

1                   STATE OF CALIFORNIA  
2           DIVISION OF WORKERS' COMPENSATION  
3   WORKERS' COMPENSATION APPEALS BOARD

4  
5  
6                   PUBLIC HEARING

7                   Friday, September 24, 2021  
8                   Via Zoom Videoconference  
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12                   Katherine A. Zalewski  
13                   Moderator  
14                   Chair, Workers' Compensation Appeals Board

15                   Anne Schmitz  
16                   Moderator  
17                   Deputy Commissioner and WCAB Secretary  
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24   Reported by:   Lori Miladinovich and Carol Ottino  
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I N D E X

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| Catherine Martinez | 19 |
| Michelle Kral      | 21 |
| Chris Alcala       | 23 |

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1 (Time Noted: 9:00 a.m.)

2 MS. ZALEWSKI: Thank you for participating in today's  
3 public hearing. My name is Katherine Zalewski. I'm the Chair  
4 of the Workers' Compensation Appeals Board. I want to inform  
5 everyone that this hearing is being recorded for internal use  
6 only. This is our noticed public hearing regarding proposed  
7 additions and amendments to the Workers' Compensation Appeals  
8 Board Rules of Practice and Procedures, Sections 10300 through  
9 10995.

10 Let me introduce you to the other WCAB members who are  
11 here today. Commissioner Deidra Lowe, Commissioner Marguerite  
12 Sweeney, Commissioner Jose Razo, Commissioner Craig Snellings,  
13 and Deputy Commissioner and WCAB Secretary Anne Schmitz. Our  
14 hearing reporters today are Lori Miladinovich and Carol Ottino.

15 All testimony today will be taken down by the hearing  
16 reporters and a transcript will be available to the public.  
17 They have the green light to interrupt a commenter to request  
18 the spelling of a word, seek clarification of any phrase, or  
19 ask a speaker to slow down if need be.

20 The purpose of this hearing is to receive comments on  
21 the proposed additions and amendments to the WCAB's Rules, and  
22 we welcome any comments you have about them. Please note, we  
23 will not ask questions, respond to, or discuss anyone's  
24 comments, although we may ask for clarification or ask you to  
25 elaborate further on any points that you're presenting. All of

1 your comments, both given verbally here today and those  
2 submitted in writing, will be considered in determining what  
3 revisions, if any, we make to the proposed rules.

4 Now, let's quickly go over the instructions on how to  
5 give a verbal comment during today's hearing. There are two  
6 ways to do so.

7 First, if you've logged into this Zoom public hearing  
8 from a PC, Mac, Linux, iOS, or Android device, please send a  
9 chat to Request to Speak and provide your full name, first and  
10 last name, and who you're affiliated with or company name, if  
11 any. Individuals will be called in the order of receipt of  
12 request. To send a chat find the chat option likely towards  
13 the bottom of your screen, but it depends on your device and  
14 settings. Choose Request to Speak. Type the information  
15 requested and click send or hit to enter. Request to Speak  
16 will respond by acknowledging your request and giving you a  
17 number to be placed in the queue to speak. Please do not send  
18 more than one request. There may be multiple requests being  
19 processed so a reply may not be instantaneous. Please be  
20 patient.

21 Do not send a chat to any other co-host besides  
22 Request to Speak because it will not be acknowledged. Request  
23 to Speak is the only person monitoring this chat during the  
24 hearing. Also, do not send your written comments through the  
25 chat. Any written comments sent via the chat thread will be

1 ignored. Finally, please update your name that will be shown  
2 on the screen so that it properly reflects your name. This  
3 will allow my assistants to timely unmute you when it's your  
4 turn to make a verbal comment. To rename yourself click on the  
5 three dots on your picture screen and click rename.

6 Second, if you called into this hearing, rather than  
7 joining us from a PC, Mac, Linux, iOS, or Android device, you  
8 can email your request to make a verbal comment. Please send  
9 an email with your name, affiliation, if any, and the telephone  
10 number you used to call into this hearing to  
11 *WCABRules@dir.ca.gov*. Again, please include the telephone  
12 number you used to call into this hearing so that we can  
13 identify who to unmute when it's your turn to speak. Please  
14 only use this email if you are calling in by phone; use the  
15 chat system described earlier if you are connecting by any  
16 other method. Please restrict the subject of your comments to  
17 the proposed rules. Your time allotted to make a verbal  
18 comment is limited to 10 minutes. Anne Schmitz will give you a  
19 one-minute warning to wrap up your comments. If you do not  
20 wrap up your comments within a reasonable time after this  
21 warning, your time will be cut off and you will be muted.

22 This hearing will continue for as long as there are  
23 people on this Zoom meeting who wish to comment on the proposed  
24 regulations, but it will close no later than 4:00 o'clock this  
25 afternoon. If the hearing continues into the lunch hour, we

1 will take a lunch break. We will also take other breaks as  
2 needed.

3 We have a 500-participant capacity in this Zoom  
4 hearing. If for some reason we reach capacity, we will ask you  
5 to log off after you make your comments so that others can join  
6 the hearing.

7 Finally, in lieu of making verbal comments during the  
8 hearing or if you wish to supplement the verbal comments you  
9 made, you may submit a written comment. All written comments  
10 can be submitted by filling out the comment submission form  
11 found on our website. The link will also be sent in the chat.  
12 Written comments submitted via this form will be accepted until  
13 4:00 o'clock today, Friday, September 24.

14 With that said, I will now hand it over to Anne  
15 Schmitz.

16 MS. SCHMITZ: Hello everybody and welcome. I will call  
17 the names of those who have indicated they wish to comment  
18 today and I apologize in advance if I mispronounce anyone's  
19 name. I will call the first person who wishes to provide  
20 comment by number and name, and indicate who will be called  
21 next so that person can be prepared to speak. When you are  
22 called to speak, you will receive a request to unmute yourself.  
23 Please click okay to unmute yourself before speaking. As  
24 Katherine said, I will also keep track of time and will provide  
25 you with a one-minute warning of when your allotted 10 minutes

1 are up.

2 Let's take a small break to allow people to send their  
3 requests to comment.

4 (Recess taken from 9:10 a.m. to 9:14 a.m.)

5 MS. SCHMITZ: Welcome back everyone. I will now call  
6 No. 1, Saul Allweiss, who will be followed by No. 2, Anne  
7 Marie Rapolla, 4600 Group and Boehm.

8 SAUL ALLWEISS

9 Yes. First of all, I would like to thank the  
10 commissioners for allowing me this opportunity to testify. My  
11 name is Saul Allweiss. I am officially testifying on behalf of  
12 Schools Insurance Authority. They are a well -- large and  
13 well-recognized joint powers authority in -- that is located in  
14 Sacramento. They administer claims throughout California. I  
15 had not planned on testifying until late last night when I saw  
16 that a bill had been signed into law on the 22nd which I think  
17 has an impact on the WCAB's rulemaking process. It's SB241 --

18 (Reporter asks for clarification.)

19 And so SB241 actually addresses the same exact issues  
20 that the WCAB is submitting rulemaking on, and we believe that  
21 it is -- the WCAB rules are very, very consistent with what was  
22 enacted in that SB241. Maybe the only flaw in SB241 is it's  
23 not -- it's not emergency legislation so, therefore, it will  
24 not go into effect until January 1st, 2022.

25 We believe that the WCAB regs were appropriate and can

1 be enacted immediately, and that's actually the essence of my  
2 testimony. We believe that if you were waiting for SB241 to be  
3 enacted, we would actually believe that you should enact your  
4 regulations immediately.

5           As a member of CCWC which submitted written comments,  
6 we have some minor changes that we recommend that the  
7 commissioners consider; but, overall, we applaud the  
8 commissioners in their proactively addressing the urgency of  
9 why these regulations should be enacted as soon as possible,  
10 and, if possible, by October 1st. We understand why the DWC  
11 had to take away their edict to allow hearings to occur  
12 virtually because of the removal of the executive order that  
13 the governor signed in June 2020 and that expired on September  
14 30 -- June 2021 -- expired on June -- on September 30, 2021. I  
15 think that the WCAB regs can now take the place of what the DWC  
16 had enacted as policy. And also we like the fact that the --  
17 you know, we recommend that the Appeals Board set up a process  
18 where they can get input from the parties regarding whether or  
19 not a trial should occur in person or via -- or virtually, but  
20 we also believe that ultimately the WCAB has the ultimate  
21 authority to consent to make a determination as to how a  
22 hearing will be set. So with that said, we, again, we applaud  
23 the commissioners' action on this incredibly timely -- when you  
24 read the CCWC comments, we have some very, very minor changes  
25 that we recommend that you adopt, but other than that, we would



1 recommend that you adopt your regulations and hopefully by  
2 October 1st or, if possible, soon thereafter.

3           Once again, thank you commissioners for an opportunity  
4   to testify.

5 MS. SCHMITZ: We are now going to call No. 2, Anne Marie  
6 -- and I'm sorry if I'm butchering your last name. I want to  
7 say it with an Italian pronunciation, but anyway -- Rapolla,  
8 with the 4600 Hundred Group and Boehm, and then No. 3 will be  
9 Elliott Eslamboly, The Law Collective.

10 ANNE MARIE RAPOLLA

11                   Good morning. I would like to thank the commissioners  
12 for the opportunity to provide my testimony with regard to our  
13 concerns with regard to Work Rule 10635. I am speaking on  
14 behalf of the 4600 Group and Boehm & Associates. Our offices  
15 represent lien claimants that fall into the category of private  
16 health plans --

17 (Reporter asks for clarification.)

18           -- union trust funds, and government entities that  
19 find themselves providing treatment to injured workers.

20 Under Board Rule 10635, as it is presently written,  
21 our offices typically are able to meet and confer with  
22 defendants with regard to discovery issues relating to medical  
23 treatment reports and the petitions that we do find that we  
24 must file to obtain medical-legal reporting which would be  
25 evidence of whether or not the injury is industrial or that the

1 necessity of medical care, etc. Our petitions are, for these  
2 entities, are filed under Board Rule 10635 as it is presently  
3 constituted and the courts have granted our petitions under  
4 those -- under the rule. We're concerned that the rule, as it  
5 has been presently rewritten, at least with regard to proposed  
6 subsection (d) in our reading, seems to create the  
7 interpretation that the qualifying recipient of those medical  
8 --

9 (Reporter asks for clarification.)

10 -- reports must be both a physician pursuant to Labor  
11 Code Section 3209.3 and an entity described in Labor Code  
12 Sections 4903.05(d) (7) and 4903.06(b). The lien claimants that  
13 we represent, private health plans, union trust funds, and  
14 government entities fall under Labor Code Sections 4903.05 and  
15 4903.06 and absolutely do not fall within the --

16 (Reporter asks for clarification.)

17 -- definition of a physician under Labor Code Section  
18 3209.3. We're concerned that under the newly drafted 10635 we  
19 will find ourselves having to file a petition as a  
20 non-physician lien claimant --

21 (Reporter asks for clarification.)

22 -- pursuant to Board Rule 10637 and essentially it  
23 will result in an explosion of petitions filed by our office  
24 requesting judicial action and a stand-still in a discovery  
25 process that has typically been able to be resolved on an

1 informal basis in reliance on present --

2 (Reporter asks for clarification.)

3 -- on present Board Rule 10635. And as a result it  
4 could engender appeals, Petitions for Reconsideration, and the  
5 like which will require additional judicial action and will  
6 encumber everyone altogether. As is been clearly established  
7 in the past, lien claimants do have -- are entitled to access  
8 under cases such as *Beverly Hills* --

9 (Reporter asks for clarification.)

10 -- *Beverly Hills Multi-Specialty*, etc. And given this  
11 situation and our meeting of the proposed change to 10635(d),  
12 we respectfully request that the commissioners re-evaluate the  
13 proposed wording in this instance.

14 And I thank you again for my opportunity to present my  
15 comments. Does anyone have any questions for me?

16 MS. SCHMITZ: No. Thank you for your comments.

17 I will now call No. 3, Aaron Eslamboly from the Law  
18 Collective.

19 AARON ESLAMBOLY

20 Good morning. Thank you to the Chair, to the  
21 Department of Workers' Comp Industrial Relations, and to all  
22 the commissioners here this morning willing to listen. You'll  
23 have to forgive me our internet just went down so I am only  
24 speaking by phone. I am here. My name is Aaron Eslamboly.  
25 I'm an applicant's attorney. I'm here with my brother and

1 partner, who is also an applicant's attorney, Elliott  
2 Eslamboly. My brother is --

3 (Reporter asks for clarification.)

4 -- Elliott Eslamboly who is also an applicant's  
5 attorney. And I believe that we do speak for a good portion of  
6 the attorneys who regularly attend hearings, and that is the  
7 capacity that I am speaking in today as far as the main purpose  
8 of today's hearing.

9 Now, I don't want to get too caught up in, again, I  
10 understand a lot of others here have been discussing a lot of  
11 the rules and what Board rules and SB241, but the main purpose  
12 of why I wanted to speak today was just to advocate to the  
13 Board and to the Chair and commissioners the huge benefit, both  
14 to defense attorneys and applicant's attorneys and to judges, I  
15 believe, in using a remote system for hearings.

16 Our firm also operates in the civil sector where we  
17 advocate for our clients in personal injury claims, employment  
18 law claims. And in that system we have the ability as  
19 attorneys to decide on our own whether we would like to appear  
20 in person or telephonically or by video depending on the court.  
21 I have found that this system has proven to be not only  
22 beneficial to the attorneys in saving time but also to the  
23 governing judicial body as well. It saves time on traffic for  
24 the attorneys. It saves -- it helps the environment because  
25 there is less travel to be done, and in a way it can also add

1 an additional revenue if the court system or the Board decided  
2 to leave it in the decision of the attorney to speak to appear  
3 telephonically to charge a nominal fee. Whether that should be  
4 allowed or not, that is a different conversation. But, for  
5 example, on the civil side we use a company called Court Call  
6 for the court systems that do not have their own system. If  
7 the Board were to adopt its own system, I believe we would find  
8 a much more efficient process in hearings. And another  
9 consideration could be we leave it to whatever judge is hearing  
10 the hearing or the matter. The judge can decide the parties  
11 can appear telephonically or not.

12 So in conclusion, I do feel that with the novel  
13 coronavirus the Board has had to make great strides, and I do  
14 commend the Board and everyone who has been involved in putting  
15 this system together, and I feel like we would be doing a  
16 disservice not only to the attorneys and the judges to  
17 completely throw it away and require all hearings to be in  
18 person again. And I do think it would be perfectly fine to  
19 allow parties to decide on their own whether to appear remotely  
20 or in person.

21 So I will entertain any questions if anybody has any  
22 for me. I believe we bring a unique perspective. If you'd  
23 like to reach out to me at any time, I'm always available. And  
24 thank you for giving me the time to speak today. Thank you.

25 MS. SCHMITZ: Thank you. We appreciate all of the

1 comments and we do consider all of them.

2 Right now that was the last speaker on the list, but  
3 we're going to take another break in case anyone else wants to  
4 speak. We'll put the instructions back up about sending the  
5 chat to Request to Speak or sending an email if you're on the  
6 phone, so we'll take about a 10-minute break now.

7 (Recess taken from 9:30 a.m. to 9:40 a.m.)

8 MS. SCHMITZ: Welcome back everyone. We are now going to  
9 call No. 4, Muaath Ali from Samuelsen, Gonzalez, Valenzuela &  
10 Brown. No. 5 will be Patrick Gorman from Gorman Law.

11 MUAATH ALI

12 Hi, good morning. My name is Muaath Ali. I am a  
13 defense attorney with Samuelsen, Gonzalez, Valenzuela & Brown.  
14 I have a few brief comments.

15 In regards to the remote proceedings, I, along with a  
16 lot of other attorneys, feel that they have been extremely  
17 efficient. Not only have they been efficient, they have  
18 allowed us to expand our services. For example, we are now  
19 able to take on clients. My office is in Newport Beach but I  
20 am able to take on cases in Northern California, so it opens up  
21 opportunities for both defense attorneys and applicant  
22 attorneys in regards to expanding these services that they  
23 provide for the clients.

24 Also, as applicant counsel indicated earlier, it  
25 definitely does a lot to limit traffic, especially in areas

1     like Los Angeles, Long Beach, all these really congested areas.  
2     When we are not on the road driving an hour or two hours for a  
3     hearing that may last 10 or 15 minutes, it does so much to  
4     limit that traffic.

5             And, lastly, it opens up new opportunities for  
6     attorneys in regards to housing. California housing prices  
7     continue to rise. With remote capabilities, attorneys will be  
8     able to look to different parts of California in order to live  
9     and raise a family where housing may not be as expensive as the  
10    areas that they were previously servicing now that they are  
11    able to service all areas remotely.

12            And that's all I have to say. So I am an advocate for  
13    continuing with remote proceedings or at least making it an  
14    option for parties who want to go that direction.

15            I thank you all for your time.

16            MS. SCHMITZ: Thank you for your comments.

17            We'll now call No. 5, Patrick Gorman of Gorman Law.

18                                PATRICK GORMAN

19            Good morning, Commissioner. Thank you very much for  
20    hearing my comments this morning. I am an applicant attorney  
21    in Northern California, far Northern California in Shasta  
22    County, and, actually, I come from a unique perspective because  
23    I am formally an equity partner from a statewide defense  
24    firm --

25                                (Reporter asks for clarification.)

1           -- up here in our region. Commissioner Sweeney is  
2 very, very familiar with the area up here. Things are very,  
3 very spread out. By landmass, it is by far the largest area,  
4 not just by geographic region covering some-odd 13 counties, in  
5 addition to that, it's -- it is also the largest. There are  
6 two boards up here that do not have a lot of judges.

7           We have also suffered many years of catastrophic wild  
8 fires resulting in office closures. I have several clients  
9 right now who are in the Susanville/Plumas area who have  
10 limited options to get to the Board, and even the doctor  
11 appointments, if it's getting treatment for their workers'  
12 compensation injuries and also adjudicating claim denials and  
13 TD denials.

14           From the defense side, I experienced the in-person  
15 hearings -- I'm sorry -- the remote hearings as well. I have  
16 to say that -- I practiced in the Bay area for many years  
17 before moving up to Redding, and I have seen such a movement  
18 towards parties picking up the phone and settling their  
19 disputes rather than showing up at the Board and spending all  
20 day in the lunchroom to settle nominal issues.

21           There has been a huge benefit to both defense and  
22 applicant side with these remote hearings; and not only do I  
23 think they should be continued, I think they should be  
24 enhanced.

25           There is also a savings on the adjudication of these



1 claims from the Bench. You guys can allocate hearings across  
2 multiple venues. You won't have the impact of calendar issues  
3 that we experience in so many boards where a judge is presiding  
4 over 19 hearings in a single day and doesn't have time to  
5 adequately review settlement documents or even disputes,  
6 instead kicking things off calendar because they have no other  
7 options to orderly administer the Court's calendar.

8 A couple of other benefits that I think will come out  
9 of these remote hearings are the availability of witnesses. We  
10 find it nearly impossible to compel attendance at hearings by  
11 claims adjusters. As we have seen over the last decade or so,  
12 claims departments are spread across the United States. They  
13 are no longer in our population centers. Claim adjusters are  
14 not in California, and having them appear as witnesses to  
15 testify regarding their claim determinations is near impossible  
16 when they are administering benefits from Ohio or Tennessee --

17 (Reporter asks for clarification.)

18 -- or Florida. Having remote hearings can bring a  
19 huge benefit to witness availability, just in that example, if  
20 not others. A lot of doctors evaluate injured workers also do  
21 not reside in California and are only present in our state for  
22 a week or two at a time, pick up evaluations, and remote  
23 hearings would provide availability for those witnesses as  
24 well.

25 There are some things I would like to suggest.

1 Counsel on both sides previously have mentioned the  
2 meet-and-confer process to agree upon whether or not a hearing  
3 should be in person or not, and that begs the question of  
4 whether parties can agree. I would suggest that the trial  
5 judge is best suited to determine whether or not cause exists  
6 for there to be an in-person trial or proceeding. Obviously,  
7 there will be circumstances where there are unrepresented  
8 injured workers, where there are multiple interpreters, or  
9 multiple witnesses, and adjudicating or trying a case over a  
10 video would not be efficient or provide the trial judge an  
11 opportunity to adequately make determinations. It would  
12 subject that to reconsideration and lack of the validity of the  
13 adjudication, so that is clearly acknowledgement -- I do  
14 believe that between the Bar and the Bench, this could be  
15 administered more effectively, and I believe that expansion of  
16 the video hearings, whether it be for a nominal fee to  
17 administering or not, is something that the Board was very,  
18 very wise in doing during the COVID pandemic, and I think that  
19 even post-pandemic the options and opportunities are limitless.

20 Thank you very much everybody for your opportunity to  
21 be heard today.

22 MS. SCHMITZ: Thank you for your comments. We appreciate  
23 them.

24 Has everyone who submitted a Request to Speak been  
25 called? Please raise your hand if you have not. You can raise

1 your hand by clicking on the hand that is usually found at the  
2 bottom of the screen. It looks like that. Or you can send  
3 another email for those of you who are on the phone. I think  
4 we'll go for about five more minutes in case anyone decides  
5 they want to speak. And the way this works is once all the  
6 speakers have spoken and given their comments then we can  
7 conclude the hearing.

8 We will now call No. 6, Catherine Martinez from SCIF.

9 CATHERINE MARTINEZ

10 Good morning. Thank you. Yes, this is Catherine  
11 Martinez from SCIF. My comment is more to Regulation 10759  
12 concerning Mandatory Settlement Conferences, and the  
13 requirement to have a Pre-Trial Conference Statement ready at  
14 the time of the close of the Mandatory Settlement Conference.  
15 I think it's a little bit confusing as to when it closes,  
16 because if you are the last case, you know, you have got a Z,  
17 and they are doing it alphabetically, you are the last case  
18 being heard. Are you supposed to have it immediately or are we  
19 talking about by the close of business on -- say it is a 1:30  
20 hearing, by 5:00 p.m. or 5:30 p.m.?

21 Furthermore, there's been some issues with -- in my  
22 experience, so I might provide a Pre-Trial Conference Statement  
23 to the other party a couple of days in advance, and I have had  
24 occasions where I get it back, during -- by email during the  
25 conference, and then the person, the other person may have made

1 significant changes to the Pre-Trial Conference Statement that  
2 I don't have time to address prior to the hearing, and I have  
3 had not much luck getting some of the judges to help the  
4 parties resolve disputes concerning the Pre-Trial Conference  
5 Statement. For example, some attorneys will raise issues never  
6 previously raised. They will claim temporary disability dating  
7 back to 2002, and you really don't have sufficient time to edit  
8 the Pre-Trial Conference Statement if you are expected to have  
9 it completed within 15 minutes or 30 minutes, sometimes even an  
10 hour there is not sufficient time to edit it in order to track  
11 down the evidence you may need for issues that were raised at  
12 the last second. And so what my suggestion would be is that  
13 perhaps the parties need to exchange -- both sides need to  
14 exchange the Pre-Trial Conference Statement well in advance and  
15 have issues that they have between themselves ready to go at  
16 the time of the conference.

17 My other comment is somewhat unrelated, which is that  
18 I have had some pushback from judges who do not want to order  
19 the parties to list the exhibits with specificity, and it makes  
20 it very difficult to prepare for trial when another party is  
21 listing various documents, various correspondence, various  
22 subpoenaed records on their exhibit list. And the Pre-Trial  
23 Conference Statement judge, the MSC judge, is telling me, "Oh,  
24 the trial judge will decide," you know, whether the evidence  
25 comes in. And it forces the parties to prepare for things that

1 may or may not be produced because the MSC judge is not doing  
2 their job in enforcing this section. So I understand it does  
3 say "shall" in here, but there is a lot of pushback from the  
4 judges because this is not how it's always been done, but I  
5 would encourage as much forceful language as possible regarding  
6 the listing of specificity of a -- by -- with specificity of  
7 exhibits, because there are due-process concerns if you do not  
8 know what the other party intends to present at trial, and it  
9 also causes delay when you finally get to trial. The judge has  
10 to deal with your discovery issues that should have been dealt  
11 with at the Mandatory Settlement Conference, and trials are  
12 often set out multiple months, we are talking three to four  
13 months from day one to day two of a trial. So that's my  
14 feedback. Thank you very much.

15 MS. SCHMITZ: Thank you for your comments.

16 We will now call No. 7, Michelle Kral of Karlin, Hiura  
17 & LaSota, and then we will have No. 8, Chris Alcala from  
18 Alcala & Associates.

19 MICHELLE KRAL

20 Hi, I will try to go slow for the court reporter.  
21 That's not something I am good at.

22 So I am a defense attorney in Northern California, and  
23 I, you know, what I think the biggest concerns that we have of  
24 not being able to do --

25 (Reporter asks for clarification.)

1           I think one of the biggest concerns that I have, as  
2 well as my colleagues have, about returning in the way that we  
3 were before comes down to public health. You know, courtrooms  
4 are not large. Most of them don't have windows. There is not  
5 appropriate ventilation system within them. And we are all  
6 expected to be very close. The counsel tables don't allow for  
7 social distancing. And one of the biggest concerns I have  
8 heard raised in our community is the interpreters. They have  
9 to be very close to an injured worker. And one of my concerns  
10 is that we are not going to have interpreters at the Board  
11 anymore when we go back in person. They are going to be  
12 exposing themselves to COVID. And regardless of the  
13 vaccination status, you can't ask an injured worker, "Are you  
14 vaccinated?" So I think we are going to lose a lot of staff.  
15 We are going to lose a lot of interpreters. And I think we are  
16 going to be exposing attorneys, judges, all of their families,  
17 everyone in their circle, everyone in their office to COVID.  
18 And I think that remaining remote is something that we can do  
19 for our community. I mean, interpreters, clerks, judges,  
20 attorneys, we are going to see a huge spike in industrial  
21 claims again, and, you know, I think it's going to be  
22 difficult. What do we do if an attorney gets exposed to COVID  
23 and then they can't do their appearances for two weeks? Is  
24 everything moved? Is everything extended out? I just think we  
25 are not in a position health-wise to expose everybody to the,

1 you know, cattle call, that is Status Conferences, MSCs, and  
2 trials in person. And I think being remote we have shown over  
3 the last year and a half that it's effective, it -- sometimes I  
4 think it's more effective. And I think it is a public health  
5 concern, you know, going back in person, it is just not  
6 something that should be done.

7 MS. SCHMITZ: Thank you for your comments. We will now  
8 call No. 8, Chris Alcala from Alcala & Associates.

9 CHRIS ALCALA

10 Good morning. Thank you commissioners for this  
11 opportunity to testify. My name is Chris Alcala. I represent  
12 lien claimants throughout the state of California and have done  
13 so for the past 35 or more years.

14 The issue that I want to bring forward at this point  
15 is that, once again, I echo the previous speaker with regard to  
16 the public health issue not only for injured workers but for  
17 those of us who are high-risk and remain so even after being  
18 vaccinated.

19 With regard to the testimony that was gleaned earlier  
20 with regard to the remote appearances, I applaud the Board in  
21 their efforts and I immensely give them credit for the remote  
22 hearings. The remote hearings have, as my experience, have  
23 cleared up hundreds if not thousands of lien claims. It allows  
24 the judge to not only have the opportunity to call their  
25 calendar but to take the time that they have after they've

1 cleared their calendar on a second or third call back. That  
2 was rarely given when we were in person.

3 Also, with regard to testimony of injured workers, as  
4 you know, the issue of threshold issues, such as AOE/COE, is,  
5 in fact, at issue. The responsibility or the burden is on the  
6 lien claimant to prove AOE/COE. Nine times out of ten we must  
7 prove so via testimony of the injured worker. And in my  
8 experience, and once again I represent injured workers --  
9 strike that -- I represent lien claimants up and down the state  
10 of California, the difficulty of having or obtaining or getting  
11 the injured worker after subpoena to come testify in person I  
12 would probably say was at a probability of 40 percent. Also,  
13 for example, the cases that are sent from the various boards in  
14 Southern California to Oxnard do not allow or give us the  
15 subpoena powers which do not -- are in excess of the 75 miles  
16 to allow an injured worker to even testify. This remote  
17 testifying allows us the due process that we're afforded under  
18 the constitution.

19 Now, with regard to the injured worker, the injured  
20 worker now via remote in my experience in trials, should they  
21 be subpoenaed has been 100 percent since the remote hearings.  
22 I have been able to obtain testimony from injured workers 100  
23 percent of the time that I go to trial.

24 Once again, in conclusion, I request that the court or  
25 the commissioners weigh the health benefits and allow us to



1 remain remote.

2 MS. SCHMITZ: Thank you for your comments.

3 Has everyone who submitted a Request to Speak been  
4 called? This is going to be our last call. So please if you  
5 wish to speak, please send a Request to Speak in the chat or  
6 send an email if you're on the phone.

7 (Recess taken from 10:05 a.m. to 10:07 a.m.)

8 MS. ZALEWSKI: If we don't have anyone else who wishes to  
9 make a verbal comment today, the time is now 10:07 a.m. and  
10 this public hearing is now closed. Thank you.

11 (The proceedings adjourned at 10:07 a.m.)

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