

Significant new WCAB Regulations Effective January 1, 2020

New Definitions:

- CCR §10305 (formally 10301)
 - “Party”—any person or entity joined in a case, including but not limited to: an Applicant, a Defendant, or a **lien claimant**
 - “Hearing:”—any Trial, MSC, Status Conference, Lien Conference, or Lien Trial at a district office, a remote location, or before the Appeals Board. **Note: No Ratings MSC listed—they no longer exist!**

New titles for Petitions:

- Petition to Dismiss Inactive Case (CCR 10550)
- Objection to Venue (CCR 10488, LC 5501.5(a)) {within 30 days}
- Petition for Change of Venue for Good Cause (CCR 10490, LC 5501.6(a))
- § 10565 –Petition Appealing Denial of Return-to-Work Supplement
 - Must be filed within 20 days of service of decision denying RTW supplement
 - Petition shall be based upon one or more of the grounds as prescribed for Petitions for Recon pursuant to LC §5903 (WCJ acted without or in excess of powers; decision procured by fraud; evidence does not justify findings of fact; new material evidence discovered that could not have been discovered before; findings of fact do not support decision)

Conduct of attorney and non-attorney representatives:

- CCR § 10400 (attorney representatives): NOR must be filed before filing document or making an appearance. NOR must include:
 - Name of represented party
 - Name and **state bar number** and contact info of handling attorney
 - The name of attorney representative and law firm or other entity shall be indicated on the MOH and on any pleading, document, or lien prepared or filed by attorney representative.
- CCR §10401 (non-attorney representatives): A NAR may act on behalf of a party at the WCAB (unless as prohibited by §10445 and is a former attorney that has been disbarred or suspended by the Supreme Court for reasons other than nonpayment of bar dues, been placed on involuntary inactive enrollment status by the SB or has resigned while disciplinary action is pending) *if* the party has been informed that the non-attorney representative is not licensed to practice law by the State of CA.
 - The NAR shall be held to the same professional standards of conduct as an attorney
 - The NAR must file and serve a NOR before filing a document or appearing at the WCAB unless the information is set forth on an opening document.
 - If a NAR is appearing pursuant to an agreement between a law firm or other entity the NOR shall include:
 - The name of represented party
 - The legal name, address, telephone number and form of law firm or other entity
 - The name and address of the law firm or other entity’s agent for service of process
 - 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 reps and

- The name of the NAR responsible for assuring that appearances are made on behalf of the party.
 - If an attorney is responsible for supervising a NAR, 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.
 - §10403—a complaint may be filed against NAR for violation of LC §4907 (which pertains to privilege of NAR to appear at WCAB)
 - Complaint is to be filed with secretary of Appeals Board
 - Must be signed under penalty of perjury and identify acts and omissions of NAR; identify case number and documents
 - NAR must be served with notice of the complaint and they are allowed to respond. The secretary will serve both parties with determination after investigation
 - §10404—NAR may be suspended from WCAB for good cause after a hearing. Good cause includes:
 - Violation of rules
 - Failure to comply with §10400/10401
 - Failure to pay LC 5813 within 60 days
- § 10520 – Attorney's name and Bar Number needs to be on all pleadings (Petitions) filed with the Board.

Filing and Service of Documents

- § 10610 – file and serve means:
 - Copy served on all representatives or pro per and on any other person required and the document and POS must be filed with WCAB
- §10615—after filing opening documents, all later documents must be filed in EAMS or in the venued district office
 - Don't file originals—other than exceptions listed in §10677—they are destroyed when scanned
 - If filed before 5pm, considered filed that date; after 5pm, considered filed the next day
- §10620: Trial exhibits must be filed 20 days before trial unless otherwise ordered.
- §10625: Must serve pro per or party's attorney of record by personal service, 1st class mail, express overnight/priority, or commercial delivery; party's designated preferred method or an expressly agreed upon method.
 - POS must be dated and verified; documents served, who is served, method of service, party represented by served attorney must all be identified.
 - If service fails, reserve with new POS
- § 10628 – Appeals Board serves any final Order, Decision, or Award regarding a disputed issue – and cannot designate a party to serve. WCJ may serve personally at hearing or walk through, or by mail, EAMS
- § 10629 – Designated service (like Minutes of Hearing) are served on ALL parties AND the injured worker/Applicant (whether represented or not) within 10 days. Designated party to serve and file POS within 10 days.
- §10635:
 - documents to be offered into evidence must be served by MSC or good cause

- if a benefits printout is requested from defendant, defendant *shall* provide the requesting party with a current computer printout within 20 days. The printout shall include date and amount of each TD and PD payment and periods paid, payee, and amount of each payment for medical treatment. After receipt of POB, 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.
- §10637: Non-physician Lien claimant **does not** need to be served medicals unless ordered. They shall not subpoena medical information and shall not obtain medical information by release or waiver; they may petition WCJ for Order to be served medical information.
 - Petition must specify the document sought and reason why document is relevant to lien claimant's issues. 10 days of service
 - Petition to be served on IW and atty and whoever is in possession of record
- § 10647 – Failure to serve subpoena and tender fee in advance based on estimated time of the trial **or deposition** may constitute a waiver of the right to cross-examine the witness.

Petition for LC 5710 Fees:

§10547: must identify attending attorney and state bar number; wait 30 days after written demand before filing; Petition to be served on IW. **Arguably, if an ATTORNEY does not appear, we do not pay.**

Filing Answers

§10465: “Shall be filed” 10 days after DOR or 90 days after App (whichever is shorter); no general denials

New Joinder Procedure:

- CCR §10382 (formally CCR §10380)--WCJ may Order joinder of any additional necessary parties.
- 10 day objection period or issuance of NOI is now required.
- WCJ may designate party who are to make service.
- If an objection is received within 10 days of service of a Petition for Joinder or a NOI or Order Joinder, the WCJ shall set for a hearing.
- §10390--The employer or insurer is to be identified as a party, **not** the TPA.

Documentary Evidence:

§10670: Filing a document is not receipt into evidence

- WCAB may decline evidence:
 - Not listed on PTCS
 - Not served at or prior to MSC (without good cause)
 - Documents not filed 20 days prior to trial, unless otherwise ordered or good cause
- Where a willful suppression of evidence is shown to exist, it shall be presumed that the evidence would be adverse, if produced.

§10677: Oversized documents, diagnostic imaging, physical exhibits, and exhibits on media may be filed **at** trial and retained by filing party until later of 5 years after initial app, 6 month after appeal time related to exhibit, after exhibit may be destroyed unless ordered otherwise. Filing party must preserve, allow inspection of, and allow copy of exhibit.

§10759: AT MSC, when listing exhibits, they must be listed with specificity. Author, title, date, page numbers; admit only relevant portions of records.

Medical Evidence:

§10682 (formally 10606): Medical reports are to include:

- Date of exam
- History of injury
- Complaints
- Listing of info reviewed
- Medical history
- Exam findings
- Diagnosis
- History of disability and work limits
- Causation of disability
- Need for medical treatment
- Injury caused PD and MMI status and description of PD
- Apportionment
- Psych—total cause from employment
- Reasons for opinion
- Signature

Settlements:

§10700--Must include medicals necessary to determine adequacy; WCAB to determine adequacy and hearing set if necessary; less than full value will be approved if in best interest of parties.

Appearances:

§10752: Applicant and Defendant must appear at all hearings related to case in chief (not lien hearings); all must have settlement authority available at all hearings; 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 is present and can obtain immediate authority. IW shall personally appear at any MSC, but failure to personally appear **shall not** be a basis for dismissal of application.

§10755: Applicant's FTA at MSC in person or by attorney may result in NOI or close discovery and set for trial.

§10756: IW FTA in person or by attorney may result in NOI or hear evidence and issue decision after 10 day NOI.

Petitions for Recon, Removal, Disqualification, and Answers:

§10940: file in EAMS with venued district office. Petition maximum 25 pages; Answer maximum 10 pages, unless good cause by separate Petition.

NOIs and Orders after NOIs

§ 10832 – If an objection is filed within the time provided, the WCAB may, in its discretion, sustain the objection or issue an Order consistent with NOI with an opinion on decision or set the matter for hearing.

An NOI may be served by designated party in accordance with §10629.

Any Order issued after NOI shall be served by the WCAB.

An Order with a clause rendering the order null and void if objection is received is not a NOI and must be served by the WCAB.

MOST RELEVANT NOW...

§10370—in emergency, (including, but not limited to earthquake, fire, destruction of or danger to a district office) AB or WCJ may

- Extend by no more than 14 additional days the time to perform any act required or permitted, except for those acts subject to a SOL or jurisdictional time limit, including but not limited to filing of Petition for Recon or Removal, Petition to Reopen, Applications for Adjudication of Claim or lien claim forms; or
- Authorize presiding WCJ of a specific district office to extend by no more than 30 additional days the time to perform any act required or permitted under these rules, except for those acts subject to a SOL or jurisdictional time limit
- Authorize any district office to accept for filing, including by fax, documents required by statute or regulation to be filed in a district office that is closed due to a public emergency
- If made necessary by the nature or extent of the public emergency, WCJ or AB may extend or renew an order for no more than 30 days.