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TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 4.5. DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1.8.1. ADMINISTRATIVE DIRECTOR -OTHER
ADMINISTRATIVE PENALTIES
ARTICLE 1 - ADMINISTRATIVE PENALTIES PURSUANT TO LABOR
CODE SECTION 5814.6

§ 10225 Definitions

(a) Adjusting Location - means the office where claims are administered. Separate underwriting companies, self-administered, self-insured employers, and/or third-party administrators operating at one location shall be combined as one audit subject for the purposes of audits conducted pursuant to Labor Code Section 129(b) only if claims are administered under the same management at that location. Where claims are administered from an office that includes a satellite office at another location, claims administered at the satellite office(s) will be considered as part of the single adjusting location for investigation and auditing purposes under this article when it is demonstrated that the claims are under the same immediate management.

(b) Award – means a Findings and Award, Stipulation with Request for Award, Stipulation and Award and/or Order, or a Stipulation and Order, by which a party is entitled to payment of compensation or payment of penalties under section 5814 of the Labor Code.

~~(b)~~ (c) Administrative Director – means the Administrative Director of the Division of Workers Compensation, including his or her designee.

~~(c)~~ (d) Claim – means a request for compensation, or record of an occurrence in which compensation reasonably would be expected to be payable for an injury arising out of and in the course of employment.

(e) Claim File - means a record in paper or electronic form, or any combination, containing all of the information specified in [section 10101.1 of these regulations](#) and all documents or entries related to the provision, payment, delay, or denial of benefits or compensation under Divisions 1, 4 or 4.5 of the Labor Code.

(f) Claims Administrator - means a self-administered workers' compensation insurer, a self-administered self-insured employer, a self-administered legally uninsured employer, a self-administered joint powers

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authority, or a third-party claims administrator for an insurer, a self-insured employer, a legally uninsured employer or a joint powers authority.

(g) Compensation - means every benefit or payment, including vocational rehabilitation, supplemental job displacement benefits, medical treatment, medical and medical-legal expenses, conferred by Divisions 1 and 4 of the Labor Code on an injured employee or the employee's dependents.

(h) Concurrent Medical Treatment Authorization - means authorization requested or provided during an inpatient stay.

(i) Employee - means every person in the service of another, as defined under Article 2 of Chapter 2 of Part 1 of Division 4 of the Labor Code (sections 3350 et seq), or in the case of the employee's death, his or her dependent, as each is defined in Division 4 of the Labor Code, or the employee's or dependent's agent or attorney.

(j) General Business Practice. For purposes of this article, a general business practice means ~~a pattern of related conduct~~ **a pattern of violations of Labor Code section 5814** at a single adjusting location ~~within a three year period~~ that can be distinguished by a reasonable person from an isolated event. The pattern of ~~related conduct~~ **violations** can occur in either a single claim or in the handling of several different claims, or may be based on evidence of ~~multiple awards under~~ **violations of** Labor Code section 5814 for failure to comply with an earlier award of the same compensation or benefit(s). The conduct may include a single practice and/or separate, discrete acts or omissions in the handling of several claims.

(k) Indemnity - means payments made directly to an eligible person as a result of a work injury and as required under Division 4 of the Labor Code, including but not limited to temporary disability indemnity, salary continuation, permanent disability indemnity, vocational rehabilitation temporary disability indemnity, vocational rehabilitation maintenance allowance, and death benefits,

(l) Insurer - means any company, group, or entity in, or which has been in, the business of transacting workers' compensation insurance for one or more employers subject to the workers' compensation laws of this state. The term insurer includes the State Compensation Insurance Fund.

(m) Investigation - means the process used by the Administrative Director, or his or her designee, pursuant to Section 10225.1 and/or Government Code sections 11180 through 11191, to determine whether a violation of Labor Code section 5814.6 has occurred, including but not limited to

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reviewing, evaluating, copying and preserving electronic and paper records, files, accounts and other things, and interviewing potential witnesses.

(n) Joint Powers Authority - means any county, city, city and county, municipal corporation, public district, public agency, or political subdivision of the state, but not the state itself, included in a pooling arrangement under a joint exercise of powers agreement for the purpose of securing a certificate of consent to self-insure workers' compensation claims under Labor Code Section 3700(c).

(o) Knowingly - means acting with knowledge of the facts of the conduct at issue. For the purposes of this article, a corporation is ~~presumed to have~~ **has** knowledge of the facts an employee receives while acting within the scope of his or her authority. A corporation is ~~presumed to have~~ **has** knowledge of information contained in its records and of the actions of its employees performed in the **scope and** course of employment. An employer or insurer is ~~presumed to have~~ **has** knowledge of information contained in the records of its Third Party Administrator and of the actions of the employees of the Third Party Administrator performed in the **scope and** course of employment.

(p) Proof of Service - means an affidavit or declaration made under penalty of perjury and filed with one or more documents required to be filed, setting out a description of the document(s) being served, the names and addresses of all persons served, whether service was made personally or by mail, the date of service, and the place of service or the address to which mailing was made,

(q) Prospective medical treatment authorization - means authorization requested or provided prior to the delivery of the medical services.

(r) Retrospective medical treatment authorization - means authorization requested or provided after medical services have been provided and for which services approval has not already been given.

(s) Salary Continuation - means payment made to an injured employee as provided under Division 4 of the Labor Code.

(t) Serve - means to file or deliver a document or to cause it to be delivered to the Administrative Director or his or her designee, or to such other person as is required under this article.

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(u) Supplemental Job Displacement Benefits - means benefits as described under Labor Code section 4658.5 and sections 10133.50 – 10133.59 of Title 8 of the California Code of Regulations.

(v) Third Party Administrator – means an agent under contract to administer the workers' compensation claims of an insurer, a self-insured employer, a legally uninsured employer, a self-insured joint powers authority or on behalf of the California Insurance Guarantee Association. The term third-party administrator includes the State Compensation Insurance Fund for locations that administer claims for legally uninsured and self-insured employers, and also includes managing general agents.

(w) Utilization Review Files – means those files, documents or records, whether paper or electronic, containing information that documents an employer or insurer utilization review process required under Division 4 of the Labor Code.

(x) Workers Compensation Administrative Law Judge - means, for the purposes of this article, any person appointed in the Division pursuant to Labor Code sections 123 and 123.5, including presiding judges and duly appointed Pro Tempore Workers' Compensation Judges.

§ 10225.1 Penalty Schedule for of Administrative Penalties Pursuant to Labor Code §5814.6.

(a) Administrative penalties shall only be imposed under this section based on **violations of Labor Code section 5814**, after one or more awards has been issued by a Workers' Compensation Administrative Law Judge **for unreasonable delay or refusal to pay compensation.**

(b) To determine whether a violation described in Labor Code section 5814.6 has occurred, and notwithstanding Labor Code section 129 (a) through (d) and section 129.5 subdivisions (a) through (c) and sections 10106, 10606.1, 10107 and 10107.1 of these regulations, the Administrative Director, or his or her designee, may conduct an investigation, which may include but is not limited to an audit of claims and/or utilization review files. The investigation may be independent of or may be conducted concurrently with an audit conducted pursuant to Labor Code section 129 and 129.5.

(c) The Administrative Director, or his or her designee, may also utilize the provisions of Government Code sections 11180 through 11191 to carry out the responsibilities mandated by Labor Code section 5814.6.

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(d) No administrative penalty assessed pursuant to this section shall be based solely on conduct occurring before June 1, 2004.

(e) For the purposes of this section, awards of compensation, awards of penalties pursuant to Labor Code section 5814 and claims handling practices prior to June 1, 2004, **for violations of Labor Code section 5814 issued between January 1, 2000 and May 31, 2004,** may be considered as evidence of a general business practice.

(f) The Administrative Director may charge both an administrative penalty under this section and a civil penalty under subdivision (e) of Labor Code section 129.5 in the same pleading, however only one penalty may be imposed by the Administrative Director following the hearing on such charges.

(g) Pursuant to Labor Code section 5814.6, administrative penalties may be assessed against an employer, insurer and/or third party administrator that knowingly violates Labor Code section 5814 with a frequency that indicates a general business practice as follows:

(1) \$ 100,000 as a base penalty, to which the following additional amounts shall be added as appropriate **for each finding of a knowing violation of Labor Code section 5814 with a frequency that indicates a general business practice;**

(2) \$ 30,000 for each finding imposing a penalty pursuant to **of a violation of Labor Code section 5814** for failure to comply with an existing award of compensation;

(3) For each finding **of a violation of Labor Code section 5814** for a failure to make a timely payment or proper objection to temporary disability benefits or salary continuation payments in lieu of temporary disability; vocational rehabilitation maintenance allowance, or death benefits:

(A) \$ 1,000 for 14 days or less of indemnity benefits;

(B) \$ 5,000 for 15 days through 42 days of indemnity benefits;

(C) \$ 15,000 for more than 42 days of indemnity benefits.

(4) For each finding **of a violation of Labor Code section 5814** for a failure to timely provide or deny authorization for medical treatment or failure to timely reimburse an employee for self-procured medical treatment costs:

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(A) \$ 1,000 for retrospective medical treatment authorization and reimbursement;

(B) \$ 5,000 for prospective or concurrent medical treatment authorization and reimbursement;

(C) \$ 15,000 for prospective or concurrent medical treatment authorization when the employee's condition is such that the employee faces an imminent and serious threat to his or her health.

(5) \$ 2,500 for each finding of a **violation of Labor Code section 5814 for** a failure to provide, or to deny responsibility for, a supplemental job displacement benefit voucher in a timely manner to an eligible employee.

(6) \$ 1,000 for each finding of a **violation of Labor Code section 5814 for** a failure to make timely payment to an injured worker as reimbursement for payment for services provided for a supplemental job displacement benefit voucher, or where the failure to pay the training provider causes an interruption in the employee's retraining.

(7) For each finding of a **violation of Labor Code section 5814** for a failure to make timely payment of permanent disability indemnity benefits:

(A) \$ 1,000 for 15 weeks or less of indemnity benefits;

(B) \$ 5,000 for more than 16 but not more than 50 weeks of indemnity benefits;

(C) \$ 7,500 for more than 50 but not more than 95 weeks of indemnity benefits;

(D) \$ 15,000 for more than 95 weeks of indemnity benefits.

(8) \$ 1,000 for any other finding by a Workers' Compensation Administrative Law Judge pursuant to Labor Code section 5814 not otherwise specified in this section.

(h) In cases **that** the Administrative Director **deems** appropriate, the Administrative Director, or his or her designee, may adjust a penalty imposed under this section after considering **each** of these factors:

(1) The **consequences and** gravity of the violation**(s)**.

(2) The good faith of the claims administrator.

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(3) The history of previous awards of penalties under Labor Code section 5814.

(4) The frequency number and type of the violations.

(5) The size of the claims adjusting location.

(i) Each penalty assessed under this section shall be doubled upon a second finding by the Administrative Director under Labor Code section § 5814.6 within a five (5) year period. Upon a third or subsequent finding by the Administrative Director under Labor Code section § 5814.6, within a ten (10) year period, each penalty shall be tripled. In no event shall the administrative penalties assessed against a single employer, insurer or third party administrator in a single charging instance under Labor Code section § 5814.6 exceed \$ 400,000.

Authority: Sections 133, 5307.3 and 5814.6, Labor Code

Reference: Sections 5814 and 5814.6, Labor Code

§10225.2 – Administrative Penalties Pursuant to Labor Code section 5814.6 – Order to Show Cause, Notice of Hearing, Notice of Penalty Assessment, Appeal Hearing Procedures and Appeals Review.

(a) Pursuant to Labor Code section 5814.6, the Administrative Director shall issue an Order to Show Cause Re: Assessment of Administrative Penalty and Notice of Hearing a Notice of Labor Code § 5814.6 Penalty Assessment when the Administrative Director, or his or her designee (the investigating unit of the Division of Workers Compensation), has reason to believe that an employer, insurer or third party administrator has knowingly violated section 5814 with a frequency that indicates a general business practice,

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

(1) Notice that an administrative penalty not to exceed \$400,000 may be assessed;

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

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

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

(2) A description of the methods for paying or appealing the penalty assessment.

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

(d) Within thirty (30) calendar days after the date of service of the **Notice of Labor Code § 5814.6 Penalty Assessment**, the employer, insurer or third party administrator may **pay the penalties as assessed or file, as the Respondent Appellant**, with the Administrative Director an **Answer appeal**, in which the Respondent **Appellant** may **shall**:

(1) Admit or deny, in whole or in part any of the allegations set forth in the Notice;

(2) Appeal the existence of any or all of the alleged violations;

(3) Appeal the amount of any or all the penalties assessed;

(4) Set forth any affirmative and other defenses;

(5) Set forth the legal and factual bases for each defense and each ground for appeal. Any item listed in the Notice but not appealed shall be paid within thirty (30) calendar days after the date of service of the Notice of Labor Code § 5814.6 Penalty Assessment.

(e) Failure to timely file an **appeal** shall constitute a waiver of the Respondent **Appellant's** right to an evidentiary hearing. Unless set forth in the **appeal**, all defenses to ~~Order to Show Cause~~ **the Notice of Penalty Assessment** shall be deemed waived. **The Respondent Appellant may also file a written request for leave to assert additional defenses. The Administrative Director may grant relief upon a showing of good cause.**

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

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employer, the employer's address shall be provided and the employer shall be included on the proof of service.

(1) The Respondent **Appellant** shall file the original and one copy of **the appeal** on the Administrative Director and concurrently serve one copy of **the appeal** on the investigating unit of the Division of Workers Compensation (DWC) (the Administrative Director's designee). The original and all copies of any filings required by this section shall have a proof of service attached.

(g) At any time before the hearing, the Administrative Director may file or permit the filing of an **Amended Notice of Labor Code § 5814.6 Penalty Assessment**. All parties shall be notified thereof. If **the Amended Notice** presents new allegations or new **penalties**, the Administrative Director shall afford the Respondent **Appellant** a reasonable opportunity to prepare its defense, and the Respondent **Appellant** shall be entitled to file an **amended appeal**.

(h) At the Administrative Director's discretion, the Administrative Director may proceed with an informal pre-hearing conference with the Respondent **Appellant** in an effort to resolve the contested matters. If any or all of the proposed penalties in **Notice of Labor Code § 5814.6 Penalty Assessment** or the **Amended Notice** remain contested, those contested matters shall proceed to an evidentiary hearing.

(i) Whenever the Administrative Director's **Notice of Labor Code § 5814.6 Penalty Assessment** has been contested, the Administrative Director may appoint a Hearing Officer to preside over the hearing. The Administrative Director's, and any appointed Hearing Officer's, authority includes, but is not limited to: conducting a prehearing settlement conference; setting the date for an evidentiary hearing and any continuances; issuing subpoenas for the attendance of any person residing anywhere within the state as a witness or party at any pre-hearing conference and hearing; issuing subpoenas duces tecum for the production of documents and things at the hearing; presiding at the hearings; administering oaths or affirmations and certifying official acts; ruling on objections and motions; issuing prehearing orders; and preparing a **Recommended Determination and Order in re: Labor Code § 5814.6 Penalties** based on the hearing.

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

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

(1) Exploration of settlement possibilities.

(2) Preparation of stipulations.

(3) Clarification of issues.

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

(5) Objections to proffers of evidence.

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

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

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

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

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

(m) Not less than 30 calendar days prior to the date **of the pre-hearing conference, or if no pre-hearing conference is set, not less than 30 calendar days prior to the date** of the evidentiary hearing, the **Respondent Appellant** shall file and serve the original and one copy of a written statement with the Administrative Director, or the appointed Hearing Officer, specifying the legal and factual bases for **its appeal** and each defense, **listing** all witnesses the **Respondent Appellant** intends to call to testify at the hearing, and **appending** copies of all documents and other evidence the **Respondent Appellant** intends to introduce into evidence at the hearing. A copy of the written statement and its attachments shall also concurrently be served on the investigating unit of the Division of Workers' Compensation. If the **Respondent's Appellant's** written statement and supporting evidence are not timely filed and served, the Administrative Director, or the appointed Hearing Officer, shall dismiss **the appeal and the violations and penalties as stated in the Notice of Labor Code § 5814.6 Penalty Assessment shall be final, due and**

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payable. and issue a written Final Decision and Order in re: Labor Code § 5814.6 Penalties, based on the evidence provided by the investigating unit of the Division of Workers' Compensation. Within ten (10) calendar days of the date for filing the written statement and supporting evidence, the Respondent **Appellant** may file a written request for leave to file a written statement and supporting evidence. The Administrative Director, or the appointed Hearing Officer, may grant the request, upon a showing of good cause. If leave is granted, the written statement and supporting evidence must be filed and served no later than ten (10) calendar days prior to the date of the hearing.

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

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

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

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

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

(p) The written affidavit or declaration of any witness may be offered and shall be received into evidence provided that (i) the witness was listed in the written statement pursuant to section 10225.2(m);, (ii) the statement is made by affidavit or by declaration under penalty of perjury, (iii) copies of the statement have been delivered to all opposing parties at least 20 days prior to the hearing, and (iv) no opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing.

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The Administrative Director, or the appointed Hearing Officer, shall disregard any portion of the statement received pursuant to this regulation that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(g) The Administrative Director, or the appointed Hearing Officer, shall issue a **written Recommended Decision-Determination and Order in re: Labor Code § 5814.6 Penalties, granting or denying the appeal, in whole or part, and affirming or amending the penalty assessment(s).** The Determination shall include a statement of the basis for the decision and each penalty assessed. It shall be served on all parties within sixty (60) days of the date the case was submitted for Determination. This requirement is directory and not jurisdictional.

(r) The Administrative Director shall **have up to sixty (60) calendar days** to adopt or modify the **Recommended Decision-Determination and Order in re: Labor Code § 5814.6 Penalties**, issued by an appointed Hearing Officer. In the event the **Recommended Decision-Determination and Order** of the appointed Hearing Officer is modified, the Administrative Director shall include a statement of the basis for the **Final Decision-Determination and Order Assessing Labor Code § 5814.6 Penalties**. If the Administrative Director does not act **within sixty calendar days**, then the **Recommended Decision and Order shall become the Final Determination Decision and Order in re: Labor Code § 5814.6 Penalties**.

(s) The **Final Decision and Order in re: Labor Code § 5814.6 Penalties**, if any, shall become the final for the purposes of review within twenty (20) days of the date it was served, unless the aggrieved party files a **timely Petition Appealing Determination of the Administrative Director**. A **timely filed Petition Appealing Determination of the Administrative Director** shall toll the period for paying any disputed penalty. All findings and assessments in the **Final Decision and Order in re: Labor Code § 5814.6 Penalties** that are not contested in the **Petition Appealing Determination of the Administrative Director** shall become final as though no such petition was filed.

(t) At any time prior to the date the **Final Decision Determination and Order in re: Labor Code § 5814.6 Penalties** becomes final, the Administrative Director, or appointed Hearing Officer, may correct the **Final Decision and Order in re: Labor Code § 5814.6 Penalties** for clerical, mathematical or procedural error or amend the **Final Determination Decision and Order** for good cause.

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(u) Penalties assessed in a Final Determination Decision and Order in re: Labor Code § 5814.6 Penalties shall be paid within thirty (30) calendar days of the date the Final Determination Decision and Order has been served, if no Petition Appealing Determination of the Administrative Director has been filed.

(v) All appeals from any part or the entire Final Decision and Order in re: Labor Code § 5814.6 Penalties shall be made in the form of a Petition Appealing Determination of the Administrative Director, in conformance with the requirements of chapter 7, part 4 of Division 4 of the Labor Code. Any such Petition Appealing Determination of the Administrative Director shall be filed at the Appeals Board in San Francisco (and not with any district office of the Workers' Compensation Appeals Board), in the same manner specified for petitions for reconsideration.

Authority: Sections 133, 5307.3 and 5814.6, Labor Code
Reference: Sections 5814, 5814.6 and 5300, Labor Code