State of California DEPARTMENT OF INDUSTRIAL RELATIONS Division of Workers' Compensation

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS

Subject Matter of Regulations: Administrative Penalties Pursuant to Labor Code § 5814.6

<u>TITLE 8, CALIFORNIA CODE OF REGULATIONS</u> <u>SECTIONS 10225 – 10225.2</u>

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 133 and 5814.6, proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 10225 Definitions

Section 10225.1 Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding these proposed modifications. <u>Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons</u>.

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator Department of Industrial Relations Division of Workers' Compensation Post Office Box 420603 San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on November 18, 2006**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: <u>dwcrules@hq.dir.ca.gov</u>.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California.

Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations:

Section 10225	Definitions
Section 10225.1	Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6

DOCUMENTS SUPPORTING THE RULEMAKING FILE

• Comments from various interested parties concerning the regulations have been added to the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

The new text is indicated by underlining, thus: <u>underlined language</u>.

Proposed Text Noticed for First 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as proposed in April 2006, are indicated by double strike-through, thus: deleted language.

Additions to the regulatory text, as proposed in April 2006, are indicated by a double underline, thus: <u>added language</u>.

Proposed Text Noticed for Second 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as previously proposed, are indicated by bold, double strike-through, thus: **deleted language.**

Additions to the regulatory text, as previously proposed, are indicated by a bold double underline, thus: **<u>added language</u>**.

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Proposed Text Noticed for Third 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as previously proposed, are indicated by italic, bold, and double strike-through, thus: *deleted language*.

Additions to the regulatory text, as previously proposed, are indicated by italic, bold, and double underline, thus: *added language*.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 10225 Definitions

Throughout the regulations, the words "a workers' compensation administrative law judge" are replaced with the words "the Workers' Compensation Appeals Board." This term is defined as the Appeals Board, commissioners, deputy commissioners, presiding workers' compensation judges and workers' compensation administrative law judges. The revision is necessary because compensation orders and awards to pay penalties due to a violation of Labor Code section 5814 may be issued by any of the entities defined as the Workers' Compensation Appeals Board. Additionally, the previous definition (dd) of "workers' compensation administrative law judge" has been deleted. The specific revisions to this section are listed below:

(g) "Compensation order" means any award, order or decision issued by *a workers*' *compensation administrative law judge the Workers*' *Compensation Appeals Board* or the Division of Workers' Compensation vocational rehabilitation unit by which a party is entitled to payment of compensation.

(s) "Penalty award" means an <u>final</u> order or <u>final</u> award by <u>a workers' compensation</u> <u>administrative law judge</u> the Workers' Compensation Appeals Board to pay penalties due to a violation of section 5814 of the Labor Code

(dd) "Workers' Compensation Appeals Board" means the Appeals Board, commissioners, deputy commissioners, presiding workers' compensation judges and workers' compensation administrative law judges.

Modifications to Section 10225.1 Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6

Throughout this section, the words "a workers' compensation administrative law judge" are replaced with the words "the Workers' Compensation Appeals Board." This term is defined as the Appeals Board, commissioners, deputy commissioners, presiding workers' compensation judges and workers' compensation administrative law judges. The revision is necessary because compensation orders and awards to pay penalties due to a violation of Labor Code section 5814 may be issued by any of the entities defined as the Workers' Compensation Appeals Board.

Additionally, subdivision (g) (5) is revised. As previously drafted, there was a gap between the medicals costs of \$100 and \$101, \$300 and \$301, and \$500 and \$501. The revised language corrects the syntax problem. The revised subdivision is set forth below:

(5) For each penalty award by *a workers' compensation administrative law judge the Workers' Compensation Appeals Board* for a violation of Labor Code section 5814 for an unreasonable delay or refusal to reimburse an employee for self-procured medical treatment <u>costs:</u>

(A) \$ 1,000 for medical treatment costs *up to of* \$100 *or less*, excluding interest and penalty:

(B) \$ 2,000 for medical treatment costs of \$101 more than \$100 to \$300, excluding interest and penalty;

(C) \$ 3,000 For medical treatment costs of \$301 more than \$300 to \$500, excluding interest and penalty;

(D) \$ 5,000 for medical treatment costs of more than \$500 \$501, excluding interest and penalty:

In subdivision (g)(8), the word "timely" was deleted (and replaced with the word "a") to be consistent with the wording of the other subdivisions and because the word was unnecessary.