served on the Return-to-Work Program located at 1515 Clay Street, 17th Floor, Oakland, California, 94612. Any appeal must be filed with the WCAB within 20 days of the service of the decision. After an appeal has been timely filed, the Return-to-Work Program may, within the period of fifteen (15) days following the date of filing of that appeal, amend or modify the decision or rescind the decision and take further action. Further action shall be initiated within 30 days from the order of rescission. The time for filing an appeal will run from the filing date of the new, amended or modified decision. Any such appeal will be subject to review at the trial level of the WCAB upon the same grounds as prescribed for petitions for reconsideration.

(h) If the Director of Industrial Relations acts under Director of Industrial Relations' rule 17309 to amend, modify or rescind the decision being appealed, the resulting order by the Director shall be served on the parties within 15 days following the date the appeal was filed and shall be filed with the district office having venue or in EAMS.

§ ~~10957. 10507.~~ Petition Appealing Independent Bill Review Determination of the Administrative Director.

Comment [mwh35]: Rule 10957 will become rule 10507 with the changes tracked below.

(a) An aggrieved party may file a petition appealing an independent bill review (IBR) determination of the Administrative Director ~~(AD)~~. For purposes of this section, a “determination” includes a decision regarding the amount payable to the provider, if any, and a decision that a dispute is not subject to independent bill review.

Comment [mwh36]: Changed to conform to style.

(b) Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal:

Comment [WU37]: Some of the content of former subdivision (f) has been moved to current subdivision (b) with stylistic changes.

(1) The petition shall be limited to raising one or more of the five grounds specified in Labor Code section 4603.6(f).

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

(b)(c) The petition shall be filed in accordance with Workers’ Compensation Appeals Board rule 10500 with the Workers’ Compensation Appeals Board no later than 20 days after service of the IBR determination. An untimely petition may be summarily dismissed.

Comment [WU38]: Relettered.

Comment [mwh39]: This is covered by rule 10500.

(d) In addition to service as required by Workers’ Compensation Appeals Board rule 10500(b)(3), the petition and any additional documents or pleadings related to the petition shall be served on the IBR Unit in accordance with Workers’ Compensation Appeals Board rule 10540(e).

Comment [WU40]: Content of (d) is based on former subdivision (g)(3).

~~(e)~~(e) The caption of the petition shall be captioned identify it as a "Petition Appealing Administrative Director's Independent Bill Review Determination:" and shall include the assigned ADJ number and the case number assigned by the Administrative Director to the IBR determination.

~~(d)~~ The caption of the petition shall include:

(1) the injured employee's first and last names;

(2) the name(s) of the defendant(s) involved in the IBR dispute;

(3) the case number assigned by the AD to the IBR determination; and

(4) the adjudication case number, if any, assigned by the Workers' Compensation Appeals Board to any related application for adjudication of claim(s) previously filed.

Comment [mwh41]: Subdivision (e) requires the ADJ number and IBR case number. This should be sufficient to identify the correct case.

~~(e)~~(f) The petition shall include a copy of the IBR determination and proof of service to of that determination.

Comment [WU42]: Relettered.

~~(f)~~ The petition shall comply with each of the following provisions. Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal.

(1) The petition shall be limited to raising one or more of the five grounds specified in Labor Code section 4603.6(f).

Comment [mwh43]: Moved to subdivision (b)(1).

(2) The petition shall set forth specifically and in full detail the factual and/or legal grounds upon which the petitioner considers the IBR determination to be unjust or unlawful, and every issue to be considered by the Workers' Compensation Appeals Board. The petitioner shall be

~~deemed to have finally waived all objections, irregularities, and illegalities concerning the IBR determination other than those set forth in the petition appealing.~~

Comment [WU44]: Moved – content now in subdivision (b).

~~(3) The petition shall comply with the requirements of sections 10842(a) & (c), 10846, and 10852. It shall also comply with the provisions of section 10845, including but not limited to the 25 page restriction.~~

~~(4) Any failure to comply with the provisions of this subdivision shall constitute valid ground for summarily dismissing or denying the petition.~~

Comment [mwh45]: Included in 10500.

~~(g) A copy of the petition shall be concurrently served on:~~

Comment [mwh46]: Content moved to sub (d).

~~(1) the adverse party(ies) or provider(s) or, if represented, their attorney or non-attorney representatives;~~

~~(2) the injured employee or, if represented, the employee's attorney; and~~

~~(3) the Division of Workers' Compensation, Independent Bill Review Unit (IBR Unit).~~

~~(h)(g)~~ Upon receiving notice of the petition, the IBR Unit may download the record of the independent bill review organization into EAMS, in whole or in part. The Workers' Compensation Appeals Board, in its discretion, may:

Comment [DIR47]: Relettered.

(1) admit all or any part of the downloaded IBR record into evidence; and/or

(2) permit the parties to offer in evidence documents that are duplicates of ones already existing in the downloaded IBR record.

~~(i)(h)~~ The petition shall not be placed on calendar unless a declaration of readiness is filed and served on the Administrative Director, all adverse parties and the applicant. The declaration of readiness may be either concurrently filed with the petition or subsequently filed. Any declaration of readiness shall be concurrently served on the adverse party(ies) or provider(s) and on the IBR Unit.

Comment [DIR48]: Relettered. Removed unnecessary verbiage re: dor.

~~(j)~~ The petition shall be adjudicated by a workers' compensation judge at the trial level of the Workers' Compensation Appeals Board utilizing the same procedures applicable to claims for ordinary benefits, including but not limited to the setting of a mandatory settlement conference, except that the IBR determination shall be presumed correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the Labor Code section 4603.6(f) statutory grounds for appeal.

Comment [DIR49]: Removed because now part of 10500.

~~(k)~~ Any party aggrieved by a final decision, order, or award of the workers' compensation judge may file a petition for reconsideration with the Appeals Board within the same time and in the same manner specified for petitions for reconsideration. The workers' compensation judge shall prepare a report on the petition for reconsideration in accordance with section 10860, unless the judge acts on a timely filed petition for reconsideration in accordance with section 10859.

Comment [DIR50]: Now part of 10500.

~~(l)(i)~~ If the IBR determination is reversed not affirmed by the workers' compensation judge or the Appeals Board, the dispute it shall be remanded rescinded and the dispute returned to the Administrative Director with an order specifying the basis for the rescission, and an order to submit the dispute to IBR in accordance with Labor Code section 4603.6(g).

Comment [DIR51]: Relettered.

~~(m)(j)~~ If a final decision of the Workers' Compensation Appeals Board affirms the Administrative Director's IBR determination and results in the

Comment [WU52]: Amended to clarify and more specifically direct judges and parties regarding procedure after a determination is rescinded.

Comment [mwh53]: Amended subdivision to clarify that only a decision affirming the IBR determination results in an immediate requirement that defendant pay the provider and to cross reference new rule number.

defendant being liable for any payment to the provider, the amount for which the defendant is liable shall be paid to the provider forthwith. If the defendant fails to pay forthwith, the provider need not file a lien claim and may file a petition to enforce under section ~~10451.4~~10508.

§ 10451.4. ~~10508.~~ Petition to Enforce an Administrative Director Determination. Independent Bill Review Determination.

Comment [mwh54]: The administrative director is empowered by statute to issue IMR and IBR determinations

(a) ~~An aggrieved party may file a "Petition to Enforce an Administrative Director Determination" after the time to appeal the determination has expired or after the Workers' Compensation Appeals Board has issued a final order affirming the determination. A petition to enforce an independent bill review (IBR) determination and/or the recovery of an IBR fee under Labor Code section 4603.6(c) may be filed if:~~

~~(1) the Administrative Director has issued an IBR determination and order requiring payment and either:~~

~~(A) a petition appealing this determination and order is not filed with the Workers' Compensation Appeals Board; or~~

~~(B) the Workers' Compensation Appeals Board has issued a final order affirming this determination and order; and~~

~~(2) the defendant has not paid the full amount allowed, including any penalties and interest payable under Labor Code section 4622(a) and/or any IBR fee reimbursement payable under Labor Code section 4603.6(c), within 20 days of finality of the determination and order, as extended by sections 10507 and 10508.~~

~~(b) Where the conditions of subdivision (a) are claimed, the medical treatment or medical legal provider is not required to file a section 4903(b) lien or a claim of costs lien and is not required to pay a lien filing or activation fee.~~

~~(e)~~(b) ~~The caption of the petition shall identify~~ be captioned ~~it~~ as a "Petition to Enforce ~~IBR~~ an Administrative Director Determination;" ~~and shall include the assigned ADJ number and~~

~~(d)~~ The ~~petition~~ shall append a copy of Administrative Director's ~~IBR~~ determination, ~~and order requiring payment and, if an appeal was filed, a copy of the Workers' Compensation Appeals Board's final order affirming this determination and order.~~

~~(e)~~ If the ~~petition to enforce~~ is filed by a person or entity who is not already a party or lien claimant of record, the ~~petition~~ shall be accompanied by a notice of representation, even if the petitioner is self-represented.

~~(f)~~ The ~~petition to enforce~~ may include a request for penalties and interest in accordance with Labor Code section 4603.2(b) and/or section 4622(a). For purposes of penalties and interest, a final decision of the Workers' Compensation Appeals Board that affirms a determination of the Administrative Director requiring payment shall be deemed an "award."

(c) The petition shall be served on all parties in accordance with Workers' Compensation Appeals Board rule 10500.

~~(g)~~(d) Within 15 days of the filing of the petition to enforce, the Workers' Compensation Appeals Board shall issue a notice of intention to grant or deny the petition, in whole or in part. The notice of intention shall give the petitioner and any adverse party no less than 15 calendar days to file written objection showing good cause to the contrary. If no timely written objection is filed, or if the written objection on its face fails to show good cause, the Workers' Compensation Appeals Board, in its discretion, may:

(1) issue an order regarding the petition to enforce, consistent with the notice of intention; or

(2) set the matter for hearing.

§ 10957.1. 10509. Petition Appealing Independent Medical Review Determination. of the Administrative Director.

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

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

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

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

Comment [mwh55]: An IMR determination will only issue in the cases involving these factual circumstances. Accordingly, if there is an IMR determination, this happened.

(b) Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal:

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

Comment [WU56]: Language changed to conform to Administrative Director rule 9792.10.3(a).

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

Comment [WU57]: Moved – content from former subdivision (g) is now subdivision (b).

(c) The petition shall be filed in accordance with Workers' Compensation Appeals Board rule 10500 ~~with the Workers' Compensation Appeals Board~~ no later than 30 days after service ~~by mail~~ of the IMR determination. ~~An untimely petition may be summarily dismissed.~~

Comment [mwh58]: Removed language as redundant.

Comment [WU59]: Included in general rule 10500.

~~(d)~~ The petition and any additional documents or pleadings related to the petition shall be served on the IMR Unit in accordance with Appeals Board rule 10540(f).

Comment [WU60]: Subdivision (d) is based on former subdivision (h)

~~(d)~~~~(e)~~ The ~~caption of the~~ petition shall ~~identify it as a~~ be captioned "Petition Appealing Administrative Director's Independent Medical Review Determination:" and shall include the assigned ADJ number and the case number assigned by Administrative Director to the IMR determination.

Comment [WU61]: Relettered.

~~(e)~~ The caption of the petition shall include:

~~(1) The injured employee's first and last names;~~

~~(2) The name(s) of the defendant(s) involved in the IMR dispute;~~

~~(3) The case number assigned by the AD to the IMR determination; and~~

~~(4) The adjudication case number, if any, assigned by the Workers' Compensation Appeals Board to any related application for adjudication of claim(s) previously filed.~~

Comment [WU62]: Subdivision (e) requires the ADJ number and IBR case number. This should be sufficient to identify the correct case.

(f) The petition shall include a copy of the IMR determination and proof of service ~~to~~ of that determination.

~~(g) The petition shall comply with each of the following provisions. Any petition that fails to comply with any of the following requirements shall be subject to summary dismissal.~~

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

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

~~(3) The petition shall comply with the requirements of sections 10842(a) & (c), 10846, and 10852. It shall also comply with the provisions of section 10845, including but not limited to the 25 page restriction.~~

~~(4) Any failure to comply with the provisions of this subdivision shall constitute valid ground for summarily dismissing or denying the petition.~~

Comment [WU63]: Moved – content from subdivisions (g)(1) & (2) now in subdivision (b), and subdivision (g)(3) now in general rule 10500.

~~(h) A copy of the petition shall be concurrently served on:~~

~~(1) The adverse party(ies) or provider(s) or, if represented, their attorney or non attorney representatives;~~

~~(2) The injured employee or, if represented, the employee's attorney; and~~

~~(3) The Division of Workers' Compensation, Independent Medical Review Unit (IMR Unit).~~

Comment [mwh64]: Now included in general rule 10500.

~~(i)~~(g) Upon receiving notice of the petition, the IMR Unit may download the record of the independent medical review organization into EAMS, in whole or in part. The Workers' Compensation Appeals Board, in its discretion, may:

(1) admit all or any part of the downloaded IMR record into evidence; and/or

(2) permit the parties to offer in evidence documents that are duplicates of ones already existing in the downloaded IMR record.

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

Comment [DIR65]: Relettered.

Comment [WU66]: Removed unnecessary verbiage.

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

~~(k) The petition shall be adjudicated by a workers' compensation judge at the trial level of the Workers' Compensation Appeals Board utilizing the same procedures applicable to claims for ordinary benefits, including but not limited to the setting of a mandatory settlement conference unless an expedited hearing is being conducted in accordance with Labor Code section 5502(b). However, the IMR determination shall be presumed correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the Labor Code section 4610.6(h) statutory grounds for appeal.~~

~~(l) Any party aggrieved by a final decision, order, or award of the workers' compensation judge may file a petition for reconsideration with the Appeals Board within the same time and in the same manner specified for petitions for reconsideration. The workers' compensation judge shall~~

~~prepare a report on the petition for reconsideration in accordance with section 10860, unless the judge acts on a timely filed petition for reconsideration in accordance with section 10859.~~

Comment [mwh67]: Included in general rule 10500.

~~(m)(i) If the IMR determination is reversed rescinded by the workers' compensation judge or the Appeals Board, the dispute request for IMR shall be remanded rescinded and the dispute returned to the Administrative Director with an order specifying the basis for the rescission and an order to submit the dispute to IMR for a new IMR in accordance with Labor Code section 4610.6(i).~~

Comment [DIR68]: Relettered.

Comment [mwh69]: Used more precise language to assist practitioners.

Comment [WU70]: Amended to clarify procedure after IMR determination is rescinded.

~~§ 10959.~~ 10510. Petition Appealing Medical Provider Network
Determination of the Administrative Director.

Comment [mwh71]: Rule 10959 will become 10510 with stylistic changes tracked below.

(a) Any aggrieved person or entity may file a petition appealing a determination of the Administrative Director to:

- (1) deny a medical provider network (MPN) application;
- (2) revoke or suspend an MPN plan;
- (3) place an MPN plan on probation;
- (4) deny a petition to revoke or suspend an MPN plan; or
- (5) impose administrative penalties relating to an MPN.

(b) The petition shall be filed only as follows:

(1) The petition shall be filed no later than 20 days after the date of service of the Administrative Director's determination. An untimely petition may be summarily dismissed.

(2) Notwithstanding any other provision of these rules or of Administrative Director Rules 9767.8(i), 9767.13(f), and 9767.14(f), the petition shall be filed solely in paper ~~(hard copy)~~ form directly with the Office of the Commissioners of the Workers' Compensation Appeals Board, ~~at either its P.O. Box or street address. Up to date P.O. Box and street address information may be obtained at the website of the Department of Industrial Relations, Workers' Compensation Appeals Board~~ ~~(currently,~~ at

Comment [DIR72]: Not capitalized.

Comment [DIR73]: Comma deleted.

Comment [mh74]: Redundant.

~~http://www.dir.ca.gov/wcab/WCAB.PetitionforReconsideration.htm) or by telephoning the Office of the Commissioners (currently, (415) 703-4550).~~

Comment [mwh75]: Have removed addresses throughout the rule for consistency.

(3) The petition shall not be submitted to any district office of the Workers' Compensation Appeals Board, including the San Francisco District Office, and it shall not be submitted electronically.

Comment [DIR76]: District Office is capitalized to conform to style.

(4) A petition submitted in violation of this subdivision shall neither be accepted for filing nor deemed filed and shall not be acknowledged or returned to the submitting party.

(c) The caption of the petition shall identify it as a "Petition Appealing Administrative Director's Medical Provider Network Determination."

(d) The caption of the petition shall include:

(1) the name of the MPN or MPN applicant;

(2) the identity of the petitioner; and

(3) the case number assigned by the Administrative Director to the MPN determination.

(e) The petition shall include a copy of the Administrative Director's determination and proof of service ~~to of~~ that determination.

Comment [mwh77]: To conform to style.

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

(1) The petition may appeal the Administrative Director's determination upon one or more of the following grounds and no other:

(A) the determination was without or in excess of the Administrative Director's powers;

(B) the determination was procured by fraud;

(C) the evidence does not justify the determination;

(D) the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and presented to the Administrative Director prior to the determination; and/or

(E) the Administrative Director's findings of fact do not support the determination.

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

Comment [mwh78]: Comma removed to conform to style.

(3) The petition shall comply with the requirements of sections 10842(a) & and (c), 10846, and 10852. It shall also comply with the provisions of section 10845, including but not limited to the 25-page restriction.

Comment [mwh79]: Ampersand removed to conform to style.

Comment [DIR80]: Comma removed.

(4) Any failure to comply with the provisions of this subdivision shall constitute valid ground for summarily dismissing or denying the petition.

(g) A copy of the petition shall be concurrently served on the Division of Workers' Compensation, Medical Provider Network Unit (MPN Unit).

(h) The petition shall be assigned to a panel of the Appeals Board in accordance with Labor Code section 115.

(i) Within 30 days after the filing of an answer or the lapse of the time allowed for filing one, the Appeals Board shall issue a notice for an evidentiary hearing regarding the petition. The evidentiary hearing shall be set for the purposes of specifying the issue(s) in dispute and any stipulations, taking testimony, and listing and identifying any documentary evidence offered. The proceedings shall be transcribed by a court reporter, which the Appeals Board in its discretion may order the petitioner to provide. The Appeals Board also may order the petitioner to pay the costs of the transcript(s) of the evidentiary hearing.

(j) In its discretion, the Appeals Board may provide that the evidentiary hearing shall be conducted by:

(1) one or more **C**ommissioners of the Appeals Board; or

Comment [DIR81]: Style consistency.

(2) a workers' compensation judge appointed under Labor Code section 5309(b) for the sole purpose of holding hearings and ascertaining facts necessary to enable the Appeals Board to render a decision on the petition; a judge appointed for this purpose shall not render any factual determinations, but may make a recommendation regarding the credibility of any witness(es) presented.

The time, date, length, and place of the evidentiary hearing shall be determined by the Appeals Board in its discretion.

Comment [DIR82]: Deleted comma.

(k) The assigned panel of the Appeals Board shall determine when the petition is submitted for decision. Within 60 days after submission, the panel shall render a decision on the petition **appealing** unless, within that

Comment [WU83]: Stylistic change.

time, the panel orders that the time be extended so that it may further study the facts and relevant law.

~~(1) Special Procedures if Timely Request Made to Administrative Director to Re-Evaluate Initial MPN Determination:~~

~~Nothing in this section shall preclude a person or entity aggrieved by an MPN determination of the AD from making a Where a timely request to the ~~AD~~ Administrative Director for a re-evaluation of an initial MPN determination is filed ~~to re-evaluate that initial determination~~ in accordance with Administrative Director rules 9767.8(f), 9767.13(c), and 9767.14(c) or any similar current or future regulation or statute. ~~→~~ the following procedures shall apply:~~

Comment [DIR84]: Comma deleted.

Comment [mwh85]: Excess verbiage removed for style purposes.

(1) If a request for re-evaluation is made to the Administrative Director prior to filing a petition with the Office of the Commissioners of the Appeals Board, the time for filing such a petition shall be tolled until the Administrative Director files and serves a decision and order regarding the request for re-evaluation.

(2) If a request for re-evaluation is made to the AD after a petition appealing the Administrative Director's initial determination is filed with the Office of the Commissioners of the Appeals Board, the petitioner shall file a copy of the re-evaluation request with the Office of the Commissioners in accordance with subdivisions (b)(2) and (b)(3), together with a cover letter requesting that its petition be dismissed without prejudice. A copy of the cover letter and request for re-evaluation shall be concurrently served on the Division of Workers' Compensation MPN Unit.

§ ~~10953.~~ **10512. Petition Appealing Audit Penalty Assessment—Labor Code Section 129.5(g).**

Comment [mh86]: Rule 10953 will become rule 10512 with stylistic changes tracked below.

(a) An insurer, self-insured employer, or third-party administrator may appeal a civil penalty assessment issued pursuant to subdivision (g) of Labor Code section 129.5 by filing a petition only with the Office of the Commissioners of the Workers' Compensation Appeals Board ~~with any district office or with the Appeals Board in San Francisco,~~ in the same time and manner as ~~provided by the Labor Code and the Rule 10840 et seq. for the filing of~~ a petition for reconsideration, except that a copy of the petition ~~also~~ shall be served on the Administrative Director. The petition shall be accompanied by a completed document cover sheet.

Comment [DIR87]: Comma deleted for consistency.

Comment [mwh88]: This clarifies that this type of petition is not filed at the trial level.

(b) The Administrative Director may answer the petition in the same time and manner provided for the filing of an answer to a petition for reconsideration.

(c) After the filing of a petition appealing a civil penalty assessment issued pursuant to Labor Code section 129.5(g), an adjudication case will be created and an adjudication case number will be assigned. The adjudication case number will be served by the Appeals Board on the Administrative Director and on the parties and attorneys listed on the proof of service to the petition.

(d) Within 15 days after the Administrative Director receives a copy of petition appealing a civil penalty assessment issued pursuant to Labor Code section 129.5(g), the Administrative Director shall submit to the Appeals Board in San Francisco a certified copy of the complete record of proceedings created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, §

10113 et seq.) The certified copy of the record shall include, but shall not necessarily be limited to:

(1) the Order to Show Cause Re: Assessment of Civil Penalty and Notice of Hearing;

(2) the Answer to the Order to Show Cause;

Comment [DIR89]: Removed capitalization to conform to style.

(3) any amended complaint or supplemental Order to Show Cause that may have been issued, and any Amended Answer filed in response thereto;

Comment [DIR90]: Removed capitalization to conform to style.

(4) any pre-hearing written statement filed by the claims administrator;

(5) any pre-hearing Minutes and pre-hearing Orders;

Comment [DIR91]: Removed capitalization to conform to style.

(6) the Minutes of any Hearing, a transcript or summary of any oral testimony offered at the hearing, any documentary evidence or affidavits offered at the hearing; and

Comment [DIR92]: Removed capitalization to conform to style.

(7) the Administrative Director's written Determination and statement of the basis for the Determination. The original record of the proceedings conducted pursuant to Labor Code section 129.5(g) shall not be filed.

(e) The Appeals Board may scan the appeal, any answer, and the photocopied record of the Administrative Director's proceedings into the adjudication file within EAMS. Upon scanning, the paper documents may be destroyed.

Comment [DIR93]: Comma deleted for consistency.

(f) The Appeals Board shall determine the appeal using the record created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, § 10113 et seq.). The

Comment [DIR94]: Period added.

Administrative Director's record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under section 10750.

Comment [mwh95]: This cross-reference will change after the reorganization is completed.

Article 9.
Filing and Service of Documents.

§ 10508. ~~10520.~~ Extension of Time for Weekends and Holidays Time for Actions.

(a) The time in which any act provided by these rules is to be performed is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or other legal holiday, and then it is also excluded.

(b) If the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Comment [mwh96]: Based on California Rule of Court 1.10.

Rule 1.10. Time for actions

•**(a) Computation of time** The time in which any act provided by these rules is to be performed is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or other legal holiday, and then it is also excluded.

•**(b) Holidays** Unless otherwise provided by law, if the last day for the performance of any act that is required by these rules to be performed within a specific period of time falls on a Saturday, Sunday or other legal holiday, the period is extended to and includes the next day that is not a holiday.

•**(c) Extending or shortening time** Unless otherwise provided by law, the court may extend or shorten the time within which a party must perform any act under the rules.

By adding a subdivision regarding computation of time, we will clarify how days are calculated for all service and filing rules. This rule reflects current law as discussed in *Messele v. Pitco Foods, Inc.* (2011) 76 Cal.Comp.Cases 956 (Appeals Board en banc).

§ 1050710523. Time Within Which to Act When a Document is Served by Mail, Fax, or E-Mail.

(a) ~~If a~~ **When any** document is served by mail, fax, e-mail, or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by:

(1) five calendar days from the date of service, if the physical address of the party, lien claimant, attorney, or other agent of record being served is within California;

(2) ten calendar days from the date of service, if the physical address of the party, lien claimant, attorney, or other agent of record being served is outside of California but within the United States; and

(3) twenty calendar days from the date of service, if the physical address of the party, lien claimant, attorney, or other agent of record being served is outside the United States.

(b) For purposes of this section, “physical address” means the street address or Post Office Box of the party, lien claimant, attorney, or other agent of record being served, as reflected in the Official Address Record at the time of service, even if the method of service actually used was fax, e-mail, or other agreed-upon method of service.

~~(c) This rule applies whether service is made by the Workers’ Compensation Appeals Board, a party, a lien claimant, or an attorney or other agent of record.~~

Comment [mwh97]: Rule 10507 will become rule ~~10553~~ 10523 with minor changes in language outlined below. In *Messele v. Pitco Foods, Inc.* (2011) 76 Cal.Comp.Cases 956 (Appeals Board en banc) we discussed the rationale for the 2008 amendment to this rule and our deviation from the Code of Civil Procedure section 1013 pertaining to service by methods other than mail.

Comment [DIR98]: Comma deleted.

Comment [mwh99]: Clarifies that this rule applies to all documents served by any method except personal service.

Comment [DIR100]: Comma deleted.

Comment [DIR101]: Comma deleted for consistency.

Comment [DIR102]: Comma deleted for consistency.

Comment [DIR103]: Comma deleted for consistency.

Comment [DIR104]: Comma deleted for consistency.

Comment [DIR105]: Comma deleted.

Comment [mwh106]: Propose eliminating this language as unnecessary because opening sentence now clarifies that this applies “when any” document is served.

§ 10525. Filing and Service of Documents.

(a) Unless a statute or rule provides for a different method for filing or service, a requirement to “file and serve” a document means that a copy of the document must be served on the attorney or representative for each party separately represented, on each self-represented party and on any other person or entity when required by statute, rule, or court order, and that the document and a proof of service of the document must be filed with the Workers’ Compensation Appeals Board.

Comment [WU107]: We propose adding a new rule based on California Rule of Court 1.21(b) to define filing and service. We think this will assist parties in understanding how to file and serve a document.

“(b) ‘Serve and file’ As used in these rules, unless a statute or rule provides for a different method for filing or service, a requirement to “serve and file” a document means that a copy of the document must be served on the attorney for each party separately represented, on each self-represented party, and on any other person or entity when required by statute, rule, or court order, and that the document and a proof of service of the document must be filed with the court.”

~~§ 10390, 10391, 10392, 10397~~ 10528. **Filing of Documents.**

Except as otherwise provided by these rules or ordered by the Workers' Compensation Appeals Board, after the filing and processing of an initial application for adjudication of claim or other case opening document, all documents required or permitted to be filed under the rules of the Workers' Compensation Appeals Board shall be filed only in EAMS or with the district office having venue.

Comment [mwh108]: This paragraph is current rule 10390 in its entirety.

(a) Except as provided by section 10603(a), no "original" business records, medical records or other documentary evidence shall be filed with the Workers' Compensation Appeals Board. Only a photocopy or other reproduction of an original document shall be filed. All paper documents that are scanned into EAMS are destroyed after filing pursuant to section 10205.10.

(b) A document is deemed filed on the date it is received, if received prior to 5:00 p.m. on a court day (i.e., Monday through Friday, except designated State holidays). An electronically transmitted document shall be deemed to have been received by EAMS when the electronic transmission of the document into EAMS is complete. A document received after 5:00 p.m. of a court day shall be deemed filed as of the next court day.

Comment [mwh109]: From rule 10392. We combined the content of subdivisions (a) and (c).

Comment [mwh110]: From rule 10392(b).

Comment [mwh111]: When a document is filed in hard-copy, the filer receives a Notice of Document Discrepancy via U.S. mail if the document is rejected. This can occur even after a doc is stamped in and accepted for filing at the window, and may take some time. If the parties resubmit the corrected document within 15 days of the Notice of Document Discrepancy, the document will be filed and the date of filing refers back to the original filing attempt. If the parties resubmit the document more than 15 days after the Notice of Document Discrepancy, the document will be filed and the date of filing will be the date on which the document is actually received.

(c) When a paper document is filed by mail or by personal service, the Workers' Compensation Appeals Board shall affix on it an appropriate endorsement as evidence of receipt. The endorsement may be made by handwriting, hand-stamp, electronic date stamp or by other means. The endorsement shall serve as confirmation of successful filing unless it

When a document is filed electronically, it is given a batch ID or an L3 automatically. If the filing time is before 5:00 pm, it is deemed filed that day. If the filing time is after 5:00 pm, it is deemed filed the next day. If the document is rejected after the EAMS batch is run (every 2 hours or overnight), the party filing the document receives a resubmission ID that is good for 15 days. The filing party may submit a corrected version of the document within the 15-day period to receive a filing date and date stamp that relates back to the original filing date.

~~accordance with this subdivision~~, the Administrative Director returns the document to the filer and notifies the filer, through the service of a Notice of Document Discrepancy, that the document has not been accepted for filing and the filer fails to correct the discrepancy within 15 days.

(d) When a document is filed electronically, confirmation of successful filing shall be made in the manner described by rule 10206.3.

Comment [mwh112]:

Confirmation of successful filing of document submitted electronically is made in accordance with Administrative Director rule 10206.3 which states:

§ 10206.3. Time of Filing of Documents

(a) An electronically transmitted document shall be deemed to have been received by EAMS when the electronic transmission of the document into EAMS is complete. A document received electronically after 5:00 pm of a court day (i.e., Monday through Friday, except designated State holidays) shall be deemed filed as of the next court day.

(b) When an e-form is filed electronically, the party filing the document shall verify completion of filing pursuant to the procedures set forth in the EAMS E-Form Filing Reference Guide. In the absence of following the procedures set forth in the EAMS E-Form Filing Reference Guide, there is no presumption that EAMS received the document.

(c) When a document is filed using jet filing, the party filing the document shall verify completion of filing pursuant to the EAMS JET File Business Rules and Technical Specifications, Version 4.1. In the absence of a confirmation of successful filing, there is no presumption that EAMS received the document.

§ 10529. Filing Proposed Exhibits.

Any document that a party proposes to offer into evidence at a trial or expedited hearing shall be filed with the Workers' Compensation Appeals Board no later than 20 days prior to the trial or expedited hearing.

Comment [mwh113]: Current rule 10393, (former Court Administrator Rule 10233) requires that medical reports, medical-legal reports, and various records be filed together with a declaration of readiness to proceed, together with a settlement, or at the mandatory settlement conference. We propose a blanket rule provide clarity regarding the filing of documents and to enable judges to review proposed exhibits prior to trial. In addition, it is impractical and wasteful of existing resources to require parties to file documents prior to this time.

§ ~~10510, 10505, 10608.5~~ 10530. **Service.**

(a) Except as otherwise provided by these rules at 10300 et seq., service shall be made on the attorney or agent of record of each affected party unless that party or lien claimant is unrepresented, in which event service shall be made directly on the party or lien claimant.

(b) A document may be served using the following methods:

(1) personal service;

(2) first class mail; or

(3) an alternative method that will effect service that is equivalent to or more expeditious than first class mail, limited to either:

(i) the use of express (overnight) or priority mail; or

(ii) the use of a bona fide commercial delivery service or attorney service promising delivery within two business days, as shown on the service's invoice or receipt; or

(4) a party or lien claimant's preferred method of service if a method has been designated in accordance with rule 10205.6; or

(5) another method if the serving and receiving parties have previously agreed to some other method of service.

Comment [mwh114]: The definitions in this combined new rule come from Cal. Rules of Court, Rule 1.21. Service:

(a) "Service on a party or attorney" Whenever a document is required to be served on a party, the service must be made on the party's attorney if the party is represented.

(b) "Serve and file" As used in these rules, unless a statute or rule provides for a different method for filing or service, a requirement to "serve and file" a document means that a copy of the document must be served on the attorney for each party separately represented, on each self-represented party, and on any other person or entity when required by statute, rule, or court order, and that the document and a proof of service of the document must be filed with the court.

(c) "Proof of service" As used in these rules, "proof of service" means a declaration stating that service has been made as provided in (a) and (b). If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served is representing.

Comment [mwh115]: From rule 10510(b). Designated service is covered in a different rule rendering subdivision (a) unnecessary in the general rule. Eliminated the following portions of subdivision (b) and subdivision (c):

"Except as provided in section 10500, or as otherwise ordered by a workers' compensation judge or the Appeals Board, no party or lien claimant shall be required to serve any document on the injured employee or any dependent(s) of a deceased employee, if the employee or dependent is represented by an attorney or other agent of record.

(c) Nothing in this rule shall preclude more comprehensive service, either as ordered by the Workers' Compensation Appeals Board or in the discretion of the Workers' Compensation Appeals Board or the parties."

Comment [REB116]: From Rule 10505(b).

(c) “Proof of service” means a dated and verified declaration identifying the document(s) served, the parties and/or lien claimants who were served and stating that service has been made. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served is representing.

Comment [REB117]: Definition of proof of service from Cal. Rules of Court Rule 1.21(c).

(d) Where a party or lien claimant receives notification that the service to one or more parties or lien claimants failed, the server shall promptly re-serve the document on the intended recipient(s) and execute a new proof of service.

Comment [mwh118]: From rule 10505(h). Shortened for clarity.

§ ~~10500~~ 10533. Service by the Workers' Compensation Appeals Board.

~~(a) Except as provided in subdivision (b) below Rule _____, the Workers' Compensation Appeals Board may, in its discretion, designate a party or lien claimant, or their attorney or agent of record, to make service of notices of the time and place of hearing, orders approving compromise and release, awards based upon stipulations with request for award and any interim or procedural orders. In deciding whether to exercise this discretion, the Workers' Compensation Appeals Board may consider whether service by it would be more efficient and cost effective because most or all of the parties, lien claimants, attorneys, or agents of record to be served have specified e-mail or fax as their preferred method of service. If discretion is exercised so as to require designated service, the party, lien claimant, or attorney or agent of record designated to make service shall retain the proof of service and shall not file it unless ordered to do so by the Workers' Compensation Appeals Board.~~

Comment [mwh119]: Moved to a new rule on designated service.

~~(b)(a) The Workers' Compensation Appeals Board shall serve the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented and all parties and lien claimants of record with notice of any final order, decision, or award issued by it on a disputed issue after submission. The Workers' Compensation Appeals Board shall not designate a party or lien claimant, or their attorney or agent of record, to serve any final order, decision, or award relating to a submitted disputed issue.~~

Comment [mwh120]: Imported from 10510.

Comment [DIR121]: Comma removed.

Comment [DIR122]: Comma deleted for consistency.

Comment [mwh123]: Removed unnecessary verbiage

~~(e)(b) If the Workers' Compensation Appeals Board effects personal service of a document at a hearing or at a walk-through proceeding, the proof of personal service shall be made by endorsement on the document,~~

setting forth legibly the fact of personal service, the name(s) of the person(s) served, and the date of service and the fact of personal service. The endorsement shall bear the legibly printed name and signature of the person making the service.

Comment [WU124]: Added a requirement that name be legibly printed because of problem with illegible handwriting.

~~(d)~~(c) If the Workers' Compensation Appeals Board serves a document by mail, the proof of mail service shall be made by endorsement on the document, setting forth the fact of mail service on the persons or entities listed on the Official Address Record who have not designated e-mail or fax as their preferred method of service. The endorsement shall state the date of mail service and it shall bear the legibly printed name and the signature of the person making the service.

Comment [DIR125]: Capitalized to conform to style.

Comment [WU126]: Added a requirement that name be legibly printed because of problem with illegible handwriting.

~~(e)~~(d) If the Workers' Compensation Appeals Board electronically serves a document through EAMS on persons or entities listed on the official address record who have designated e-mail or fax as their preferred method of service, the record of electronic service maintained in EAMS shall constitute proof of service on such persons or entities by the Workers' Compensation Appeals Board.

~~(d)~~(e) Where a district office of the Workers' Compensation Appeals Board maintains mailboxes for outgoing documents and allows consenting parties, lien claimants and attorneys to obtain their documents from their mailboxes, documents so obtained shall be deemed to have been served on the party, lien claimant or attorney by mail on the date of service specified on the document.

Comment [mwh127]: Rule 10506 is included in new rule with no change in language.

§10535, Designated Service.

Comment [WU128]: We propose adding a new rule containing a portion of the content of former rule 10500 related to designated service. The changes are mostly non-substantive, except the change noted below in subdivision (c).

(a) The Workers' Compensation Appeals Board may, in its discretion, designate a party or lien claimant, or their attorney or agent of record, to serve any order that is not required to be served by the Workers' Compensation Appeals Board in accordance with Workers' Compensation Appeals Board rule 10533.

(b) In addition to the service required by rule 10560, service shall also be made on the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented.

(c) Within 10 days from the date on which designated service is ordered, the person designated to make service shall serve the document and file the proof of service at the Workers' Compensation Appeals Board district office having venue or in EAMS.

Comment [mwh129]: Former rule 10500 required that a party making designating service retain the proof of service. We propose requiring that the proof of service be filed rather than retained to promote the efficient administration of the workers' compensation system by allowing the parties and judges to verify that designated service was performed correctly.

§10501. 10540. Service on the Division of Workers' Compensation and the Director of Industrial Relations. ~~in Death Cases.~~

Comment [mwh130]: Expanded rule to include additional divisions of the Department of Industrial Relations.

(a) When an Application for Adjudication, stipulations with request for award or compromise and release is filed in a death case in which there is a bona fide issue as to partial or total dependency, the filing party shall serve copies of the documents on the Department of Industrial Relations, Death Without Dependents Unit.

Comment [REB131]: Original text of rule 10501 in its entirety.

(b) Service of all documents on the Subsequent Injuries Benefits Trust Fund shall be made on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund.

(c) Service of documents on the Uninsured Employers Benefits Trust Fund shall be made as follows:

(1) Service shall be made on the Division of Workers' Compensation, Uninsured Employers Benefits Trust Fund – Oakland if the employee's case is venued in one of the following District Offices: Bakersfield, Eureka, Fresno, Oakland, Oxnard, Redding, Riverside, Sacramento, Salinas, San Diego, San Francisco, San Jose, San Luis Obispo, Santa Ana, Santa Rosa, Stockton or Van Nuys.

(2) Service shall be made on the Division of Workers' Compensation, Uninsured Employers Benefits Trust Fund – Los Angeles if the employee's case is venued in one of the following District Offices: Anaheim, Los Angeles, Long Beach, Marina del Rey, Pomona or San Bernardino.

Comment [WU132]: This subdivision provides for service on the UEBTF, using language that mirrors the subdivision regarding service on the SIBTF.

(d) Service of all documents on the Return-to-Work Supplement Program shall be made on the Director of Industrial Relations, Return-to-Work Supplement Program.

Comment [WU133]: This subdivision provides for service on the RTW Supplement Program, using language that mirrors the subdivision regarding service on the SIBTF.

(e) Service of all documents on the Independent Bill Review Unit shall be made on the Division of Workers' Compensation, Independent Bill Review Unit.

Comment [WU134]: This subdivision provides for service on the IBR Unit, using language that mirrors the subdivision regarding service on the SIBTF.

(f) Service of all documents on the Independent Medical Review Unit shall be made on the Division of Workers' Compensation, Independent Medical Review Unit.

Comment [WU135]: This subdivision provides for service on the IMR Unit, using language that mirrors the subdivision regarding service on the SIBTF.

~~§10601, 10607, 10608, 10615, 10616~~ 10545. Duty to Serve Documents.

(a) Where documents, including electronic media, are to be offered into evidence, copies shall be served on all adverse parties no later than the mandatory settlement conference, unless good cause is shown.

Comment [mwh136]: Rule 10601 states that “Where documents, including videotapes, are to be offered into evidence, copies shall be served on all adverse parties no later than the mandatory settlement conference, unless a satisfactory showing is made that all the documents were not available for service by that time.” This rule will become subdivision (a) with the words “electronic media” substituted for “videotapes” to include other forms of electronic recording contemplated by Evidence Code section 1551.

(b) If a party requests that a defendant provide a computer printout of benefits paid, the defendant shall provide the requesting party with a current computer printout of benefits paid within 20 days. The printout shall include the date and amount of each payment of temporary disability indemnity, permanent disability indemnity, the period covered by each payment, and the date, payee and amount of each payment for medical treatment. This request may not be made more frequently than once in a 120-day period unless there is a change in indemnity payments.

Comment [mwh137]: Subdivision (b) is the portion of current rule 10607 that relates to service of benefit print outs, with minor non-substantive changes in language. The portion of rule 10607 that relates to the requirement that a defendant have a current computer printout of benefits paid available at a MSC will be moved to the article regarding hearings.

(c) During the continuing jurisdiction of the Workers’ Compensation Appeals Board, the parties have an ongoing duty to serve:

Comment [mwh138]: From 10615 with superfluous language omitted and the word “ongoing” substituted for the word “continuing” regarding the duty to serve.

(1) each other with any medical reports received; and

(2) a lien claimant who has requested service of medical reports with any medical reports received unless the lien claimant is not defined as a “physician” by Labor Code section 3209.3 and is not an entity described in Labor Code sections 4903.05(c)(7) and 4903.06(b); and

Comment [mwh139]: From 10608(b) & (c) and 10615.

(3) any written communication from a physician containing information listed in rule 10606 that is maintained in the employer’s capacity as an employer. Records from an employee assistance program are not required

Comment [mwh140]: From 10616.

Comment [mwh141]: Need new cross reference.

to be filed or served unless ordered by the Workers' Compensation Appeals Board.

Article 10
Subpoenas

Comment [mwh142]: Not proposing very many changes to current article

§ 10530. 10550. Subpoenas.

Comment [mwh143]: Rule 10530 will become rule 10550 with the changes reflected below.

The Workers' Compensation Appeals Board shall issue subpoenas and subpoenas duces tecum upon request in accordance with the provisions of Code of Civil Procedure sections 1985 and 1987.5 and Government Code section 68097.1. Subpoenas and subpoenas duces tecum shall be on forms prescribed and approved by the Workers' Compensation Appeals Board, ~~and for injuries occurring on or after January 1, 1990, shall contain, in addition to the requirements of Code of Civil Procedure 1985, an affidavit that a claim form has been duly filed pursuant to Labor Code section 5401, subdivision (c).~~

Comment [mwh144]: Eliminated reference to window period cases.

§ 10532. 10552. Notice to Appear or Produce.

Comment [mwh145]: Rule 10532 will become rule 10552 with no changes.

A notice to appear or produce in accordance with Code of Civil Procedure Section 1987 is permissible in proceedings before the Workers' Compensation Appeals Board.

Comment [DIR146]: Not capitalized.

§ 10534.10554. Microfilm Subpoenas of Electronic Records.

Comment [mwh147]: Rule 10534 will become rule 10554 and will be expanded to cover electronic records in general rather than microfilm.

Where records or other documentary evidence have been recorded or reproduced using the methods described in **Section 1551** of the Evidence Code and the original records destroyed, the film, legible print thereof or electronic recording shall be produced in response to a subpoena duces tecum. A party offering a film or electronic recording in evidence may be required to provide legible prints thereof or reproductions from the electronic recording.

Comment [mwh148]: Evidence code section 1551 addresses photographic records of destroyed originals and films in general and not specifically with microfilm. Given that electronic records are currently kept in many forms, broadening the rule to accommodate subpoenas for other types of electronic records will clarify that copies of electronic records may be provided in lieu of a destroyed original and that costs of obtaining and inspecting reproductions shall be paid by the subpoenaing party.

The expense of:

~~(a) inspecting reproductions shall be paid by the party making the inspection; and~~

~~(b) obtaining microfilm prints shall be borne by the party requiring the same.~~

Comment [WU149]: Because the language of this rule has been broadened, it will encompass more forms of electronic media/records and the removed language may not reflect current practice.

§ ~~10536~~, 10557. Witness Fees and Subpoenas.

Comment [mwh150]: Rule 10536 will become rule 10556 with no change in language.

Medical examiners appointed by the Workers' Compensation Appeals Board or agreed to by the parties when subpoenaed for cross-examination at the Workers' Compensation Appeals Board or deposition shall be paid by the party requiring the attendance of the witness in accordance with the Rules of the Administrative Director.

Comment [mwh151]: Removed capitalization to conform to style.

Failure to serve the subpoena and tender the fee in advance based on the estimated time of the trial or deposition may be treated by the Workers' Compensation Appeals Board as a waiver of the right to examine the witness. Service and payment of the fee may be made by mail if the witness so agrees.

§ ~~10537~~10558. Subpoena for Medical Witness.

Comment [mwh152]: Rule 10537 will become rule 10557 with a minor change in language to conform to style.

A subpoena requiring the appearance of a medical witness before the Workers' Compensation Appeals Board must be served not less than ~~ten~~ (10) days before the time the witness is required to appear and testify.

Comment [DIR153]: Deleted parenthesis and word "ten" to conform to style.

§ 10538 10559. Subpoenas for Medical Information by Non-Physician Lien Claimants.

Comment [mwh154]: Rule 10538 will become rule 10558 without change in language except for a renumbered cross-reference.

A lien claimant that is not either a “physician” as defined in Labor Code section 3209.3 or an entity described in Labor Code sections 4903.05(c)(7) and 4903.06(b) shall not issue any subpoena or subpoena duces tecum that seeks to obtain any medical information about an injured worker, but shall instead follow the procedure set forth in ~~section~~ Workers’ Compensation Appeals Board rule 10608(c).

Comment [mwh155]: Will need new cross-reference.

§ 10618, 10575. X-Rays.

Comment [mwh156]: Rule 10618 will become rule 10575. Comment: this rule seems to be more about subpoenas than evidence. It also is a mess.

~~On order of the Appeals Board or workers' compensation judge, a party shall forthwith transmit all X rays to the person designated in the order.~~

~~X rays shall be subpoenaed only when they are relevant to pending issues and there is a present and bona fide intent to offer them in evidence. X rays produced in violation of this rule will be ordered returned to their original custodian at the expense of the party causing them to be produced.~~

Comment [WU157]: Language removed because parties need greater discretion with electronic records and other methods of providing copies of X-rays and other medical imaging studies.

Upon reasonable request of a party, X-rays in the possession of, or subject to the control of, an adverse party or lien claimant shall be made available for examination by the requesting party or persons designated by that party at a time or place convenient to the persons to make the examination.

Article 11 Evidence

§ ~~10393, 10604, 10622, 10634, 10600~~. Evidence and Reports Documentary Evidence.

The filing of a document does not signify its receipt in evidence and, except for the documents listed in Workers' Compensation Appeals Board rule 10750, only those documents that have been received in evidence shall be included in the record of proceedings on the case.

(a) Certified copies of reports or records of any governmental agency, division or bureau shall be admissible in evidence in lieu of the original reports or records.

(b) The Workers' Compensation Appeals Board may decline to receive in evidence:

(1) Any document not listed on the pre-trial conference statement.

(2) Any document not served prior to the mandatory settlement conference, unless good cause is shown.

(3) Any document not filed 20 days prior to trial or expedited hearing, unless good cause is shown.

(4) Any physician's report that does not comply with Labor Code section 4628 unless good cause has been shown for the failure to comply and, after notice of non-compliance, compliance takes place within a reasonable

Comment [mwh158]: Current rule 10600 with stylistic changes in language.

Comment [mwh159]: Will need new cross reference.

Comment [mwh160]: Subdivision (a) is rule 10604 with stylistic changes in language.

Comment [REB161]: Per LC 5502(d)(3), which states:
If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

See also current WCAB rule 10353(c) re: pretrial conference statements.

Comment [REB162]: Per LC 5502(d)(3), which states:
If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

See also new WCAB rule 10530 re: service.

Comment [REB163]: See proposed WCAB rule 10529, which states:

Any document that a party proposes to offer into evidence at a trial or expedited hearing shall be filed with the Workers' Compensation Appeals Board no later than 20 days prior to the trial or expedited hearing.

period of time or within a time prescribed by the workers' compensation judge.

Comment [REB164]: See LC 4628(e), which states:

Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

(5) Any report that does not comply with the verification requirements of Labor Code section 5703(a)(2) or 5703(j)(2) .

Comment [mwh165]: Labor Code section 5307(j)(2) states that "Reports are admissible under this subdivision only if the vocational expert has further stated in the body of the report that the contents of the report are true and correct to the best knowledge of the vocational expert. The statement shall be made in compliance with the requirements applicable to medical reports under subdivision (a).

(c) Where a willful suppression of evidence is shown to exist, it shall be presumed that the evidence would be adverse, if produced.

Comment [mwh166]: Labor Code section 5703(a)(2) states that physician reports "are admissible under this subdivision only if the physician has further stated in the body of the report that there has not been a violation of Section 139.3 and that the contents of the report are true and correct to the best knowledge of the physician. The statement shall be made under penalty of perjury."

(d) The remedies in this section are cumulative to others authorized by law.

Comment [mwh167]: Subsections (c) and (e) are the last two paragraphs of rule 10622 broadened to include any kind of evidence. Evid. Code 413 states: "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case. "

This has been applied as a non-tort remedy to punish/deter the destruction of evidence. See *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 11 ("the evidentiary inference that evidence which one party has destroyed or rendered unavailable was unfavorable to that party").

§ ~~10580~~. **10603. Evidence Taken Without Notice.**

Comment [mwh168]: Rule 10580 will become rule 10603 with no change in language.

Transcripts or summaries of testimony taken without notice and copies of all reports and other matters added to the record, otherwise than during the course of an open hearing, shall be served upon the parties to the proceeding. Unless it is otherwise expressly provided, the parties shall be allowed 10 days after service of the testimony and reports within which to produce evidence in explanation or rebuttal or to request further proceedings before the case shall be deemed submitted for decision.

§ ~~10602~~, 10604. Formal Permanent Disability Rating Determinations.

Comment [mwh169]: Rule 10602 will become rule 10604 without change in language.

The Workers' Compensation Appeals Board may request the Disability Evaluation Unit to prepare a formal rating determination on a form prescribed for that purpose by the Administrative Director. The request may refer to an accompanying medical report or chart for the sole purpose of describing measurable physical elements of the condition that are clearly and exactly identifiable. In every instance the request shall describe the factors of disability in full.

The report of the Disability Evaluation Unit in response to the request shall constitute evidence only as to the percentage of the permanent disability based on the factors described, and the report shall not constitute evidence as to the existence of the permanent disability described.

The report of the Disability Evaluation Unit shall be filed and served on the parties and shall include or be accompanied by a notice that the case shall be submitted for decision seven (7) days after service unless written objection is made within that time.

§ ~~10603~~, ~~10605~~. Oversized Exhibits, Diagnostic Imaging, Physical Exhibits, and Exhibits on Media.

Comment [mwh170]: Rule 10603 will become rule 10605 with non-substantive stylistic changes tracked below.

Comment [DIR171]: Comma deleted to conform to style.

(a) The following exhibits shall be filed only at the time of trial:

(1) Oversized documents, other than medical reports, that are:

(A) larger than 11 x 17 inches (e.g., maps, diagrams, and schematic drawings); and

Comment [DIR172]: Comma removed.

(B) over 25 pages in length;

(2) Diagnostic imaging, including but not limited to any X-ray, computed axial tomography (CAT) scan, magnetic resonance imaging (MRI), nuclear medicine, positron emission tomography (PET) scan, mammography, ultrasound, or other similar medical imaging that is stored on digital, film, or other non-paper media;

Comment [DIR173]: Comma deleted to conform to style.

Comment [mwh174]: Removed comment for style.

(3) Original business or office records;

(4) Physical objects or other tangible things;

(5) Any CD-ROM, DVD, or other digital media, including but not limited to:

Comment [mwh175]: Removed comment for style.

(A) digital photographs;

(B) digital video recordings; and

(C) digital audio recordings;

(6) Videotapes, audiotapes, films and other non-digital video and/or audio recordings or images; and

(7) Photographs printed on paper.

(b) Unless otherwise ordered by the Workers' Compensation Appeals Board, any exhibit listed in subdivision (a) that is offered into evidence (whether or not admitted into evidence) shall be retained by the filing party (or an agent of the filing party) until the later of either:

(1) five years after the filing of the initial application for adjudication (or other case opening document); or

(2) at least six months after all appeals have been exhausted or the time for seeking appellate review has expired with respect to the decision on the issue(s) for which the exhibit was offered in evidence. After expiration of the later of these two time periods, the party may destroy the exhibit, unless the Workers' Compensation Appeals Board has ordered that the exhibit be preserved for a longer period.

(c) Before and during the period of retention, the filing party shall:

(1) Maintain the exhibit under conditions that will protect it against loss, destruction, or tampering, and that will preserve its quality and integrity as far as practicable;

Comment [DIR176]: Comma deleted to conform to style.

(2) At the request of any other party to the action, promptly permit the party to inspect or view the exhibit; and

(3) At the request of any other party to the action, and if practicable, promptly furnish the party a copy of the exhibit or promptly permit the party to make a copy.

For purposes of subsection (c), the term "exhibit" shall include any item listed in subsection (a), whether or not the party or lien claimant in possession or control of that item intends to offer it in evidence.

(d) Any disputes regarding subdivision (c), including but not limited to issues of timing and costs, may be submitted for determination to the Workers' Compensation Appeals Board.

§ ~~10605~~. 10606. Reproductions of Documents.

Comment [mwh177]: Rule 10605 will become rule 10606 with stylistic changes tracked below.

(a) It is presumed a filed photocopy is an accurate representation of the original document. If a party or lien claimant alleges that a filed photocopy is accurate or unreliable, the party alleging the document is inaccurate or unreliable shall state the basis for the objection. The filing party must establish that the document is an accurate representation of the original document.

Comment [mwh178]: From former 10391(b) and (c).

(b) A nonerasable optical image reproduction provided that additions, deletions, or changes to the original document are not permitted by the technology, a photostatic, microfilm, microcard, miniature photographic, or other photographic copy or reproduction, or an enlargement thereof, of a writing is admissible as the writing itself if the copy or reproduction was made and preserved as a part of the records of a business (as defined by Evidence Code Section 1270) in the regular course of that business. The introduction of the copy, reproduction, or enlargement does not preclude admission of the original writing if it is still in existence. The Workers' Compensation Appeals Board may require the introduction of a hard copy printout of the document.

Comment [mwh179]: Begin rule 10605.

Comment [DIR180]: Comma deleted.

(c) A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving by a preponderance of the

Comment [DIR181]: Section is not capitalized.

evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

§ ~~10606~~. 10607. Physicians' Reports as Evidence.

Comment [mwh182]: Rule 10606 will become rule 10607 with minor stylistic changes tracked below.

(a) The Workers' Compensation Appeals Board favors the production of medical evidence in the form of written reports. Direct examination of a medical witness will not be received at a trial except upon a showing of good cause. A continuance may be granted for rebuttal medical testimony subject to Labor Code Section 5502.5.

Comment [mwh183]: Removed capitalization to conform to style.

(b) Medical reports should include where applicable:

(1) the date of the examination;

(2) the history of the injury;

(3) the patient's complaints;

(4) a listing of all information received in preparation of the report or relied upon for the formulation of the physician's opinion;

(5) the patient's medical history, including injuries and conditions, and residuals thereof, if any;

(6) findings on examination;

(7) a diagnosis;

(8) opinion as to the nature, extent, and duration of disability and work limitations, if any;

Comment [mwh184]: Comma removed for style purposes.

(9) cause of the disability;

(10) treatment indicated, including past, continuing, and future medical care;

Comment [mwh185]: Comma deleted for style purposes.

(11) opinion as to whether or not permanent disability has resulted from the injury and whether or not it is stationary. If stationary, a description of the disability with a complete evaluation;

(12) apportionment of disability, if any;

(13) a determination of the percent of the total causation resulting from actual events of employment, if the injury is alleged to be a psychiatric injury;

(14) the reasons for the opinion; and

(15) the signature of the physician.

In death cases, the reports of non-examining physicians may be admitted into evidence in lieu of oral testimony.

(c) All medical-legal reports shall comply with the provisions of Labor Code Section 4628. Except as otherwise provided by the Labor Code, including Labor Code Sections 4628 and 5703, and the rules of practice and procedure of the Appeals Board, failure to comply with the requirements of this section will not make the report inadmissible but will be considered in weighing the evidence.

Comment [DIR186]: Section not capitalized.

Comment [DIR187]: Sections not capitalized.

§ ~~10606.5~~. 10608. Vocational Experts' Reports as Evidence.

Comment [mwh188]: Rule 10606.5 will become rule 10608 with no changes in language.

(a) The Workers' Compensation Appeals Board favors the production of vocational expert evidence in the form of written reports. Direct examination of a vocational expert witness will not be received at a trial except upon a showing of good cause. Good cause shall not be found if the vocational expert witness has not issued a report and the party offering the witness fails to demonstrate that it exercised due diligence in attempting to obtain a report. A continuance may be granted for rebuttal testimony if a report that was not served sufficiently in advance of the close of discovery to permit rebuttal is admitted into evidence.

(b) A vocational expert's written report shall meet the following requirements:

(1) The report shall contain a declaration by the vocational expert signing the report stating: "I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true. I further declare under penalty of perjury that there has not been a violation of Labor Code section 139.32." The foregoing declaration shall be dated and signed by the vocational expert and shall indicate the county wherein it was signed.

(2) The report shall disclose the qualifications of the vocational expert signing the report, which may be satisfied by attaching a curriculum vitae.

(3) Except as provided in subdivision (b)(4), the body of the report shall contain a statement, above the declaration under penalty of perjury, that: “No person, other than the vocational expert signing the report, has participated in the non-clerical preparation of the report, including all of the following:

Comment [mwh189]: Hyphen added.

(i) taking a history from the employee;

(ii) reviewing and summarizing medical and/or non-medical records; and

(iii) composing and drafting the conclusions of the report.”

(4) Notwithstanding subdivision (b)(3), it is permissible for a person or persons, other than the vocational expert signing the report, to prepare an initial outline of the employee’s history and/or to excerpt prior medical and non-medical records. If this is done, however, the vocational expert signing the report:

(A) shall review the excerpts and the entire outline and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant issues;

(B) shall include in the statement required by subdivision (b)(3) that, as applicable, an initial outline of the employee’s history and/or an excerpt of the employee’s prior medical and non-medical records were prepared by another person or persons and that the vocational expert signing the report has reviewed any such excerpts and/or outline and has made any additional inquiries and examinations necessary and appropriate to identify and determine the relevant issues; and

(C) shall comply with subdivision (b)(5), below.

(5) The report shall disclose the name(s) and qualifications of each person who performed any services in connection with the report, including diagnostic studies, other than its clerical preparation.

(c) The vocational expert's report should include, where applicable:

(1) the date(s) of any evaluation(s), interview(s), and test(s);

Comment [mwh190]: Comma deleted for style purposes.

(2) the history of the injury;

(3) the employee's vocational history;

(4) the injured employee's complaints;

(5) a listing of all information reviewed in preparation of the report or relied upon for the formulation of the vocational expert's opinion;

(6) the injured employee's medical history, including injuries and conditions, and residuals thereof, if any;

(7) findings and opinion on evaluation;

(8) the reasons for the opinion; and

(9) the signature of the vocational expert.

A failure to comply with the requirements of subdivision (c) will not make the report inadmissible but will be considered in weighing the evidence.

(d) Statements concerning any vocational expert's bill for services are admissible only if they comply with subdivision (b)(1).

Article 12 Settlements

§ ~~10870, 10882~~ 10610. Approval of Settlements.

(a) The Workers' Compensation Appeals Board shall inquire into the adequacy of all compromise and release agreements and stipulations with request for award, and may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards.

Comment [mwh191]: Former 10882 with no change in language.

(b) Agreements that provide for the payment of less than the full amount of compensation due or to become due and undertake to release the employer from all future liability will be approved only where it appears that a reasonable doubt exists as to the rights of the parties or that approval is in the best interest of the parties. ~~No agreement shall relieve an employer of liability for vocational rehabilitation benefits unless the Workers' Compensation Appeals Board makes a finding that there is a good faith issue which, if resolved against the injured employee, would defeat the employee's right to all workers' compensation benefits.~~

Comment [mwh192]: Former 10870 with reference to vocational rehabilitation removed; vocational rehabilitation is no longer a benefit provided to injured workers.

(c) Settlements or commutations of Supplemental Job Displacement Benefits are not permitted for injuries occurring on or after January 1, 2013.

Comment [WU193]: Added to conform rule to Labor Code section 4658.7(g), which provides:

"(g) Settlement or commutation of a claim for the supplemental job displacement benefit shall not be permitted under Chapter 2 (commencing with Section 5000) or Chapter 3 (commencing with Section 5100) of Part 3."

§ ~~10875, 10612.~~ Procedures—Labor Code Section 3761.

Where the insurer has attached a declaration to the compromise and release agreement or stipulations with request for award that it has complied with the provisions of Labor Code ~~Sections 3761, subdivision (a), and 3761, subdivision (b),~~ the Workers' Compensation Appeals Board may approve the compromise and release or stipulations with request for award without hearing or further proceedings.

Comment [mwh194]: Renumbered with minor changes. LC 3761(b) includes the requirement that an insurer provide notice of facts that would disprove a claim. In relevant part, it states "Failure by the insurer to provide the required notice shall not prohibit the board from approving a compromise and release agreement, or stipulation; however the board shall order the insurer to pay reasonable expenses as provided by section 5813."

Comment [DIR195]: Section is not capitalized.

Comment [mwh196]: Comma deleted for style.

Where a workers' compensation judge or the Appeals Board has approved a compromise and release or stipulations with request for award and the insurer has failed to show proof of service pursuant to Labor Code ~~Section 3761, subdivision (b),~~ the workers' compensation judge or the Appeals Board, after giving notice and an opportunity to be heard to the insurer, shall award expenses as provided in Labor Code ~~Section 5813~~ upon request by the employer.

Comment [DIR197]: Section is not capitalized.

Comment [DIR198]: Section is not capitalized.

Any request for relief under Labor Code ~~Section 3761, subdivision (b),~~ or Labor Code ~~Section 3761, subdivision (d),~~ shall be made by the filing of a petition pursuant to Workers' Compensation Appeals Board Rule 10450, together with a Declaration of Readiness to Proceed.

Comment [DIR199]: Section is not capitalized.

Comment [mwh200]: Comma deleted for style.

Comment [DIR201]: Section is not capitalized.

Comment [DIR202]: Rule is not capitalized

~~This rule shall apply to injuries on or after January 1, 1994.~~

Comment [mwh203]: Language no longer necessary due to the passage of time.

§ ~~10886, 10888~~. 10615. Resolution of Liens.

(a) Before issuance of an order approving compromise and release that resolves a case or an award that resolves a case based upon the stipulations of the parties, if there remain any liens that have not been resolved or withdrawn, the parties shall make a good-faith attempt to contact the lien claimants and resolve their liens. A good-faith attempt requires at least one contact of each lien claimant by telephone or letter.

Comment [mwh204]: Subdivision (a) is rule 10888, except for the last sentence, with minor changes in language to conform to style.

After issuing an order approving compromise and release that resolves a case or an award that resolves a case based upon the stipulations of the parties, if there remain any liens that have not been resolved or withdrawn, the workers' compensation judge shall:

(1) set the case for a lien conference; or

(2) issue a ~~ten (10)~~-day notice of intention to order payment of any such lien in full or in part; or

Comment [DIR205]: "ten" and parens removed and hyphen added.

Comment [DIR206]: Comma removed and semicolon added.

(3) issue a ~~ten (10)~~-day notice of intention to disallow any such lien. Upon a showing of good cause, the workers' compensation judge may once continue a lien conference to another lien conference. If a lien cannot be resolved at a lien conference, the workers' compensation judge shall set the case for trial.

Comment [DIR207]: "ten" and parens removed and hyphen added.

(b) An agreement to "pay, adjust or litigate" a lien, or its equivalent, or an award leaving a lien to be adjusted, is not a resolution of the lien.

Comment [REB208]: Subdivision (b) is the last sentence of rule 10888, set apart for emphasis.

(c) Where a lien claim is on file with the Workers' Compensation Appeals Board, and a compromise and release agreement or stipulations with request for award or order is filed, a copy of the compromise and release agreement or stipulations shall be served on the lien claimant.

No lien claim shall be disallowed or reduced unless the lien claimant has been given notice and an opportunity to be heard.

Comment [WU209]: Subdivision (a) is rule 10886.

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