



*Educating and consulting self-insured, insured and public entity employers, their claim administrators and insurance carriers in workers' compensation*

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## CLIENT BULLETIN WCAB RULE CHANGES FOR 2020

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The New Year finds us dealing with a host of revisions to the California Code of Regulations which provides procedural rules in the handling of workers compensation cases before the WCAB. One significant change is simply the rule numbers which are being utilized. They have been re-organized to provide easier navigation in topic groups. But whether that goal will be achieved is suspect considering the enormity of the number of rules.

Some of the rules which are of importance to our daily practice involve the following:

### **§10305 "Definitions"**

- Included in this rule is the definition of "party" which not only includes the applicant and defendant, but also lien claimants. *COMMENT: This will potentially affect the rules regarding proper notice and service of medical reports, notices of all court appearances and discovery matters such as depositions. Will lien claimants have the right to appear at an applicant deposition?*
- Another definition which has been added is that of "Significant Panel Decision." It is defined as a decision of the Appeals Board that has been designated by all members of the WCAB as of significant interest and importance to the workers compensation community although not binding precedent. This is further set forth in a subsequent new Rule §10325. *COMMENT: That has always been the understanding of the community and why it has been formally set forth in the rules is unknown; if it is significant to the community why not issue it as an en banc decision?*

### **§10370 "Extensions of Time During Public Emergencies"**

- In the event of a public emergency such as earthquake, fire, or destruction of or danger to a district office, the chief workers compensation judge may extend 14 additional days to perform any required act, except for those subject to a statute of limitations or jurisdictional time limitation (such as filing Petitions for Reconsideration, Petitions to Reopen, Applications). The presiding judge of a specific district office may extend the time up to 30 days.

### **§10525 through §10575 Rules relating to Petitions**

- All rules relating to Petitions are now found within these sections and include those relating to: Serious & Willful Misconduct; Discrimination per Labor Code 132a; Re-Open per Labor Code 5803; New and Further Disability per Labor Code 5410; Terminate TD; Attorney Fees per Labor Code 5710; Costs; Dismissal for inactivity; Credit.

### **§10600 “Time for Actions”**

- Exclude the first day, include the last. If the last day is on a weekend of holiday, then the next business day applies.

### **§10605 “Time to Act”**

- If a document is served by mail, fax or email, the time to respond is extended 5 calendar days from the date of service if within California; 10 calendar days if outside California but within the United States; and 20 calendar days if outside the United States.
- Place of address and place of mailing is the street address or PO Box of the party, even if method of service is via fax or email.

### **§10615 “Filing of Documents”**

- All documents shall only be filed in EAMS or with the district office having venue, and no original records shall be filed.

### **§10625 “Service”**

- The following methods may be used: personal; 1<sup>st</sup> Class Mail; express overnight method by a bona fide commercial delivery or attorney service; a party’s preferred method. *COMMENT: a party must agree to fax or email service for it to be valid.*

### **§10635 “Duty to Serve Documents”**

- A defendant shall provide a print out of benefits within 20 days if requested. Another such request may not be made more frequently than once in a 120 day period, unless a change in indemnity payments has occurred or a new dispute arisen.

### **§10670 “Documentary Evidence”**

- Filing of documents does not mean it is received in evidence, and a judge may decline it if it is not listed on the Pre Trial Conference Statement, is not filed 20 days before trial (unless otherwise ordered by the judge or good cause is shown), a physician’s report does not comply with Labor Code 4628. This includes sub rosa.

### **§10682 “Physicians Reports as Evidence”**

- This rule lays out the fundamental requirements a medical report must have to constitute substantial medical evidence.

### **§10625 “Vocational Expert Report as Evidence”**

- Similar to the foregoing, this rule provides the fundamental requirements with respect to this expert’s report.

### **§10742 through §10788 Rules relating to Hearings**

- DORs (10742) - Efforts made to resolve the issues *must* be stated with specificity under penalty of perjury. For MSCs, it must be stated that discovery has been completed. Lien claimants cannot file a DOR unless the case in chief has settled or applicant has chosen not to proceed with their case.
- Appearances required (10752) - Each party shall have a person available with settlement authority at all hearings.
- Failure to Appear at MSC (10755) and Trial (10756) – If notice is served, it is within Judge’s discretion regarding the consequences, up to notice of intent to dismiss.
- MSC rules (10759); Expedited Hearings (10782); Priority Conferences (10785); Trials (10787).

### **§10786 “Determination of Med-Legal Expense Dispute”**

- This addresses the process for med-legal providers to collect payments when disputes are not eligible for IBR. The *employer* is required to file a DOR to proceed to a Status Conference within 60 days of receiving a provider’s objection to a denied payment. *COMMENT: This has been met with criticism by the providers, because it eliminates the ability of a QME to have a non-IBR petition heard prior to resolution of the case in chief, if the employer chooses not to file a DOR.*