

January 10, 2013

Workers' Compensation Appeals Board
Attn: Forums
P.O. Box 429459
San Francisco, CA 94142-9459

RE: Workers' Compensation Appeals Board (WCAB) - Tentative Proposed Rules of Practice and Procedure

To Whom It May Concern:

The above-listed organizations thank you for the opportunity to provide comments on the tentative changes to the WCAB Rules of Practice and Procedure. Combined, our organizations represent tens of thousands of insured and self-insured public and private California employers and insurance companies.

While there have been several estimates of the savings associated with SB 863 (De Leon, 2012), it is clear that the ultimate impact on employers (large and small, insured and self-insured) will depend largely on the regulatory framework that is constructed over the next several months. The tentative changes proposed to the WCAB Rules of Practice and Procedure are vitally important to ensuring that the statutory changes made in SB 863 are appropriately administered at appeals boards across the state.

Generally speaking, the tentative proposed changes do a very good job of harmonizing the WCAB Rules of Practice and Procedure with the statutory changes contained in SB 863 (De Leon, 2012). The WCAB Rules of Practice and Procedure are vital to the effective administration of California's workers' compensation system, and our organizations strongly support the tentatively proposed changes.

While we are generally supportive of the tentative proposed changes, we would also respectfully offer several specific observations, comments, and recommendations:

- **§ 10530. Subpoenas and Subpoenas Duces Tecum**
(l)(1) – The timeframes related to a petition to quash a subpoena are too restrictive. Our coalition would recommend increasing the timeframes for filing both a petition to quash (currently 10 days) and filing opposition to a petition to quash (currently 5 days) to 20 days.
- **§ 10606. Physician and Vocational Expert Reports as Evidence**
The WCAB should include in these regulations a list of required components for vocational expert reports [similar to § 10606(b)(1) – (15)]. This addition would eliminate ambiguity and ensure that vocational expert reports have the necessary components.

Our coalition is concerned that § 10606(d)(1)(B) may send the wrong message to Workers' Compensation Judges (WCJ). Specifically, we believe that the language could be interpreted to allow the WCJ to order disputed medical treatment denied through the Independent Medical Review (IMR) process based only the report of an AME/PQME or PTP report adopting the medical legal opinions. This should be clarified so that the supremacy of IMR is clear. For example, we recommend changing the last line of (d)(1) from "continuing medical care, unless:" to "continuing medical necessity, unless:".

- **§ 10608. Service of Medical Reports, Medical-Legal Reports, & Other Medical Information**

References to lien claimants (both physician and non-physician) should be eliminated from this section, and make this regulation applicable to injured workers and defendants (referencing multiple defendants in one claim), and instead inserted in a resurrected §10609 (Repealed 2002):

Copies of all physicians' reports shall be served on lien claimants whose liens for medical or unemployment compensation disability benefits are proposed to be reduced or disallowed. Such service shall be made not later than the time such reduction or disallowance is proposed.

Service of records on lien claimants should be considered separately. Our coalition believes strongly that service on lien claimants should not be an ongoing process since they are not parties until the case in chief is resolved. Instead, we would recommend the parties have 30 days following the resolution of the claim in chief to resolve the dispute or serve medical records.

We would also recommend that the timeframes for service of records be changed from 6 days to 20 days to be consistent with other provisions.

Finally, we would recommend the WCAB create a separate verification form for non-physician lien claimants to avoid the unnecessary production of confidential medical records. This class of lien claimants only request medical reports for the purpose of proving the service was actually provided as alleged. A Verification of Services form signed under penalty of perjury by the lien claimant, the evaluating or treating physician and the applicant would achieve this same purpose and obviate the need to provide full medical records. The form should include the date, time and location the services began and ended, in addition information pertinent to claim identification.

- **§ 10770. Filing and Service of Lien Claims**

(h)(1) – If a lien claimant notifies the WCAB that their lien is withdrawn or resolved, the liens should be deemed Dismissed with Prejudice, not "without prejudice." If the issue is resolved they should not be allowed to resurrect the same issue at a later date. If the notification is filed on the wrong case, the dismissal with prejudice is only pertinent to the case(s) from which it was dismissed and would not preclude filing in the correct claim.

- **§10957. Petition Appealing Independent Bill Review Determination of Administrative Director**

(c)(2) - Requires the filing of an Application with a petition in a previously non-litigated claim. Our coalition strongly believes that this will place an unnecessary burden on the defense community to dismiss an Application that might otherwise have never been filed

by the applicant. If the sole dispute of an appeal of the Independent Bill Review (IBR) decision, then this is not the dispute of the injured worker, rather it is a provider dispute. Our coalition feels strongly that there needs to be a mechanism to dismiss the application, if one is needed. Two possible proposals:

1. On receipt of the Petition Appealing the IBR, that the Administrative Director provides an ADJ# for the sole purpose of resolving the dispute. At the conclusion of the issue the ADJ# would be dismissed without prejudice, by operation of law.
2. If a filing of an Application is necessary, then there should be a mechanism to capture that the Application is filed for the sole purpose of disputing an IBR decision and the grounds on which it is being disputed. This would enable the WCAB to track the purpose of the Application and to categorize it so that when the issue is resolved, the ADJ# can be dismissed without prejudice by operation of law.

Thank you once again for the opportunity to provide commentary on the proposed regulations. We look forward to the opportunity to engage more thoroughly when the DWC moves forward with a regular rulemaking process.

Sincerely,



Jeremy Merz
California Chamber of Commerce



Jason Schmelzer
California Coalition on Workers' Compensation

cc: David Lanier, Chief Deputy Legislative Secretary, Office of Governor Edmund G. Brown
Christine Baker, Director, Department of Industrial Relations
Destie Overpeck, Acting Administrative Director, Division of Workers' Compensation