Text of Proposed Regulations. Font attributes must be turned on to correctly understand this document. Text with underline attributes are new language, and text with strike-through attributes are removed language. Please consult the Initial Statement of Reasons, posted separately, for explanation of language moved between regulations.

## § 10305. Definitions.

As used in this subchapter:

(a) “Administrative Director” means the Administrative Director of the Division of Workers' Compensation or a designee.

(b) “Appeals Board” means the commissioners and deputy commissioners of the Workers' Compensation Appeals Board acting en banc, in panels or individually.

~~(c) “Appear” means to act on behalf of any party.~~

(c) “Appearance” means a party or their representative’s presence, pursuant to Labor Code section 5700, at any hearing.

(d) “Applicant” or “injured employee” or “injured worker” or “dependent” means any person asserting a right to relief under the provisions of Labor Code section 5300.

(e) “Claims administrator” means an entity that reviews or adjusts workers' compensation claims on behalf of either (1) an insurer or (2) an employer that has secured a certificate of consent to self-insure from the Department of Industrial Relations, whether employed directly or as a third party.

(f) “Defendant” means any person against whom a right to relief is claimed.

(g) “Director” means the Director of Industrial Relations or a designee.

(h) “District office” means a location of a trial court of the Workers' Compensation Appeals Board and includes a permanently staffed satellite office.

(i) “Electronic” means by any available technological means.

~~(i)~~(j) “Electronic Adjudication Management System” or “EAMS” means the computerized case management system used by the Division of Workers' Compensation to electronically store and maintain adjudication files and to perform other case management functions.

~~(j)~~(k) “En Banc decision” means a decision of the Appeals Board as a whole, issued in order to achieve uniformity of decision or in a case presenting novel issues, that is binding on panels of the Appeals Board and workers' compensation judges as legal precedent under the principle of stare decisis.

~~(k)~~(l) “Entity” means a corporation, limited liability company, limited partnership, general partnership, limited liability partnership, sole proprietorship or any other organizational structure.

(m) “Filing” a document means receipt and acceptance by the Workers’ Compensation Appeals Board of the document for the purpose of having it included in the adjudication file.

~~(l)~~(n) “Hearing” means any trial, mandatory settlement conference, status conference, lien conference, lien trial or priority conference conducted by ~~at a district office, a remote location or before~~ the Workers’ Compensation Appeals Board.

~~(m)~~(o) “Lien claimant” means any person or entity claiming payment under the provisions of Labor Code section 4903 et seq., including a claim of costs filed as a lien.

~~(n)~~(p) “Non-attorney representative” means a person who is not licensed to practice law by the State of California who acts on behalf of a party in proceedings before the Workers' Compensation Appeals Board as allowed by Labor Code sections 5700 and 4907.

~~(o)~~(q) “Party” means any person or entity joined in a case, including but not limited to:

(1) An applicant;

(2) A defendant; or

(3) A lien claimant.

~~(p)~~(r) “Presiding workers' compensation judge” means the presiding workers' compensation judge of any district office and includes workers' compensation judges designated to perform the functions of a presiding workers' compensation judge.

~~(q)~~(s) “Section 4903(b) lien” means a lien claim filed in accordance with Labor Code section 4903(b) for medical treatment expenses incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Labor Code section 4600), including but not limited to expenses for interpreter services, copying and related services and transportation services incurred in connection with medical treatment. It shall not include any amount payable directly to the injured employee.

(t) “Service” of a document means to deliver a copy of the document in a manner permitted by these rules to a party or other person.

~~(r)~~(u) “Significant panel decision” means a decision of the Appeals Board that has been designated by all members of the Appeals Board as of significant interest and importance to the workers' compensation community. Although not binding precedent, significant panel decisions are intended to augment the body of binding appellate and en banc decisions by providing further guidance to the workers' compensation community.

~~(s)~~(v) “Status conference” means a proceeding set for the purpose of ascertaining if there are genuine disputes requiring resolution, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of facilitating preparation for trial if a trial is necessary.

~~(t)~~(w) “Submission” means the closing of the record to the receipt of further evidence or argument.

(x) “Testimony” means oral evidence given under oath that is transcribed pursuant to Labor Code sections 5704 and 5708.

~~(u)~~(y) “Walk-through document” means a document that is presented to a workers' compensation judge for immediate action where no notice of hearing has issued.

~~(v)~~(z) “Workers' Compensation Appeals Board” means the commissioners and deputy commissioners of the Appeals Board, presiding workers' compensation judges and workers' compensation judges.

~~(w)~~(aa) “Workers' compensation judge” means “workers' compensation administrative law judge” (formerly, “referee”) and includes pro tempore judges appointed pursuant to section 10350.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 20, 110(a), 5300, 5307, 5309, 5500, 5500.3, 5501, 5501.5, 5501.6, 5502, 5700 and 5701, Labor Code.

## § 10400. Attorney Representatives.

(a) An attorney representative shall file and serve a notice of representation before filing a document or appearing on behalf of a party unless the information required to be included in the notice of representation is set forth on an opening document.

(b) The notice of representation or opening document shall comply with rule 10390 and shall include:

(1) The name of the represented party;

(2) The legal name and State Bar number of the attorney; and

(3) The name, -mailing address, email address and telephone number of the law firm or other entity's agent for service of process;.

(c) The name of the attorney representative and law firm or other entity shall be set forth on the record of proceedings at all appearances and on any pleading, document or lien prepared or filed by an attorney representative.

(d) Attorney representatives of lien claimants shall also comply with the requirements set forth in rule 10868.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 3755-3759, 4903.1(c), 5001, 5002, 5003, 5004, 5500, 5502, 5503, 5505, 5702 and 5709, Labor Code.

## § 10401. Non-Attorney Representatives.

(a) Except as prohibited by rule 10445, a non-attorney representative may act on behalf of a party in proceedings before the Workers' Compensation Appeals Board if the party has been informed that the non-attorney representative is not licensed to practice law by the State of California.

(b) A non-attorney representative shall be held to the same professional standards of conduct as an attorney.

(c) A non-attorney representative shall file and serve a notice of representation before filing a document or appearing on behalf of a party unless the information required to be included in the notice of representation is set forth on an opening document.

(1) If the non-attorney representative is appearing pursuant to an agreement between a law firm or other entity that provides non-attorney representatives and a party, the notice of representation shall include:

(A) The name of the represented party;

(B) The legal name, mailing address, email address, telephone number and form of the law firm or other entity;

(C) The name, ~~and~~ mailing address and email address of the law firm or other entity's agent for service of process;

(D) The name of the person who entered into an agreement on behalf of the law firm or other entity with the party to provide non-attorney representatives; and

(E) The name of the non-attorney representative responsible for assuring that appearances are made on behalf of the party.

(2) If a non-attorney representative is appearing as an individual pursuant to an agreement between the non-attorney representative and a party, the notice of representation shall include the name of the represented party and the non-attorney representative's name, mailing address, email address and telephone number.

(d) The name of the non-attorney representative and any entity responsible for providing a party with the non-attorney representative shall be set forth on the record of proceedings at all appearances and on any pleading, document or lien prepared or filed by a non-attorney representative.

(e) If an attorney is responsible for supervising a non-attorney representative, the attorney shall be identified in all documents. The supervising attorney's specific written authorization must be included with all Compromise and Release agreements and Stipulations with Request for Award.

(f) A non-attorney representative whose name is not on the notice of representation must file a notice of appearance as provided in rule 10751 before appearing before the Workers' Compensation Appeals Board.

(g) Non-attorney representatives of lien claimants shall also comply with the requirements set forth in rule 10868.

Authority cited: Sections 133, 5307 and 5700 Labor Code. Reference: Section 4907, Labor Code; and Section 6126, Business and Professions Code.

## § 10404. Suspension and Removal of a Non-Attorney Representative's Privilege to Appear Before the Workers' Compensation Appeals Board Under Labor Code Section 4907.

(a) Upon motion of the Appeals Board, a non-attorney representative may have the privilege to appear before the Workers' Compensation Appeals Board removed or suspended for good cause after a hearing.

(b) Good cause includes, but is not limited to, serious or repeated violations of these rules, failure to comply with rule ~~10400~~ 10401 or failure to pay a final order of sanctions, attorney's fees or costs issued under Labor Code section 5813 within 60 days.

(c) The Appeals Board shall designate a hearing officer to conduct the hearing and make initial rulings on all issues and objections. The hearing officer is subject to disqualification as provided in Labor Code section 5311 and rule 9721.12. A Petition for Disqualification of a Hearing Officer shall be filed with the Appeals Board as provided in rule 10960.

(d) The Appeals Board shall initiate proceedings by issuing a Notice of Proposed Action setting forth:

(1) the acts or omissions that constitute good cause for removal or suspension and any statutes and rules that the non-attorney representative is alleged to have violated;

(2) the intended action, whether removal or suspension, and the length of time of any proposed suspension;

(3) the date on which the hearing regarding suspension or removal of the non-attorney representative's privilege to appear will take place and the identity of the hearing officer; and

(4) the right to submit a written response to the Notice of Proposed Action within the time specified in the Notice of Proposed Action.

(e) The Appeals Board shall serve the non-attorney representative with the Notice of Proposed Action and copies of materials relied upon.

(f) Any pleadings, response, correspondence, requests and other documents shall be submitted in writing only to the Appeals Board and not filed at any district office or in EAMS.

(g) All hearings regarding the removal or suspension of a non-attorney representative's privilege to appear shall be held at the office of the Appeals Board, or at a District Office of the Workers' Compensation Appeals Board as designated by the Appeals Board.

(h) If the non-attorney representative does not testify on their own behalf, their testimony may be taken as if under cross-examination.

(i) After considering the evidence and any response submitted by the non-attorney representative, the hearing officer shall issue a recommended decision and findings of fact addressing all issues and objections and setting forth the recommended action to be taken. The recommended decision shall be submitted to the Appeals Board.

(j) The Appeals Board, acting en banc, may (1) adopt and incorporate the recommended decision of the hearing officer as its own in whole or in part; (2) review the record and increase or decrease the recommended action; or (3) take further or other action, including directing the conduct of a new hearing on one or more of the issues presented, as deemed just and appropriate. The Appeals Board shall serve the non-attorney representative and hearing officer with copies of its final decision as well as the hearing officer's recommended decision.

(k) Once the Appeals Board has served its final decision, any person may request a copy of all or a portion of the record, subject to any assertions of privilege, protective orders or provisions of law prohibiting disclosure. The complete record includes the pleadings, all notices and orders issued by the Appeals Board, any proposed decision by the hearing officer, the final decision, all exhibits whether admitted or rejected, the written evidence and any other papers in the case, except as provided by law.

(l) A non-attorney representative whose privilege to appear has been removed or suspended may petition the Appeals Board for reinstatement of the privilege after a period of not less than one year has elapsed from the date on which the decision of the Appeals Board took effect, or from the date of the denial of a similar petition.

Note: Authority cited: Sections 4907 and 5307, Labor Code. Reference: Sections 4907 and 5311, Labor Code.

## § 10462. Subsequent Injuries Benefits Trust Fund Application.

(a) All claims against the Subsequent Injuries Benefits Trust Fund shall be by an application in writing setting forth the date and nature of the industrial injury, together with all factors of disability alleged to have pre-existed the injury.

(b) All such applications shall be filed with the Workers' Compensation Appeals Board district office having venue or in EAMS, and a copy shall be served by mail on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund, in accordance with rules ~~10530~~10625 and ~~10540~~10632. Where joinder of the Subsequent Injuries Benefits Trust Fund has been ordered, the applicant shall forthwith file and serve an application as provided herein.

(c) After such an application is filed, any party who has previously filed medical reports shall serve copies on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund no later than 30 days prior to the mandatory settlement conference or other hearing, unless service is waived by the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund.

(d) After joinder of the Subsequent Injuries Benefits Trust Fund and no later than 30 days prior to the mandatory settlement conference or other hearing, all parties shall meet and confer in good faith as to the elements of Labor Code section 4751.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4750, 4751, 4753, 4753.5 and 4754.5, Labor Code.

## § 10550. Petition to Dismiss Inactive Cases.

(a) Unless a case is activated for hearing within one year after the filing of the Application for Adjudication of Claim or the entry of an order taking off calendar, the case may be dismissed after notice and opportunity to be heard. Such dismissals may be entered at the request of an interested party or upon the Workers' Compensation Appeals Board's own motion for lack of prosecution.

(b) At least 30 days before filing a petition to dismiss, the defendant seeking to dismiss the case shall send a letter to the applicant and, if represented, to the applicant's attorney or non-attorney representative, stating the defendant's intention to file a “Petition to Dismiss Inactive Case” 30 days after the date of that letter, unless the applicant or applicant's attorney or non-attorney representative objects in writing, demonstrating good cause for not dismissing the case.

(c) A petition to dismiss shall be filed with the district office having venue or in EAMS and the petition shall be served on all parties and all lien claimants pursuant to Rule 10625.

(d) A petition to dismiss shall be captioned “Petition to Dismiss Inactive Case [assigned ADJ number].”

(e) The following documents shall be filed with a petition to dismiss:

(1) A copy of the letter required by subdivision (a)(b) of this rule; and

(2) Any reply to the letter required by subdivision (a)(b) of this rule.

(f) A case may be dismissed after issuance of a 10-day notice of intention to dismiss and an opportunity to be heard, but not by an order with a clause rendering the order null and void if an objection showing good cause is filed.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5405 and 5406, Labor Code.

## § 10610. Filing and Service of Documents.

Unless a statute or rule provides for a different method ~~for filing or service~~, a requirement to “file and serve” a document means that ~~a copy of~~ the document must be filed as set forth in rule 10615 and served as set forth in rule 10625~~on the attorney or non-attorney representative for each party separately represented, on each self-represented party and on any other person or entity when required by statute, rule or court order~~, and ~~that the document and~~ a proof of service of the document must be filed with the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5500.3, Labor Code.

## § 10615. Filing of Documents.

~~Except as otherwise provided by these rules or ordered by the Workers' Compensation Appeals Board, after the filing and processing of an initial Application for Adjudication of Claim or other case opening document, a~~

(a) All documents required or permitted to be filed under the rules of the Workers' Compensation Appeals Board shall be filed ~~only~~ in EAMS or with the district office having venue, except as otherwise provided by these rules or ordered or allowed by the Workers' Compensation Appeals Board.

~~(a) Except as provided by rule 10677(a), no “original” business records, medical records or other documentary evidence shall be filed with the Workers' Compensation Appeals Board. Only a photocopy or other reproduction of an original document shall be filed. All paper documents that are scanned into EAMS are destroyed after filing pursuant to rule 10205.10.~~

(b) A document is deemed filed on the date it is received, if received prior to 5:00 p.m. on a court day ~~(i.e., Monday through Friday, except designated State holidays)~~. ~~An electronically transmitted document shall be deemed to have been received by EAMS when the electronic transmission of the document into EAMS is complete.~~ A document received after 5:00 p.m. ~~of~~ on a court day shall be deemed filed as of the next court day.

(c) When a paper document is filed ~~by mail or by personal service~~, the Workers' Compensation Appeals Board shall affix on it an appropriate endorsement as evidence of receipt. The endorsement may be made by handwriting, hand-stamp, electronic date stamp or by other means. The endorsement shall serve as confirmation of successful filing unless otherwise notified by the Workers’ Compensation Appeals Board or the Administrative Director ~~returns the document to the filer and notifies the filer, through the service of a Notice of Document Discrepancy, that the document has not been accepted for filing and the filer fails to correct the discrepancy within 15 days~~.

(d) When a document is filed electronically, it shall be deemed to have been received by the Workers’ Compensation Appeals Board when transmission of the document is complete. Receipt shall constitute confirmation of successful filing unless otherwise notified by the Workers’ Compensation Appeals Board or the Administrative Director. Confirmation of successful filing ~~When a document is filed~~ ~~electronically~~ in EAMS~~, confirmation of successful filing~~ shall be made in the manner described by rule 10206.3.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 126, 5500.3, 5501.5 and 5501.6, Labor Code.

## § 10625. Service by Parties.

(a) ~~Except as otherwise provided by these rules at 10300 et seq., s~~Service shall be made on the attorney or agent of record of each affected party unless that party is unrepresented, in which event service shall be made directly on the party, except as otherwise provided by these rules or ordered or allowed by the Workers’ Compensation Appeals Board.

(b) A document may be served using the following methods:

(1) Personal service;

(2) Electronic service;

~~(2)~~(3) First class mail; or

~~(3)~~(4) An alternative method that will effect service that is equivalent to or more expeditious than first class mail; or~~, limited to either:~~

~~(A) The use of express (overnight) or priority mail; or~~

~~(B) The use of a bona fide commercial delivery service or attorney service promising delivery within two business days, as shown on the service's invoice or receipt; or~~

~~(4) A party's preferred method of service if a method has been designated in accordance with rule 10205.6; or~~

(5) Another method if the serving and receiving parties have ~~previously~~ agreed ~~to some other method of service~~.

(c) “Proof of service” means a dated and verified declaration identifying the document(s) served and the parties who were served, and stating that service has been made and the method by which it has been made. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served represents. If a document is served electronically, the proof of service must also state the names and email addresses of the person serving electronically and the person served electronically.

(d) Where a party receives notification that the service to one or more parties failed, the server shall ~~promptly~~ re-serve the document on all ~~the~~ intended recipient~~(~~s~~)~~ and execute a new proof of service, or provide a courtesy copy to the recipient on whom service failed, within a reasonable amount of time.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Article XIV, Section 4, California Constitution; Sections 4906, 5307.9 and 5316, Labor Code; and Section 250, Evidence Code.

## § 10628. Service by the Workers' Compensation Appeals Board.

(a) The Workers' Compensation Appeals Board shall serve the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented, and all parties of record with any final order, decision or award issued by it on a disputed issue after submission. The Workers' Compensation Appeals Board shall not designate a party, or their attorney or agent of record, to serve any final order, decision or award relating to a submitted issue.

(b) If the Workers' Compensation Appeals Board effects personal service of a document at a hearing or at a walk-through proceeding, the proof of personal service shall be made by endorsement on the document, setting forth legibly the name(s) of the person(s) served, the date of service and the fact of personal service. The endorsement shall bear the legibly printed name and signature of the person making the service.

(c) If the Workers' Compensation Appeals Board serves a document by mail, the proof of mail service shall be made by endorsement on the document, setting forth the fact of mail service on the persons or entities listed on the ~~O~~official ~~A~~address ~~R~~record as required by rules 10400 and 10401 and shall state ~~who have not designated e-mail or fax as their preferred method of service. The endorsement shall state~~ the date of mail service ~~and it shall bear the legibly printed name and the signature of the person making the service~~.

(d) If the Workers' Compensation Appeals Board electronically serves a document, the proof of electronic service shall be made by endorsement on the document, setting forth the fact of electronic service ~~through EAMS~~ on the persons or entities listed on the official address record as required by rules 10400 and 10401 and ~~who have designated e-mail or fax as their preferred method of service,~~ the date of electronic service ~~proof of e-mail or fax service shall be made by endorsement on the document, setting forth the fact of e-mail or fax service on the persons or entities listed~~.

(e) Where a district office of the Workers' Compensation Appeals Board maintains mailboxes for outgoing documents and allows consenting parties, lien claimants and attorneys to obtain their documents from their mailboxes, documents so obtained shall be deemed to have been served on the party, lien claimant or attorney by mail on the date of service specified on the document.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5316 and 5504, Labor Code.

## § 10635. Duty to Serve Documents.

(a) Where documents, including electronic media, are to be offered into evidence, copies shall be served on all adverse parties no later than the mandatory settlement conference, unless good cause is shown.

(b) If a party requests that a defendant provide a computer printout of benefits paid, the defendant shall provide the requesting party with a current computer printout of benefits paid within 20 days. The printout shall include the date and amount of each payment of temporary disability indemnity, permanent disability indemnity, the period covered by each payment, and the date, payee and amount of each payment for medical treatment. After receipt of a printout of benefits, another such request may not be made more frequently than once in a 120-day period unless there is a change in indemnity payments or a new dispute requiring updated payment periods.

(c) During the continuing jurisdiction of the Workers' Compensation Appeals Board, the parties have an ongoing duty to serve each other with any medical reports received and any written communication from a physician containing information listed in rule 10682 that is maintained in the employer’s capacity as an employer within 10 calendar days of receipt.~~:~~

~~(1) Each other with any medical reports received; and~~

~~(2)~~(d) The parties are not required to serve a lien claimant with medical reports unless ordered by the Workers’ Compensation Appeals Board, unless the ~~A~~ lien claimant ~~who~~ is defined as a “physician” by Labor Code section 3209.3 and is an entity described in Labor Code sections 4903.05(d)(7) and 4903.06(b) and has requested such service ~~of medical reports with any medical reports received~~. ~~unless the lien claimant is not defined as a “physician” by Labor Code section 3209.3 and is not an entity described in Labor Code sections 4903.05(c)(7) and 4903.06(b); and~~

~~(3)~~(e) ~~Any written communication from a physician containing information listed in rule 10682 that is maintained in the employer's capacity as an employer.~~ Records from an employee assistance program are not required to be filed or served unless ordered by the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133, 4903.6(d), 5307, 5309 and 5708, Labor Code. Reference: Sections 3209.3, 4600, 4903.05, 4903.06, 4903.6(d), 5001, 5502, 5502(e), 5703 and 5708, Labor Code.

## § 10670. Documentary Evidence.

The filing of a document does not signify its receipt in evidence and, except for the documents listed in rule 10803, only those documents that have been received in evidence shall be included in the record of proceedings on the case.

(a) Certified copies of reports or records of any governmental agency, division or bureau shall be admissible in evidence in lieu of the original reports or records.

(b) The Workers' Compensation Appeals Board may decline to receive in evidence:

(1) Any document not listed on the Pre-Trial Conference Statement.

(2) Any document not served at or prior to the mandatory settlement conference, unless good cause is shown.

(3) Any document not filed 20 days prior to trial, unless otherwise ordered by a workers' compensation judge or good cause is shown.

(4) Any physician's report that does not comply with Labor Code section 4628 unless good cause has been shown for the failure to comply and, after notice of non-compliance, compliance takes place within a reasonable period of time or within a time prescribed by the workers' compensation judge.

(5) Any report that does not comply with the verification requirements of Labor Code section 5703(a)(2)or 5703(j)(2).

(c) Except as provided by rule 10677(a), no “original” business records, medical records or other documentary evidence shall be filed with the Workers' Compensation Appeals Board. Only a photocopy or other reproduction of an original document shall be filed.

~~(c)~~(d) Where a willful suppression of evidence is shown to exist, it shall be presumed that the evidence would be adverse, if produced.

~~(d) The remedies in this rule are cumulative to others authorized by law.~~

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 126, 4628, 5316, 5500, 5501, 5703, 5708 and 5813, Labor Code.

## § 10745. Setting the Case.

The Workers' Compensation Appeals Board, upon the receipt of a Declaration of Readiness to Proceed, may, in its discretion, set the case for a type of proceeding other than that requested. The Workers' Compensation Appeals Board may, on its own motion with or without notice, set any case for any type of hearing ~~conference or trial~~ and may order that hearings be conducted electronically.

Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5310, Labor Code.

## § 10750. Notice of Hearing.

~~The Workers' Compensation Appeals Board shall either serve or, under rule 10629, cause to be served~~

(a) Notice shall be served ~~notice~~ on all parties and their attorneys or non-attorney representatives of record of the time and ~~place~~ location, including whether the hearing will be conducted electronically, of each hearing scheduled, whether or not the hearing affects all parties, as provided in rule ~~10610~~ 10625.

(b) The Workers' Compensation Appeals Board may, in its discretion, designate a party or their attorney or agent of record to serve a notice of hearing as provided in rule 10629. Notice shall include the time and location, including whether the hearing will be conducted electronically and how to access any electronic hearing.

(c) Notice of hearing shall be given at least 10 days before the date of hearing, except where:

~~(a)~~(1) Notice is waived; or

~~(b)~~(2) A different time is expressly agreed to by all parties and ~~concurred in~~ ordered or approved by the Workers' Compensation Appeals Board.

Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5504, Labor Code.

## § 10752. Appearances Required.

(a) Each applicant and defendant shall appear or have an attorney or non-attorney representative appear at all hearings pertaining to the case in chief. Neither a lien conference nor a lien trial is a hearing pertaining to the case in chief.

(b) Each required party shall have a person available with settlement authority at all hearings. ~~This person need not be present if the party's attorney or non-attorney representative is present and can obtain immediate authority.~~

~~(c) A represented injured employee or dependent shall personally appear at any mandatory settlement conference. Failure to personally appear shall not be a basis for dismissal of the application.~~

~~(d)~~(c) A lien claimant need not appear at any mandatory settlement conference or trial in the case in chief, but shall have a person ~~be~~ immediately available ~~by telephone~~ with ~~full~~ settlement authority ~~and shall notify defendant(s) of the telephone number at which the defendant(s) may reach the lien claimant~~. ~~Failure to comply may give rise to monetary sanctions, attorney's fees and costs under Labor Code section 5813 and rule 10421.~~

~~(e)~~(d) Any appearance required by this rule may be excused by the Workers' Compensation Appeals Board. Any appearance not required by this rule may be ordered by the Workers' Compensation Appeals Board.

(e) A workers’ compensation judge may issue a notice of intention pursuant to rule 10832 for failure to comply with this rule.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5502 and 5700, Labor Code.

## § 10755. Failure to Appear at Mandatory Settlement Conference in Case in Chief.

~~(a) Where an applicant served with notice of a mandatory settlement conference fails to appear either in person or by attorney or non-attorney representative at the mandatory settlement conference, the workers' compensation judge may:~~

~~(1) Dismiss the application after issuing a 10-day notice of intention to dismiss, or~~

~~(2) Close discovery and set the case in chief for trial.~~

~~(b) Where a defendant served with notice of a mandatory settlement conference fails to appear either in person or by attorney or non-attorney representative at the mandatory settlement conference, the workers' compensation judge may:~~

~~(1) Close discovery and set the case for trial on all issues, or~~

~~(2) Set the case in chief for trial.~~

~~(c)~~Where a required party, after notice, fails to appear at a mandatory settlement conference in the case in chief:

(a) If ~~and~~ good cause is shown for failure to appear, the workers' compensation judge may take the case off calendar or may continue the case to a date certain.

(b) If no good cause is shown for failure to appear, the workers’ compensation judge may issue a notice of intention pursuant to rule 10832, take the case off calendar or continue the case to a date certain.

~~(d)~~ This rule shall not apply to lien conferences, which are governed by rule 10875.

Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; and Sections 5502(e) and 5708, Labor Code.

## § 10756. Failure to Appear at Trial in Case in Chief.

~~(a) Where an applicant served with notice of trial in the case in chief fails to appear either in person or by attorney or non-attorney representative at the trial, the workers' compensation judge may:~~

~~(1) Dismiss the application after issuing a 10-day notice of intention to dismiss, or~~

~~(2) Hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a 10-day notice of intention to submit, make such decision as is just and proper.~~

~~(b) Where a defendant served with notice of trial in the case in chief fails to appear either in person or by attorney or non-attorney representative at the trial, the workers' compensation judge may hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a 10-day notice of intention to submit, make such decision as is just and proper.~~

~~(c)~~ Where a required party, after notice, fails to appear at a trial in the case in chief:

(a) If ~~and~~ good cause is shown for failure to appear, the workers' compensation judge may take the case off calendar or may continue the case to a date certain.

(b) If no good cause is shown for failure to appear, the workers’ compensation judge may issue a notice of intention pursuant to rule 10832, take the case off calendar or continue the case to a date certain.

~~(d)~~ This rule shall not apply to lien trials, which are governed by rule ~~10876~~10880.

Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; and Sections 5502(e) and 5708, Labor Code.

## § 10759. Mandatory Settlement Conferences.

(a) In accordance with Labor Code section 5502, the workers' compensation judge shall have authority to inquire into the adequacy and completeness, including provision for lien claims, of Compromise and Release agreements or Stipulations with Request for Award or orders, and to issue orders approving Compromise and Release agreements or awards or orders based upon approved stipulations. The workers' compensation judge may temporarily adjourn a conference to a time certain to facilitate a specific resolution of the dispute(s) subject to Labor Code section 5502(d)(1).

Subject to the provisions of Labor Code section 5502.5 and rule 10744, upon a showing of good cause, the workers' compensation judge may continue a mandatory settlement conference to a date certain, may continue it to a status conference on a date certain, or may take the case off calendar. In such a case, the workers' compensation judge shall note the reasons for the continuance or order taking off calendar in the minutes. The minutes shall be served on all parties and their representatives.

(b) The parties shall meet and confer prior to the mandatory settlement conference and, a~~A~~bsent resolution of the dispute(s), the parties shall ~~file~~ complete a joint Pre-Trial Conference Statement setting forth the issues and stipulations for trial, witnesses, and a list of exhibits by the close of the mandatory settlement conference. A defendant that has paid benefits shall have a current computer printout of benefits paid available for inspection at every mandatory settlement conference.

~~(1)~~(c) Each exhibit listed must be clearly identified by author/provider, date, and title or type (e.g., “the July 1, 2008 medical report of John Doe, M.D. (3 pages)”). Each medical report, medical-legal report, medical record, or other paper or record having a different author/provider and/or a different date is a separate “document” and must be listed as a separate exhibit, with the exception that the following documents may be listed as a single exhibit, unless otherwise ordered by the Workers' Compensation Appeals Board:

~~(A)~~(1) Excerpted portions of physician, hospital or dispensary records, provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates of treatment or other service(s) covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of physician, hospital or dispensary records shall be admitted in evidence;

~~(B)~~(2) Excerpted portions of personnel records, wage records and statements, job descriptions, and other business records provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of personnel records, wage records and statements, job descriptions, and other business records shall be admitted in evidence; and

~~(C)~~(3) Explanation of Benefits (EOB) letters.

~~(c)~~(d) The workers' compensation judge may make orders and rulings regarding admission of evidence and discovery matters, including admission of offers of proof and stipulations of testimony where appropriate and necessary for resolution of the dispute(s) by the workers' compensation judge, and may submit and decide the dispute(s) on the record pursuant to the agreement of the parties.

~~(d)~~(e) The joint Pre-Trial Conference Statement, the disposition, and any orders shall be completed by the close of the mandatory settlement conference and shall be filed by the workers' compensation judge in the record of the proceedings on a form prescribed and approved by the Appeals Board and shall be served on the parties.

Note: Authority cited: Sections 133, 5307 and 5502, Labor Code. Reference: Sections 5502 and 5502.5, Labor Code.

## § 10815. Electronic Hearings Before the Workers’ Compensation Appeals Board.

(a) Any matter may be set for an electronic hearing as set forth in rule 10745.

(b) Any party may object to an electronic hearing by filing a written objection showing good cause after service of a notice that a hearing will be conducted electronically.

(c) After an objection to a notice that a hearing will be conducted electronically is filed, the presiding workers’ compensation judge of the district office having venue may set the issue of whether the hearing will be conducted electronically for a hearing.

(d) If the presiding workers’ compensation judge of the district office having venue takes no action on the objection before the hearing, it will be deemed deferred as an issue for the hearing before the assigned workers’ compensation judge.

(e) The Division of Workers’ Compensation will make information available to members of the public regarding access to hearings.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5502, 5504 and 5700, Labor Code.

## § 10816. Electronic Appearances Before the Workers’ Compensation Appeals Board.

(a) If a party intends to appear electronically at any hearing, they shall file a petition showing good cause pursuant to rule 10510.

(b) For any hearing that is conducted electronically pursuant to rule 10815, all appearances will be presumed to be electronic appearances with no petition required, unless otherwise requested, ordered or allowed.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5502, 5502.5 and 5708, Labor Code.

## § 10817. Electronic Testimony Before the Workers’ Compensation Appeals Board.

(a) If a witness intends to testify electronically, a petition showing good cause shall be filed pursuant to rule 10510 by the witness or by the party offering the witness’s testimony before the hearing, and shall identify the witness and contain the witness’s full legal name, mailing address, email address and telephone number.

(b) For any hearing that is conducted electronically pursuant to rule 10815, all testimony will be presumed to be electronic testimony with no petition required, unless otherwise requested, ordered or allowed.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5502, 5502.5 and 5708, Labor Code.

## § 10818. Recording of Proceedings.

~~(a) For the purposes of this rule, “recording” means any photographing, recording, or broadcasting of trial level proceedings using video, film, audio, any digital media or other equipment.~~

~~(b) Except as provided in this rule, proceedings shall not be photographed, recorded, or broadcast. This rule does not prohibit the Division of Workers' Compensation (DWC) from photographing or videotaping sessions for judicial education or publications and is not intended to apply to closed-circuit television broadcasts solely within DWC or among DWC facilities if the broadcasts are controlled by DWC and DWC personnel.~~

~~(c)~~(a) Recording of proceedings shall be permitted only on written order by the ~~assigned workers' compensation judge~~ Workers’ Compensation Appeals Board. ~~The workers' compensation judge may permit, refuse or limit recording.~~

~~(1)~~ Any person who wishes to record a proceeding shall ~~make~~ file a written petition showing good cause pursuant to rule 10510 ~~request to the assigned workers' compensation judge and shall serve the written request on all parties at least 10 business days before the proceeding commences unless good cause to shorten time is shown~~.

~~(2)~~ The ~~workers' compensation judge~~ Workers’ Compensation Appeals Board may hold a hearing on the request or rule on the request without a hearing.

~~(3) In ruling on the request, the workers' compensation judge shall consider the following factors:~~

~~(A) Importance of maintaining public trust and confidence in the workers' compensation system;~~

~~(B) Importance of promoting public access to the workers' compensation system;~~

~~(C) Parties' support of or opposition to the request;~~

~~(D) Nature of the case;~~

~~(E) Privacy rights of all participants in the proceeding, including witnesses;~~

~~(F) Effect on any minor who is a party, prospective witness, or other participant in the proceeding;~~

~~(G) Effect on any ongoing law enforcement activity in the case;~~

~~(H) Effect on any subsequent proceedings in the case;~~

~~(I) Effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;~~

~~(J) Effect on excluded witnesses who would have access to the televised testimony of prior witnesses;~~

~~(K) Security and dignity of the trial level proceeding;~~

~~(L) Undue administrative or financial burden to DWC or participants;~~

~~(M) Interference with neighboring hearing rooms;~~

~~(N) Maintaining orderly conduct of the proceeding;~~

~~(O) Any other factor the workers' compensation judge deems relevant.~~

~~(4) The workers' compensation judge's ruling on the request to permit recording is not required to make findings or a statement of decision.~~ The ~~workers' compensation judge~~ Workers’ Compensation Appeals Board may condition the order permitting recording of the proceedings on the requestor's agreement to pay any increased costs incurred by DWC resulting from recording the proceeding ~~(for example, for additional security)~~. ~~The requestor shall be responsible for ensuring that any person who records the trial level proceedings on their behalf know and follow the provisions of the order and this rule.~~

~~(5) The order permitting recordation may be modified or terminated on the workers' compensation judge's own motion or upon application to the workers' compensation judge without the necessity of a prior hearing or written findings. Notice of the application and any modification or termination ordered pursuant to the application shall be given to the parties and each person permitted by the previous order to record the proceeding.~~

~~(6) The workers' compensation judge shall not permit recording of the following:~~

~~(A) Proceedings held in chambers that are not transcribed by a hearing reporter;~~

~~(B) Proceedings closed to the public; and~~

~~(C) Conferences between an attorney and a client, witness, or aide, between attorneys, or between counsel and the workers' compensation judge at the bench, unless transcribed by a hearing reporter.~~

~~(7) The workers' compensation judge may require a demonstration that people and equipment comply with this rule. The workers' compensation judge may specify the placement of equipment to minimize disruption of the proceedings.~~

~~(8) The following rules shall apply to all recording:~~

~~(A) One video recording device and one still photographer shall be permitted.~~

~~(B) The equipment used shall not produce distracting sound or light. Signal lights or devices to show when equipment is operating shall not be visible.~~

~~(C) Microphones and wiring shall be unobtrusively located in places approved by the workers' compensation judge and shall be operated by one person.~~

~~(D) Operators shall not move equipment or enter or leave the courtroom while the proceeding is in session, or otherwise cause a distraction.~~

~~(E) Equipment or clothing shall not bear the insignia or marking of a media agency.~~

~~(9) If two or more people request recordation of a proceeding, they shall file a statement of agreed arrangements. If they are unable to agree, the workers' compensation judge may deny a request to record the proceeding.~~

~~(d) Any violation of this rule or an order made under this rule is an unlawful interference with the proceedings and may be the basis for an order terminating recording, a citation for contempt, or an order imposing monetary or other sanctions as provided by law.~~

~~(e)~~(b) ~~Notwithstanding (a) through (d), a workers' compensation judge may permit inconspicuous personal recording devices to be used by parties in a courtroom to make sound recordings as personal notes of the proceedings. A person~~ Any person proposing to record the proceedings for personal use ~~a recording device~~ shall obtain advance permission from the workers' compensation judge ~~before recording the proceeding~~. The recording shall not be used for any purpose other than as personal notes~~, and shall not constitute evidence as to any matter recorded~~.

(c) Permission ~~The right of any individual~~ to record the proceedings ~~use a personal recording device shall be suspended~~ may be revoked if~~, in~~ the workers' compensation judge~~'s~~ determines ~~sole discretion, it appears~~ that:

~~(1) The~~ the continued recording of the proceedings will inhibit any party or witness from participation in the proceeding~~;~~ or

~~(2) The~~ the recording is done in a manner that threatens to disrupt the proceeding.

(d) Any violation of this rule is an unlawful interference with the proceedings and may be the basis for an order terminating recording, a citation for contempt or an order imposing monetary or other sanctions. A workers’ compensation judge may issue a notice of intention pursuant to rule 10832 for any violation of this rule.

~~(f)~~(e) Only the ~~stenographic~~ recordings described in Labor Code sections 5704 and 5708 ~~provided by an Official Hearing Reporter shall be deemed~~ are the official recordings of a proceeding.

Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Rule 1.150, California Rules of Court.

## § 10832. Notices of Intention and Orders after Notices of Intention.

(a) The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including but not limited to:

(1) Allowing, ~~or~~ disallowing or dismissing a lien;

(2) ~~Allowing or disallowing~~ Granting, denying or dismissing a petition ~~for costs~~;

(3) Sanctioning a party;

(4) Submitting the matter on the record ~~after a party fails to appear~~; or

(5) Dismissing an application.

(b) A Notice of Intention may be served by designated service in accordance with rule 10629.

(c) If an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may:

(1) Sustain the objection;

(2) Issue an order consistent with the notice of intention together with an opinion on decision; or

(3) Set the matter for hearing.

(d) Any order issued after a notice of intention shall be served by the Workers' Compensation Appeals Board pursuant to rule 10628.

(e) An order with a clause rendering the order null and void if an objection is received is not a Notice of Intention and must be served by the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5307, Labor Code.

## § 10862. Filing and Service of Lien Claims and Supporting Documents.

(a) A lien claim may be filed only if permitted by Labor Code section 4900 et seq. An otherwise permissible lien claim shall not be filed if doing so would violate the premature filing restrictions of Labor Code section 4903.6(a).

(b) A section 4903(b) lien shall only be filed electronically in accordance with section 4903.05 and not by any other method.

(c) All other lien claims may be filed utilizing an optical character recognition (OCR) lien claim form approved by the Appeals Board.

(d) The claims of two or more providers of goods or services shall not be merged into a single lien. An individual provider may claim more than one type of lien on a single lien form by marking the “Other Lien(s)” checkbox on the form and by specifying the nature and statutory basis for each lien in that checkbox's associated text box.

(e) The following documents shall be concurrently filed with each lien claim:

(1) A proof of service;

(2) The verification under penalty of perjury outlined in rule 10863, if required; and

~~(4)~~(3) Any other declaration or form required by law to be concurrently filed with a lien claim, including but not limited to documents required by Labor Code sections 4903.05, 4903.06 and 4903.8.

(f) Nothing in this rule shall preclude a medical treatment lien claimant from filing a lien claim if there are other outstanding disputes, including but not limited to injury, employment, jurisdiction, or the statute of limitations.

(g) All original and amended lien claims, and all related documents, including a full statement or itemized voucher for any section 4903(b) lien and any document listed in rule 10862(e) shall be served on:

(1) The injured worker or, if deceased, the worker's dependent(s), unless:

(A) The worker or dependent(s) is represented by an attorney or other agent of record, in which event service may be made solely upon the attorney or agent of record; or

(B) The underlying case of the worker or dependent(s) has been resolved; or

(C) The worker or the dependent(s) chooses not to proceed with the case.

(2) Any employer(s) or insurance carrier(s) that are parties to the case and, if represented, their attorney(s) or other agent(s) of record.

(h) The service of a lien claim on a defendant, or the service of notice of any claim that would be allowable as a lien, shall not constitute the filing of a lien within the meaning of these rules unless allowed by statute.

(i) Where a lien has been served on a party, that party shall have no obligation to file that lien with the Workers' Compensation Appeals Board.

(j) When serving an amended lien claim, the lien claimant shall indicate in the box set forth on the lien form that it is an “amended” lien claim and shall provide the name, mailing address and telephone number of a person with authority to resolve the lien claim on behalf of the lien claimant.

(k) Any lien claim filed in violation of the provisions of this rule may be deemed not filed for any purpose, including tolling or extending the time for filing the lien claim, and may not be acknowledged or returned to the filer and may be destroyed at any time without notice.

Note: Authority cited: Sections 133, 5307 and 5708, Labor Code. Reference: Sections 4900 et seq., 4903, 4903.05, 4903.06, 4903.8, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 4603.2, 4603.3, 4603.6, 4610.5, 4610.6, 4616.3, 4616.4, 4622 and 5813, Labor Code.