

## SUMMARY OF RELEVANT NEW AND AMENDED RULES EFFECTIVE JANUARY 1, 2020

Regulations §§ 10300 – 10999, the Workers' Compensation Rules of Practice and Procedure, contained in Subchapter 2 of Title 8, Division 1, Chapter 4.5 of the California Code of Regulations, have been renumbered and reorganized for ease of use. In this process, there have been repeals, amendments, renumbering and new regulations created. This summary highlights some of the relevant changes in the rules.

### **8 CCR § 10305 – Definitions. (former § 10301)**

Deleted many of the definitions that are also defined in other statutes and regulations, and others that were deemed unnecessary. Includes new definitions for “Administrator,” “En banc decision,” “Entity,” “Non-attorney representative.” The Definition for “Party” is simplified and now adds as a party, “Lien claimant,” even when the case-in-chief is not resolved. This is consistent with the rules requiring lien claimants to appear at certain hearings before the case-in-chief is resolved. It does not alter the fact that lien claimants will not be heard until the case-in-chief is concluded. The intent of the rule is to reflect the reality that lien claimants are parties. Further, this change will not require service on lien claimants of all documents related to the case-in-chief, because rule 10625 requires service only on “affected” parties.

### **8 CCR § 10325 – En Banc and Significant Panel Decisions. (former § 10341)**

In addition to advising En Banc decisions are binding on the WCAB and WCJs, it has added “Significant panel decisions of the Appeals Board involve an issue of general interest to the workers' compensation community but are not binding precedent.”

### **8 CCR § 10370 – Extensions of Time During Public Emergencies. (New)**

Allows a WCJ or the WCAB to extend time on any non-jurisdictional deadline in the event the district office is affected by a natural disaster or other public emergency. They may not extend time for any act subject to a statute of limitation or jurisdictional time limitation, such as applications, petitions to reopen, petitions for reconsideration, etc.

### **8 CCR § 10403 – Complaints Regarding Violations of Labor Code Section 4907. (New) (former § 10403 was repealed and replaced by § 10450)**

Adopted to effectuate Labor Code § 4907 which allows the WCAB to remove or suspend non-attorney representatives from practicing in front of it for violations of administrative rules and other good cause. Under § 10403, the board may with or without a complaint from an outside party, begin the process of removing, denying or suspending a non-attorney's privilege to appear before the WCAB. A hearing officer will be appointed to conduct a hearing and make a determination.

### **8 CCR § 10404 – Suspension and Removal of a Non-Attorney Representative's Privilege to Appear before the Workers' Compensation Appeals Board under Labor Code Section 4907. (New) (former § 10404 was repealed and replaced by § 10470)**

A non-attorney may be removed or suspended for good cause and this regulation provides the procedure for such proceedings.

### **8 CCR § 10410 – Ex Parte Communications. (former § 10324)**

The existing rule states that no party shall discuss with the Board or WCJ the merits of any case pending before it. Section 10410 has added, “except when submitting a walk-through document in accordance with rule 10789.”

### **8 CCR § 10450 – Invoking the Jurisdiction of the Workers’ Compensation Appeals Board. (New) (former 10450 was repealed and replaced by § 10510)**

Derived from §§ 10403 and 10400 which have been repealed, § 10450 addresses all case opening documents and provides, that except as under § 10990 (reconsideration from arbitration decision) or § 10590 (petition appealing audit penalty), proceedings before the WCAB are only initiated by the filing of an application, a case opening C&R or Stipulations with Request for Award or a Request for Findings of Fact under § 10460. Until then the WCAB may not conduct hearings, issue orders or authorize discovery, including subpoenas. A pre-application assignment of a non-adjudication EAMS number by any ancillary unit (DEU, I&A, et al) does not establish jurisdiction, toll the statute of limitations or commence discovery.

### **8 CCR § 10454 – Automatic Reassignment After Reversal – REPEALED**

This rule has been repealed. It formerly allowed automatic assignment to another WCJ after the WCAB reverses a decision of the WCJ on an issue of the statute of limitations, jurisdiction, employment or injury AOE/COE and remands for further proceedings. The WCAB has explained that that judges have an ethical obligation to decide the cases assigned to them, unless they are disqualified from doing so. Vesting a party who prevails before the Appeals Board on certain issues with an automatic right of assignment undermines the general principle that judges should decide the cases assigned to them, and risks implying that some erroneous rulings may in fact be a valid basis for seeking judicial reassignment.

### **8 CCR § 10540 – Petition to Terminate Liability for Continuing Temporary Disability. (New) (Replaces §§ 10462, 10464, 10466)**

The substance of the repealed rules is reiterated with some of the specific requirements regarding the contents of the petition eliminated. The requirement to file a petition within 10 days of the termination of payments has been eliminated because LC § 4651.1 provides that TD is to continue for at least one week following the filing of such petition.

### **8 CCR § 10547 – Petition for Labor Code Section 5710 Attorney’s Fees. (New)**

Establishes a procedure for applicant’s attorneys petitioning for deposition fees under LC § 5710. The petition must be verified upon oath, it may not be filed or served until at least 30 days after a written demand, it must attach a copy of the written demand, a copy of any response, proof of service on applicant and defendant and it must contain the name and bar number of the attorney who attended the deposition.

### **8 CCR § 10550 – Petition to Dismiss Inactive Cases (former § 10582) (New) (former § 10550 was repealed and replaced by § 10390)**

The language of § 10582 has been reworded but is the same in substance. § 10550 adds to the procedures that the petition must be filed with the district office having venue or in EAMS and it shall be served on all parties. It must be captioned “Petition to Dismiss Inactive Case [assigned ADJ number]” and it must be appended with a copy of the letter to the applicant and any reply.

**8 CCR § 10555 – Petition for Credit (New)**

New rule that clarifies the procedure for an employer claiming a credit. Per settled case law, this rule makes clear that an employer must not unilaterally take credit for alleged overpayment of benefits, but must file a petition for credit with the WCAB to have the issue adjudicated.

**8 CCR § 10620 – Filing proposed exhibits (New) (former § 10393 repealed and replaced)**

Blanket rule that any document a party proposes to enter into evidence at trial shall be filed with the WCAB at least 20 days prior to trial unless ordered otherwise.

**8 CCR § 10670 – Documentary Evidence (Former §§ 10600, 10604, 10622 and 10634 are repealed and replaced by § 10670.)**

Former §§ 10600, 10604, 10622 are replicated entirely and former § 10634 becomes subdivision (b) (4). New § 10670 outlines documents the WCAB may decline to receive into evidence, including any document not filed 20 days prior to trial.

**8 CCR § 10629 – Designated Service (New)**

**(former § 10629 was repealed and renumbered by § 10759.)**

New § 10629 contains a portion of former § 10500 related to designated service. § 10629 adds a requirement that the proof of service be filed with the WCAB.

**8 CCR § 10752 – Appearances Required (New)**

**(former §§ 10563, 10563.1 repealed)**

Former section 10563 is replicated entirely and last three subdivisions of 10563.1 are replicated. The language is amended in light of the rule that lien claimants are parties. Adds that lien claimants need not appear at MSC or Trial in case-in-chief, however shall be immediately available by telephone with full settlement authority and must notify defendant of the telephone number where they can be reached. Failure to comply could result in sanctions.

**8 CCR § 10788 – Petition for Automatic Reassignment of Trial or Expedited Hearing to another Workers' Compensation Judge (former 10453).**

The language of former § 10453 has been amended. An applicant or defendant shall be entitled to one reassignment of a WCJ for trial or expedited hearing only. This rule is not applicable to conference hearings. If first notified of the identity of the WCJ at mandatory status conference, status conference, lien conference, priority conference or upon reassignment at the time of trial, an oral motion for reassignment must be made immediately. If first notified of identity of WCJ assigned for trial or expedited hearing by Notice of Hearing served by mail, must petition for reassignment not more than five days after receipt of notice. Prior language was "after service of notice."

**8 CCR § 10789 – Walk-Through Documents (former § 10417)**

Former § 10417 has been renumbered § 10789 and amended. The definition of a walk-through document has been moved to § 10305. Section 10789 adds to the prior list of approved documents for walk-through, Petitions for Costs pursuant to § 10545. In the initial statement of reasons, the WCAB noted not all Petitions for Costs will be amenable to resolution on a walk-through basis. The new regulation contains the prior language that when presented with a walk-through document, the WCJ shall approve it, disapprove it, suspend action on it, or accept it for later review and action.

### **8 CCR § 10832 – Notices of Intention and Orders after Notices of Intention. (former § 10349)**

Now provides a non-inclusive list of purposes of a notice of intention and indicates a notice of intent may be served by designated service under §10629, but any subsequent order must be served by the WCAB.

### **8 CCR § 10868 – Notices of Representation for Lien Claimants (former § 10774.5 subdv. (c)-(f)).**

Significantly revised the former regulation for ease of use. New section (a) clarifies that unless an initial lien document is signed by a representative, a lien claimant who obtains representation after a lien has been filed or changes such representation, must file a notice of representation within 5 days. If a copy of the notice is not in the record at the time of hearing, the lien representative shall lodge a copy at the hearing and personally serve all parties appearing. The regulation provides the requirements of the notice and advises that a violation of this rule may result in monetary sanctions and attorney fees. The new regulation has removed the prior section that indicated if no notice has been filed before the hearing, a lien claimant shall be deemed not be represented.

### **8 CCR § 10888 – Dismissal of Lien Claims (New)**

**(former §§ 10582.5, 10770.1 repealed)**

The process for dismissing liens for lack of prosecution has been condensed and simplified to improve clarity and provide better guidance. Subdivision (a) summarizes reasons for dismissal of a lien. A lien claim may be dismissed for lack of prosecution on a petition filed by a party or on the WCAB's own motion if the lien claimant fails to file a DOR within 180 days after the underlying case has resolved or 180 days after a lien conference or trial. Dismissal for failure to appear shall only issue if the lien claimant was provided with notice of the conference or trial. A lien can only be dismissed for failure to comply with the Labor Code or these Rules if the statute or rule provides for dismissal for non-compliance. Before issuing an Order dismissing a lien, the WCAB shall issue a Notice of Intention to Dismiss.

### **8 CCR § 10960 – Petition for Disqualification of Judge (former § 10452)**

New § 10960 adds that the petition to disqualify be verified. It deletes the sentence indicating "In no event shall any such petition be allowed after the swearing of the first witness" as this was not consistent with Code of Civil Procedure section 641.

### **8 CCR § 10964 – Supplemental Petitions (former § 10848)**

After a timely petition for reconsideration, removal or disqualification has been filed, aside from the answer, any supplemental petitions or pleadings or responses must be approved by the WCAB. Section 10964 adds (b) that provides a party seeking to file a supplemental pleading shall file a petition setting forth good cause, for the Board's approval, and must attach the proposed pleading.