# WCAB Rulemaking Public Comment Submissions September 24, 2021

1. [intentionally omitted]
2. Melissa Kamin, , [mkamin@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cmkamin%40albmac.com) 805 850-8395, 10815, Electronic hearings should be mandatory in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials and Expedited Hearings. New variants continue to threaten the public. Current WCAB offices are not built in a manner which is conducive to social distancing. Court rooms are very small and in many cases no greater than 12x12. Parties are allowed to congregate in narrow hallways. Boards such as Los Angeles and Marina Del Rey only have general access through elevators which are prone to high traffic. Stairs are not feasible given that files and laptops and other legal material need to be transported to the court room. Those with disabilities cannot take the stairs at locations which offer reasonable stair access. Protection from COVID-19 is necessary for attorneys and applicant's and not just court staff and judges. Vaccinations are not mandato ry at this time and even those vaccinated are experiencing break-through infections.
3. Melissa Kamin, , [mkamin@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cmkamin%40albmac.com) 805 850-8395, 10816, Electronic hearings should be mandatory in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials and Expedited Hearings. Parties should not have to file Petition for good cause to appear electronically. New variants continue to threaten the public. Current WCAB offices are not built in a manner which is conducive to social distancing. Court rooms are very small and in many cases no greater than 12x12. Parties are allowed to congregate in narrow hallways. Boards such as Los Angeles and Marina Del Rey only have general access through elevators which are prone to high traffic. Stairs are not feasible given that files and laptops and other legal material need to be transported to the court room. Those with disabilities cannot take the stairs at locations which offer reasonable stair access. Protection from COVID-19 is necessary for attorneys and applicant's and not just court staff and judges. Vaccinations are not mandatory at this time and even those that are vaccinated are experiencing break-through infections.
4. Melissa Kamin, , [mkamin@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cmkamin%40albmac.com) 805 850-8395, 10817, Electronic hearings should be mandatory in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials and Expedited Hearings. Parties should not have to file Petition for good cause to appear electronically including to have witnesses appear electronically. New variants continue to threaten the public. Current WCAB offices are not built in a manner which is conducive to social distancing. Court rooms are very small and in many cases no greater than 12x12. Parties are allowed to congregate in narrow hallways. Boards such as Los Angeles and Marina Del Rey only have general access through elevators which are prone to high traffic. Stairs are not feasible given that files and laptops and other legal material need to be transported to the court room. Those with disabilities cannot take the stairs at locations which offer reasonable stair access. Protection from COVID-19 is necessary for attorneys and applicant's and not just court staff and judges. Vaccinations are not mandatory at this time and even those that are vaccinated are experiencing break-through infections.
5. Ahamed Syed, , [asyed@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Casyed%40albmac.com), 10815, Electronic hearings should be mandatory in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials and Expedited Hearings. New variants continue to threaten the public. Current WCAB offices are not built in a manner which is conducive to social distancing. Court rooms are very small and in many cases no greater than 12x12. Parties are allowed to congregate in narrow hallways. Boards such as Los Angeles and Marina Del Rey only have general access through elevators which are prone to high traffic. Stairs are not feasible given that files and laptops and other legal material need to be transported to the court room. Those with disabilities cannot take the stairs at locations which offer reasonable stair access. Protection from COVID-19 is necessary for attorneys and applicant's and not just court staff and judges. Vaccinations are not mandatory at this time and even those that are vaccinated are experiencing break-through infections.
6. Ellen Creager, Albert and Mackenzie, [ecreager@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cecreager%40albmac.com), 10815, This Pandemic is not over. There are far too many people refusing to get vaccinated, and even those that are are having break through infections. The crowds at the WCAB are not conducive to social distancing. The court call system is efficient and should remain in place until it is 100% safe to return.
7. ellen creager , Albert and Mackenzie, [ecreager@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cecreager%40albmac.com), 10816, This Pandemic is not over. There are far too many people refusing to get vaccinated, and even those that are are having break through infections. The crowds at the WCAB are not conducive to social distancing. The court call system is efficient. This Quarantine has shown us new ways to work and calling in for hearings should continue.
8. ellen creager, Albert and Mackenzie, [ecreager@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cecreager%40albmac.com), 10817, This Pandemic is not over. There are far too many people refusing to get vaccinated, and even those that are are having break through infections. The crowds at the WCAB are not conducive to social distancing. The court call system is efficient. This Quarantine has shown us new ways to work and calling in for hearings should continue.
9. Harmony Kessler, , [harmonygroves@gmail.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Charmonygroves%40gmail.com), 10815, Hearings should be default remote, and any requirement for filing a request for hearing should apply if there is a need for in-person hearing, established by good cause. The remote hearings are saving defendants money on travel time and costs, and are better for the environment as less attorneys are required to travel long distances for in-person hearings. Most issues in workers comp do not require in person hearings for a meaningful resolution. In-person hearings should only apply if an unrepresented applicant demands, or if there is a Trial with multiple witnesses testifying. The online hearings run smoothly as long as the attorneys have prepared appropriately and the efiling system is easy to use.
10. Harmony Kessler, , [harmonygroves@gmail.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Charmonygroves%40gmail.com), 10816, Hearings should be default remote, not default in-person, and any requirement for filing a request for hearing should apply if there is a need for in-person hearing, established by good cause. The remote hearings are saving defendants money on travel time and costs, and are better for the environment as less attorneys are required to travel long distances for in-person hearings. The remote hearings are saving the STATE money by not needing security for hearings, or judges using multiple courtrooms. Most issues in workers comp do not require in person hearings for a meaningful resolution. In-person hearings should only apply if an unrepresented applicant demands, or if there is a Trial with multiple witnesses testifying. The online hearings run smoothly as long as the attorneys have prepared appropriately and the efiling system is easy to use.
11. Asia Kowalski, , , 10815, Given the circumstances, it should be mandatory, no need to file a petition, that all hearings be held electronically A petition should be allowed to be filed on expedited and trials only. Having multiple petitions to file can also add to confusion especially if the applicant is representing themselves. If all hearings are electronic, the applicant will have a better expectation of the proceedings unless informed otherwise. The courtrooms and hallways are no conducive to social distancing, This will put people at risk especially with the new variant.
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14. Rajinder Sungu, , , 10815, Electronic hearings should be mandatory in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials and Expedited Hearings.
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16. Rajinder Sungu, , , 10817, Electronic hearings should be mandatory in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials and Expedited Hearings.
17. Richard Barkhordarian, Esq., Barkhordarian Law Firm, PC, 323-450-2779, 10815, Allowing for continued electronic appearances completely goes against the foundation of our work comp system which is to provide expedient treatment and resolution of the injured worker's claims. Many times in order to get expedient treatment and/or expedient resolution of issues or applicant's claim in general, hearings need to be filed for. Remote appearances or electronic hearings completely restrict how many hearings one attorney can handle in a full day. The reason being is that you can only be on phone phone line with one Judge at a time. My firm employs 5 workers compensation attorneys. We have over 800 active cases. Prior to the Boards being shut down to in person appearances, an attorney could come to the Board and handle 4 to 5 hearings in the morning session and the same again in the afternoon session. With remote/telephonic appearances the attorney really can only appear for one case in the morning and one case in the afternoon, which has effectively slowed down the processing of each case to resolution by 66% to 75%, because we can only appear for one case at a time.

Remote or electronic hearings are also completely inefficient. The first 30 to 45 minutes is spent taking "roll call" of which parties are present and which are not. As an attorney you are stuck to wait on the line for fear of missing your case name being called. Once you do state your appearance, if you don't have a quick disposition, you are forced to call back an hour later so you even though you are appearing at 8:30am you don't really get to argue what you are there for before a Judge until 10:30am. During pre-COVID times, we could have handled and resolved at least 3 hearings for three different clients by that time. Now we are only able to resolve 1.

Furthermore, meeting opposing council at the Board in person is drastically more effective in resolving issues than speaking over the phone or by email. Trials performed remotely, is a technical nightmare. We have a Judge, court reporter, interpreter, witness, applicant, employer's rep and both applicant and defense attorneys all need to be online, all need to hear what is going on and with communication going every which way, it is very difficult and not nearly as effective to get through a trial and still be an effective advocate as there are constant technical interruptions. Also, questioning a witness in person is just much more effective then through a camera. Also, a Judge loses his ability to "judge" a witness as being credible or not simply by not being able to look into his or her eye's when testifying or their total body movement. Remote appearances for Trial also make no assurances that witnesses are all in the same room to listen to what each are testifying to, where when having trials at the Board, we are able to clearly monitor who is allowed into the courtroom and who is not. These all make for a much cleaner more legitimate process that is not only owed to the injured worker but also to the defendant employer.

Its not just proposed section 10815 that is a bad idea. All proposed sections that have anything to do with electronic/remote appearances/hearings should not be passed into law for all the same reasons explained above. Those are sections 10745, 10815, 10816 and 10817. Again, passing these sections would almost completely destroy our work comp system and effectively triples the time it would take to properly resolve an injured worker's claim.

1. Ksenia Snylyk, Defense Attorney, [ksnylyk@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cksnylyk%40albmac.com), 10815, Electronic hearings should be mandatory in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials and Expedited Hearings. New variants continue to threaten the public. Current WCAB offices are not built in a manner which is conducive to social distancing. Court rooms are very small and in many cases no greater than 12x12. Parties are allowed to congregate in narrow hallways. Boards such as Los Angeles and Marina Del Rey only have general access through elevators which are prone to high traffic. Stairs are not feasible given that files and laptops and other legal material need to be transported to the court room. Those with disabilities cannot take the stairs at locations which offer reasonable stair access. Protection from COVID-19 is necessary for attorneys and applicant's and not just court staff and judges. Vaccinations are not mandatory at this time and even those that are vaccinated are experiencing break-through infections.

I do believe that electronic hearings would be beneficial even in a post-COVID world. It encourages parties to discuss the matter prior to the hearing and avoids parties traveling to the WCAB causing traffic congestion. Appearing remotely has had many benefits especially for parents in that they can spend more time at home with their children. I also believe that the calendar is completed more quickly and efficiently then when hearings were conducted in person.

1. Ksenia Snylyk, Defense attorney, [ksnylyk@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cksnylyk%40albmac.com), 10816, Electronic hearings should be mandatory in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials and Expedited Hearings. New variants continue to threaten the public. Current WCAB offices are not built in a manner which is conducive to social distancing. Court rooms are very small and in many cases no greater than 12x12. Parties are allowed to congregate in narrow hallways. Boards such as Los Angeles and Marina Del Rey only have general access through elevators which are prone to high traffic. Stairs are not feasible given that files and laptops and other legal material need to be transported to the court room. Those with disabilities cannot take the stairs at locations which offer reasonable stair access. Protection from COVID-19 is necessary for attorneys and applicant's and not just court staff and judges. Vaccinations are not mandatory at this time and even those that are vaccinated are experiencing break-through infections.

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1. Paul Wolsey, , [Paul\_Wolsey@shwhlaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5CPaul_Wolsey%40shwhlaw.com), 10815, Electronic hearings have caused significant delays in the workers' compensation system and often impact due process rights given the difficulty in presenting information to the WCJ during the hearing. Having the potential for electronic hearings in any setting will hurt consistency and the rights of both injured workers and employers.
2. Paul Wolsey, , , 10745, Electronic hearings have caused significant delays in the workers' compensation system and often impact due process rights given the difficulty in presenting information to the WCJ during the hearing. Having the potential for electronic hearings in any setting will hurt consistency and the rights of both injured workers and employers.
3. George Woolverton , Self, [gw@shwm.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cgw%40shwm.com), 10815, This would hinder case resolution, when a party has to present testimony this hinders a true credibility observation by the judge. Introducing exhibits would be next to impossible as it is now now. Sub Rosa evidence would be next to Impossible to introduce.

Thiese rules probably violate the constitutional mandate by article 21 and would infringe on due process to all parties. This is a user funded system and this would deprive payers of the system, the empanadas the ability to have a fair system that they pay for.

I am so shocked by this I may seek Injunctive relief. It simply deprives all of a proper constitutional process.

1. Robert AMoore, Esq., , , 10816, Please consider the positive environmental impacts of teleconference appearances which eliminate greenhouse gas emissions, smog, other pollutants, and reduce traffic congestion. I would prefer remote teleconference appearances as the default for all conferences, without the requirement for any petition.
2. Diana B. Berlin, , , 10815, Electronic appearances created undue hardship and delay in resolution of cases
3. Diana B. Berlin, , , 10816, Non-person/electronic appearances created undue hardship in delay in case resolution
4. Diana B. Berlin, , , 10817, Non-person/electronic appearances created undue hardship in delay in case resolution
5. SHIVA FARZINPOUR, TORKAN & FARZINPOUR, LLP, [SHIVA@TFLEGALGROUP.COM](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5CSHIVA%40TFLEGALGROUP.COM), 10815, WE WOULD LIKE THE WCAB TO MAKE ELECTRONIC APPEARANCES/HEARINGS PERMANENT. IT IS MORE EFFICIENT, EVERNY ONE PREPARES IN ADVANCE AND DOES NOT WASTE THE JUDGE'S TIME, OR THE OTHER PARTIE'S TIME, SAFE ON EVERY LEVEL AND FOR EVERY ONE.
6. David Holzman, Applicants Attorney, , 10815, I am fully in favor of both electronic conferences and hearings. The electronic conferences at the Santa Barbara WCAB have been fast and efficient. No time is wasted. Issues are discussed directly and cases either go OTOC or are set for trial. Most often electronic hearings motivate counsel to meet and confer before the hearing which often results in resolution of the issues before the conference takes place. I've been an AA for 35 years and have found that the electronic hearing process works great and I see no reason to change back to in person hearings.
7. Michael Diamaond, , , 10305, I think the WCAB has lost sight of their purpose and how important they are to the communities they serve as evidenced by making telephonic appearances permanent. If all other area of law courts are open to in person hearings then they WCAB should do it. The WCAB is too important and telephonic court is too inefficient. Making it permanent you might as well not have a judge at all as most judges now seem to be more burdened with EAMS than helping injured workers and employers. Since going telephonic the WCAB has become so inefficient it's the definition of lack of due process and a bureaucratic mess for both sides. Settlement documents take months to get approved, judges are not hearing trials because it’s too difficult to get things set up, judges complain about doing their job since they cannot figure out EAMS, civility has gone out the window because people are not face to face and there are no official court rules. This costs both injured workers and employers time and money that would not be spent if we were to go back in person.

Most importantly, big mill law firms will swallow up local business that they would not otherwise take due to location of the city. This will result in poor and low standard of legal representation. It's baffling that this is even being considered. If other people must go into work, than the WCAB should to and should have been the first group of business to go back to in person. THIS IS A COURT OF LAW NOT SOME 800 HELP HOTLINE. If the grocery store clerk must work in person and risked being exposed to COVID-19 then the WCAB employees should be in person as well. What a travesty of justice if this becomes permanent and what a mess the WCAB will descend into. Do not make this permanent. Open the courts like it was meant to be.

1. A. Smith, , , 10745, As a defense attorney I do not want WCAB hearings to go back in person. My time is better served with quick telephonic hearings where parties must communicate directly and with a judge. A telephone hearing can last 1 minute to 2 hours on the phone whereas an in person hearing would almost always last 3.5 hours not to mention driving and parking time. On a personal note, my stress levels are much reduced with telephone appearances. Overall, my life is better and my cases are proceeding smoother.
2. Lauren E. Twitchell, , [lauren@zrawa.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Clauren%40zrawa.com), 10745, NO ON PERMANENTLY ELIMINATING IN PERSON CONFERENCES. AT LEAST MSCs SHOULD BE IN PERSON.

I am an Applicant's attorney. I have found that meeting with our clients at the Board tends to heighten their sense of reality and weightiness of the process. They start listening to what we are telling them and get a sense of what will happen if they don’t. Many feel like they are getting an opportunity to participate in their case legally, which is a powerful thing.

Additionally, with the judge staring down at the DA, telling him/her to be reasonable and insisting that the adjuster be contacted while we are all there, we are very often able to make much more headway towards resolving a case, then just on a conference call. I'm sure the defense attorneys would say the same about us. Suddenly the parties start getting reasonable and more serious about considering all consequences of the claim when they don’t have a telephone to hide behind. This results in a decent percentage of cases actually being resolved during in person conference appearances. The percentage of cases that we were able to settle at in person MSCs could be as high as 40% to 50%. It is also more efficient in the sense that you can get the C&R/Stips signed and an OACR or Award issued immediately. The applicant actually gets something tangible in their hands and the promise of money within 30 days. The in person human connection is a powerful thing. It is also easier to confer on filing out a PTCS for trial when both parties are in the room and talking contemporaneously instead of emailing back and forth and maybe getting a response and maybe not.

There will be instances when we want our clients to appear and for DA to appear, as many issues are better resolved when we are looking at each other face to face. It is so much easier to hide behind a telephone and say “no” instead of looking us and the Judge in the eye and saying “no.” It is also easier to get the clients to listen to you when you are looking at them and sitting with them at the Board. I believe that we are more persuasive when we can state a legal argument in person, rather than trying to make ourselves heard on the phone over background noise, bad connections, someone’s three year old asking for breakfast or a phone ringing. Also, if an issue is argument intensive, there is much less talking over each other when we are face to face and ideas can be expressed more efficiently. Finally, it is a bit more private to appear in person, which is desirable in some cases.

1. Angelina I. Romano, Esq, Applicant Attorney , [RomanoLaw951@gmail.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5CRomanoLaw951%40gmail.com), 10745, This regulation would de detrimental to the efficacy of completing multiple hearings at one time. As attorneys for injured workers it is imperative that counsel be permitted to attend to multiple hearings at the same district office which further the need for efficiency and the ability to protect judicial resources, by filing multiple continuance requests.
2. John Mikhail, Applicants Attorney , , 10756, I support all hearings being done telephonically. This is a tremendous saver of resources. I hope we can make the telephone system more seamless and easier. This is great news for injured workers. Please make all hearings over the phone.
3. Kenneth Brown, , [kenneth.brown@cc.sbcounty.gov](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Ckenneth.brown%40cc.sbcounty.gov), 10305, Permanently converting conferences to an electronic format has a negative effect on networking and comradery within the profession. There is obvious benefit to conducting simple status conferences and lien conferences virtually. However, there are clear advantages to in person appearances for conferences such as MSCs and Trials. Parties are more likely to settle a case at an MSC during an in person appearance.
4. Brent Thompson, Electronic hearing are extremely efficient. They should be made permanent., , 10815, Same answer
5. David H. Parker, Parker, Kern, Nard & Wenzel, 559-449-2558; [dparker@pknwlaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cdparker%40pknwlaw.com); 7112 N. Fresno St. Ste. 300 Fresno, CA 93720, 10815, The proposed Regulation recognizes the "virtual reality" now existing of personal appearances being replaced by electronic appearances for business, commerce and society. The majority of WCAB appearances related to the California Workers' Compensation system clearly have moved to electronic platforms as opposed to physical offices. The migration has been sudden but proven successful. The success should be tempered by the understanding: injured workers do not have equal internet and/or hardware access to necessary resources to establish a completely non-physical system for delivery of benefits. This lack of access benefits no stakeholder or participant in the system, and further may impact the Constitutional mandate to deliver benefits as well as ensure due process. Perhaps an administrative solution would be to create WCAB "virtual appearance/court room" facilities coordinated through its Information and Assistance Units equipped (appearance/court rooms) and fully staffed for anticipated increased scheduling/other burdens (The Units) by the DWC. Thus facilities can be ensured if/as and when needed by injured workers and/or their counsel? Consider that savings realized including reduction of space needs for trial court rooms, by stakeholders' and others' non-physical appearance access rights now identified, as well as other savings may be redirected or earmarked to fund/provide new, required, additional resources by these existing resources/assessments no longer needed for physical appearances? Virtual appearances appear to have benefited all as well as ensured safe WCAB environments. The use of them should be maintained as WCAB Regulation and policy. The above-adjustments may assist in refining the proposed if not existing system to replace one arguably outdated, just as paper filing and files have become for most if not all practical purposes. This Regulation with additional policy regulation suggested above will further move the WCAB into the "existing virtual world," a seeming oxymoron but without question the present as well as continuing future of WCAB administration of benefits to injured workers.
6. Jamie Sanderson, None, [jtremmel@lawnet.uci.edu](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cjtremmel%40lawnet.uci.edu), 10759, This comment is submitted on behalf of myself as an individual and is not being submitted on behalf of any organization/employer I may be associated with on a professional basis.

Subsection (b) could be more specific as to how far in advance the parties must meet prior to the MSC. Having a specific deadline would help ensure both parties reach out to each other in enough time to facilitate a meaningful discussion and prepare a Pre-Trial Conference Statement (PTCS), if necessary.

Under subsection (e), the PTCS needs to be completed by the end of the MSC and it must be filed by the workers' compensation judge (WCJ). Given that the changes in the regulations are being prompted to address electronic hearings, it would be beneficial if this section addressed how the PTCS is to be submitted and filed at electronic hearings. Currently, some district offices are requiring the PTCS to be submitted before the MSC, if the parties want to set the case for trial. Other district offices are giving the parties a certain number of days to complete the PTCS after the MSC. Having an official rule would ensure all sides are on notice of how to properly handle the PTCS at electronic hearings.

1. Peter Gimbel, , 650-474-5570, [peter@peninsulacomp.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cpeter%40peninsulacomp.com), 10815, I support virtual proceedings in all workers compensation hearings. There should be some kind of exception for an in person hearing in limited circumstances were that would be necessary.
2. Pravin A. Singh, , , 10862, Catastrophically injured workers would be at a substantial disadvantage as judges would be unable to witness important details like ability to walk, sit, balance, etc. Also, workers' comp would be extremely boring. Keep trials in person! MSC/SC remote.
3. Erin wintersteen, Defense attorney, [Erin@wclawcorp.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5CErin%40wclawcorp.com), 10305, Re going back to in person hearings/ trials:

I am in favor of them especially for EH/trials.

However, I prefer to allow remote/tc hearings if both parties are in agreement.

It will be unlikely to get an agreement from AA’s ahead of time so I would recommend a rule where the hearings (anything besides an expedited hearing or trial) are presumed to be telephonic unless one party objects in writing within 10 days of the hearing. Please consider this.

Thank you!

1. Andrea Burger, , , 10745, There are serious and grave issues that will arise with the permanent movement of hearings via telephone that far outweigh the benefit. The lack of privacy for the applicant in an arena that is allegedly protected by HIPAA. There is no ability to ascertain or verify specifically who is on the other end of the telephone call. There will also be a complete breakdown in relationships and connections between attorneys that are fostered by in person meetings. Although there are some hearings that can remain remote such as for discovery matters, where testimony or documents need to be submitted and witnesses examined for credibility, the remote process does not provide a sufficient access to due process for the parties.
2. Ashley S. Randolph, Albert and Mackenzie, (714) 289-4459 , 10815, I believe keeping certain hearings remote is in the interest of judicial economy. It is also time saving and more cost effective for all parties involved. Please keep MSC's, Priority Conferences, Status Conferences, and Lien Conferences remote. I believe that all of these hearings should automatically be remote and both parties must agree to having a live appearance instead.
3. Russ Neault, Albert and Mackenzie, [rneault@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Crneault%40albmac.com), 10815, Electronic hearings should be mandatory in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials and Expedited Hearings. New variants continue to threaten the public. Current WCAB offices are not built in a manner which is conducive to social distancing. Court rooms are very small and in many cases no greater than 12x12. Parties are allowed to congregate in narrow hallways. Boards such as Oakland, Fresno, Stockton, Sacramento and Santa Rosa only have general access through elevators which are prone to high traffic. Stairs are not feasible given that files and laptops and other legal material need to be transported to the court room. Those with disabilities cannot take the stairs at locations which offer reasonable stair access. Protection from COVID-19 is necessary for attorneys and applicant's and not just court staff and judges. Vaccinations are not mandatory at this time and even those that are vaccinated are experiencing break-through infections.
4. Rebecca Martinez, , , 10815, As it pertains to electronic hearings, COVID is still a very big issues, especially in the larger cities where many of the Boards are located. Considering that all individuals who may have to appear for a hearing/trial potentially have vulnerable and higher risk individuals whom they themselves may be or may have regular contact with, requiring even trials and expedited hearings to be held in person seems like an unnecessary risk.

As a new mother of an infant who cannot wear masks or be vaccinated, and as someone who has essentially been quarantined for the past year and a half because of my son, I do not want to take on the risk of appearing for a trial in October when not only flu season begins, but also with COVID and the Delta Variant, for which there is no vaccine, is still a very big danger and concern.

Opening up even for trials at this early stage seems like a risky decision where the potential harm would outweigh any potential good when the electronic hearing system has been working for nearly two years.

1. russel Neault, Albert and Mackenzie, [rneault@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Crneault%40albmac.com), 10816, Electronic hearings should be mandatory in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials and Expedited Hearings. New variants continue to threaten the public. Current WCAB offices are not built in a manner which is conducive to social distancing. Court rooms are very small and in many cases no greater than 12x12. Parties are allowed to congregate in narrow hallways. Boards such as Fresno, Sacramento, Stockton, Santa Rosa and Oakland only have general access through elevators which are prone to high traffic. Stairs are not feasible given that files and laptops and other legal material need to be transported to the court room. Those with disabilities cannot take the stairs at locations which offer reasonable stair access. Protection from COVID-19 is necessary for attorneys and applicant's and not just court staff and judges. Vaccinations are not mandatory at this time and even those that are vaccinated are experiencing break-through infections.
2. russel Neault, Albert and Mackenzie, [rneault@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Crneault%40albmac.com), 10817, Electronic remote hearings should be mandatory in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials and Expedited Hearings. New variants continue to threaten the public. Current WCAB offices are not built in a manner which is conducive to social distancing. Court rooms are very small and in many cases no greater than 12x12. Parties are allowed to congregate in narrow hallways. Boards such as Fresno, Sacramento, Stockton, Santa Rosa and Oakland only have general access through elevators which are prone to high traffic. Stairs are not feasible given that files and laptops and other legal material need to be transported to the court room. Those with disabilities cannot take the stairs at locations which offer reasonable stair access. Protection from COVID-19 is necessary for attorneys and applicant's and not just court staff and judges. Vaccinations are not mandatory at this time and even those that are vaccinated are experiencing break-through infections.
3. Sara Boessenecker, Albert & Mackenzie, , 10815, At the very least, all status conference and lien conferences should be held electronically going forward, with the option for electronic hearings to be held for any matter. It should also be considered whether all hearings should be set electronically with an option for a party to object.
4. Russel Neault, Albert and Mackenzie, [rneault@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Crneault%40albmac.com), 10815, PROPOSED REG § 10815. Electronic Hearings Before the Workers’ Compensation Appeals Board.
5. Any matter may be set for an electronic hearing as set forth in rule 10745.
6. 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.
7. 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.
8. 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.
9. 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.

1. Russel Neault, Albert and Mackenzie, [rneault@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Crneault%40albmac.com), 10816, PROPOSED REG § 10816. Electronic Appearances Before the Workers’ Compensation Appeals Board.
2. If a party intends to appear electronically at any hearing, they shall file a petition showing good cause pursuant to rule 10510.
3. 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.

1. Anne Marie Rapolla, The 4600 Group and Boehm & Associates, Phone: (818) 254-7565, Email: [annemarie@boehm-associates.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cannemarie%40boehm-associates.com), 10635, The 4600 Group/ Boehm & Associates acknowledges the Initial Statement of Reasons noting non-substantive rewording and reorganization to proposed amended Board Rule 10635, regarding the intention to clarify entities who must be served with documents, as well as correcting the typographical error to correct the citation to Labor Code (LC) Section 4903.05(d)(7).

We respectfully object to the proposed change in Board Rule 10635 to amend the language to state, “The parties are not required to serve a lien claimant with medical reports unless ordered by the Workers’ Compensation Appeals Board unless the lien claimant is defined as a “physician” by Labor Code Section 3209.3 and is an entity described in Labor Code section 4903.05(d)(7) and 4903.06(b) and has requested such service.”

The proposed change to this regulation, as discussed below, will lead to confusion, rather than clarity, and that a substantial, sweeping change in due process rights, obligations, and administration will result from the seemingly minor substitution of the word “and” in place of the word “or.” The entities described in LC Section 3209.3 and 4903.05(d)(7) / 4903.06(b) are mostly mutually exclusive. It is a rare occasion when a LC Section 3209.3 “physician” might be a member of the class of lien claimants described in LC Sections 4903.05(d)(7)/ 4903.06(b).

The proposed regulation would bar such lien claimants from obtaining medical evidence. This raises serious due process concerns. “Physician” under LC 3209.3 is defined as those practitioners having an M.D., D.O., etc. With the imposition of “and,” the proposed regulation requires a lien claimant seeking medical reports to be both a physician and an entity in LC sections 4903.05(d)(7) and 4903.06(b). Most of these participants would be not considered “physicians.” As such, this should be revised to state a lien claimant must meet one category, or the other, but certainly not both.

Although lien claimants are disallowed from prosecuting their liens during the case-in-chief, they are permitted to participate in the underlying case – the Board has held so in prior decisions. (i.e. Beverly Hills Multispecialty Group, Inc, v. WCAB, 59 CCC 461; 26 Cal. App 4th 789 (1994).) Lien claimants must be provided a mechanism in which they can obtain medical reports. Otherwise, this would result in a flood of petitions for medical evidence in the case, and likely petitions for removal that will follow if said petitions are denied.

We do not believe the proposed regulation in 10635 intended to bar lien claimants from obtaining medical reports that do not fall under the “physician” definition of the LC. This is supported in the ISOR noting non-substantive rewording and reorganizing of the Board Rule. But, the wording in the proposed regulation would lead to a substantial change. If the intent is not to allow for service to LC 4903.05(d)(7) and 4903.06(b) participants, then The 4600 Group/ Boehm & Associates intend to present at the public hearing with strong objection against the proposal which will include case citation.

Prior regulation provided that no order was required by the WCAB for a lien claimant defined under LC sections 4903.05(d)(7) and 4903.06(b) to obtain medical reports. However, the proposed text now requires an order.

The proposed text of 10635 should be revised as follows:

1. 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.
2. Parties to serve under this section include lien claimants as defined as a “physician” by Labor Code section 3209.3(b), or an entity described in Labor Code sections 4903.05(d)(7) and 4903.06(b) and has requested such service.
3. Russel Neault, Albert and Mackenzie, [Rneault@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5CRneault%40albmac.com), 10817, PROPOSED REG

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

1. 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.
2. 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.

1. Andrea Gutierrez, Pinnacle lien Services , 951-256-8350, 10401, I think the system we have now is working. Especially in light of the Delta Variant rising.

It also is not cost effective to drive for one lien trial per lien representative.

The hearings are working great especially for those with family auto immune deficiency

1. Kathy, , , 10752, For the hearings that will return in person, will there be an option to also do those via phone/life size if opposing side agrees. I am very concerned as I have both elderly parents and children in my household and I am very concerned about the spread of the virus in the court settings.
2. monica, no, , 10815, do not reopen the WCAB, please keep it remote.
3. monica, no, , 10816, please do not re-open the WCAB for mandatory in person hearings, make it optional
4. monica, , , 10818, please do not re-open the WCAB for mandatory in person hearings, make it optional
5. Ebony Onoh, , , 10816, Parties should have the right to appear electronically at all WCAB hearings, with or without agreement from opposing counsel or the Court given the risks inherent in appearing in person, including exposure to unvaccinated individuals, and congregating hours indoors with questionable circulation and with limited (or no) ability to practice social distancing.

Requiring in person hearings stands to jeopardize the health of applicants, judges and legal representatives, along with each groups’ respective family members who may (as in my case) include unvaccinated minors under age 12 and vulnerable senior citizens living in the home.

The proposed regulations note that a petition for good cause to appear electronically would be required for any hearing set to occur in person. Exposure to Covid 19 seems like a fairly obvious good cause so that should be written in as an explicit basis to appear electronically.

Please consider continuing ALL hearings electronically given the rising infection rates, mutations of the virus and upcoming cold/flu season. This just is NOT a good idea.

1. Shannon Cornay, , 310-995-9402, 10752, I have read the proposed regulations that conferences will continue to be telephonic while trials, lien trials and expedited hearings will be in person. Given that Covid is not under control and we have the Delta variant I do not feel in- person trials are safe. I am fully vaccinated and very careful yet I caught Covid which lasted for just under a month. Even with masks, it is impossible to socially distance in elevators, stairwells and courtrooms. There is no way to know whom is vaccinated. I fully agree that trials should go back to an in-person format but it should be done when it is safe to all parties. Thank you for your consideration of my comments.
2. Monica Menendez , , [diventare29@yahoo.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cdiventare29%40yahoo.com) , 10305, Opening the WCAB and requiring individuals to show up during a pandemicn9s ludicrous. I was recently diagnosed with cancer and would not be given the option to stay out of a place where I am being forced to be around others that may be carrying covid and are unvaccinated. It is insipid to pile people in rooms where there is no guarantee on who is vaccinated - and to ignore the fact that we are in as bad as a situation as were in March 2020- pretending that it has gone away does not make it so. I did not stay inside for 18 months to now be exposed to an infected person. No one can force you to attend a hearing where you are not physically safe in an environment that does not have adequate ventilation. There is no science that supports being indoors with inadequate ventilation and no way to protect yourself from unvaccinated people or the Delta variant, or whatever variant is coming next.
3. Jean Liao, , [Jeanliao@rlgcomp.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5CJeanliao%40rlgcomp.com), 10756, Respectfully believe that having in person expedited hearings which often go off calendar within minutes would be a significant waste of time. Request there be an option to call in for quick dispositions, or to appear virtually. Further, the delta variant is particularly concerning especially in upcoming winter months and some of us live in elderly people. Virtual options for all hearings if parties agree should be provided.
4. Sara Grumley, , [sgrumley@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Csgrumley%40albmac.com), 10815, Electronic hearings should continue in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials. New variants continue to threaten the public. Current WCAB offices are not conducive to social distancing. For example, absent climbing six flights of stairs, people in Oakland will be forced to use elevators, which is not particularly safe. Courtrooms are very small and in many cases no greater than 12x12. Parties congregate in narrow hallways. Protection from COVID-19 is necessary for attorneys and applicants and not just court staff and judges. Vaccinations are not mandatory at this time and even those that are vaccinated are experiencing break-through infections.

Trial witnesses maybe hesitant to attend, which would prejudice one or both sides. Those witnesses may or may not be vaccinated, and if they contract COVID from attending they in turn will have their own WC claims.

For the last 1.5 years hearings have been handled by telephone, and have been incredibly efficient compared to the past. The defense and applicant attorneys actually talk to each other prior to the hearing and come much more prepared, which seems to typically make things easier for the Judges as well.

As for Expedited Hearings, they are frequently set on issues that do not require any testimony, such as panel disputes. There is no need for those hearings to be held in person, except for when the issue concerns a benefit to the applicant such as TD or medical treatment. Even then, with in-person hearings, the Judge will be less able to assess credibility as the applicant's face will be hidden behind a mask. Conducting hearings by Life Size means no masks are needed.

1. Sara Grumley, , [sgrumley@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Csgrumley%40albmac.com), 10816, Electronic hearings should continue in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials. New variants continue to threaten the public. Current WCAB offices are not conducive to social distancing. For example, absent climbing six flights of stairs, people in Oakland will be forced to use elevators, which is not particularly safe. Courtrooms are very small and in many cases no greater than 12x12. Parties congregate in narrow hallways. Protection from COVID-19 is necessary for attorneys and applicants and not just court staff and judges. Vaccinations are not mandatory at this time and even those that are vaccinated are experiencing break-through infections.

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1. Sara Grumley, , [sgrumley@albmac.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Csgrumley%40albmac.com), 10817, Electronic hearings should continue in light of the COVID-19 pandemic, at least through 2022 with no opportunity for objection, aside from Trials. New variants continue to threaten the public. Current WCAB offices are not conducive to social distancing. For example, absent climbing six flights of stairs, people in Oakland will be forced to use elevators, which is not particularly safe. Courtrooms are very small and in many cases no greater than 12x12. Parties congregate in narrow hallways. Protection from COVID-19 is necessary for attorneys and applicants and not just court staff and judges. Vaccinations are not mandatory at this time and even those that are vaccinated are experiencing break-through infections.

Trial witnesses maybe hesitant to attend, which would prejudice one or both sides. Those witnesses may or may not be vaccinated, and if they contract COVID from attending they in turn will have their own WC claims.

For the last 1.5 years hearings have been handled by telephone, and have been incredibly efficient compared to the past. The defense and applicant attorneys actually talk to each other prior to the hearing and come much more prepared, which seems to typically make things easier for the Judges as well.

As for Expedited Hearings, they are frequently set on issues that do not require any testimony, such as panel disputes. There is no need for those hearings to be held in person, except for when the issue concerns a benefit to the applicant such as TD or medical treatment. Even then, with in-person hearings, the Judge will be less able to assess credibility as the applicant's face will be hidden behind a mask. Conducting hearings by Life Size means no masks are needed.

1. Leonard Retter, Goldberg Segalla, [lretter@goldbergsegalla.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Clretter%40goldbergsegalla.com), 10815, "Any matter" that may be set for Electronic Hearing SHOULD include TRIALS, EXPEDITED HEARINGS, LIEN CONFERENCES and SAU TRIALS which are proposed to be in-person. This should also include any hearings that are continuances from prior conferences, especially if those hearing were initially set electronically. In-person appearances should be wholly optional and up to the request of the parties.
2. Leonard Retter, Goldberg Segalla, [lretter@goldbergsegalla.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Clretter%40goldbergsegalla.com), 10816, This section should be changed to apply to IN-PERSON appearances. A party should have to show good cause as to why an electronic appearance is not sufficient.
3. Leonard Retter, Goldberg Segalla, [lretter@goldbergsegalla.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Clretter%40goldbergsegalla.com), 10817, This section should be changed to apply to IN-PERSON testimony. A party should have to show good cause as to why an electronic testimony is not sufficient.
4. Charles Mix, Mix & Namanny APC, [charles@mixnamanny.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Ccharles%40mixnamanny.com), 10815, Recommend that if all parties to a matter jointly request the hearing to be performed electronically, then the court shall permit it and no petitions for good cause need to be submitted per 10816(a)
5. Debra Tobias, , [dtobias@testanlaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cdtobias%40testanlaw.com), 10815, All hearings AND TRIALS should remain electronic. We are no better off than we were when electronic hearings began 1.5 years ago and in fact, the Delta variant has made matters worse. No one should be forced to appear for in person Trials and this announcement that in person trials will resume 10/1/2021 is ridiculous. The vast majority of the WCAB courtrooms have no ventilation, no circulation, no windows and no ability for one to protect themselves against COVID. If parties wish to appear for trials electronically, then that provision should be made. This is very disconcerting indeed.
6. Timothy Rose, Esq, Attorney, 916-779-6246, [trose@siegelmoreno.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Ctrose%40siegelmoreno.com), 10815, I am strongly in favor of making most appearances electronic. Specifically, Status Conferences, Lien Conferences, Priority Conferences and MSC's. I have noted a significant improvement in my caseload regarding meet and confer prior to hearing with counsel, working out differences prior to hearing, shorter calendar appearances and cost savings, ability to appear more often to move claims along, and overall calendar clearing from all WCJ's in a more timely and efficient manner. I also feel that some Expedited Hearings can be electronic as well. I understand the need for certain appearances to be in person (face to face), though I believe that overall, the older system of in person for all appearances was inefficient and dragged morning and afternoon calendars along. With these changes, both sides have become more efficient and it has created an incentive for better communication. I HIGHLY endorse these appearances remaining electronic in nature.
7. Eric schwartz, Applicant attorney, [ericschwartz@plblaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cericschwartz%40plblaw.com), 10815, "Any matter" that may be set for Electronic Hearing SHOULD include TRIALS, EXPEDITED HEARINGS, LIEN CONFERENCES and SAU TRIALS which are proposed to be in-person. This should also include any hearings that are continuances from prior conferences, especially if those hearing were initially set electronically. In-person appearances should be wholly optional and up to the request of the parties.
8. Eric schwartz, Applicant attorney, [ericschwartz@plblaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cericschwartz%40plblaw.com), 10816, This section should be changed to apply to IN-PERSON appearances. A party should have to show good cause as to why an electronic appearance is not sufficient.
9. Eric schwartz, applicant attorney, [ericschwartz@plblaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cericschwartz%40plblaw.com), 10817, This section should be changed to apply to IN-PERSON testimony. A party should have to show good cause as to why an electronic testimony is not sufficient.
10. Ron F. Gurvitz, , [rgurvitz@gurvitzlaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Crgurvitz%40gurvitzlaw.com), 10815, I have been a workers compensation litigator since 1980. While I appreciate that the current electronic/telephone procedures are necessary for COVID reasons, I firmly believe that going to an all electronic appearance system removes one of the central pillars of this practice. The interpersonal relationships between parties, judges and court staff have been invaluable in creating relationships which foster trust, acceptance and cooperation between all stakeholders and truly helps resolve complex issues more informally. This is one aspect of a workers compensation practice that is truly unique and desirable to all parties. Also, the current all electronic system is creating havoc with calendar issues. I practice in the L.A. metropolitan area and there are only 2 district offices which will coordinate new hearing dates with the calendars of both parties. I have been receiving 2 to 3 hearing notices per week during COVID which created a conflict with other hearings or depositions, let alone vacations, etc. There are some types of conferences where electronic appearances are just fine, but on dispositive motions or very complicated issues, that process just does not work well. Trials involving complex issues, multiple pieces of evidence or multiple parties are just too unwieldy for electronic appearances. To make the switch to all electronic appearances will create havoc in many situations. As for the telephonic appearances, this deprives the parties of the visual cues necessary to avoid talking over the judges and the other parties. I strongly urge you to reconsider moving to all electronic appearances once the COVID issues have passed.
11. Jay Shergill, , [jshergill@purintonlaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cjshergill%40purintonlaw.com), 10816, Will the Board be providing clarity on what constitutes "good cause" for an electronic appearance?
12. Gregory Pshide, Esq. , , [gpshide@haworthlaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cgpshide%40haworthlaw.com), 10816, I write in support of proposed permanent changes to 8 CCR Section 10816. My support is based on the following:
13. Judicial Economy - Electronic appearances require Parties to meet and confer prior to appearing before the Board and be ready to address all salient issues at the time their case is called. In-person Hearings are inefficient and unnecessarily time consuming. Civil Courts for years have held Conferences in multi-million dollar cases via Court call for these very reasons.
14. Benefit to Applicants - In person hearings are a financial burden to Applicant's who must often take time off work to appear (sometimes all morning or afternoon) often only to be told that their case has been taken off calendar or continued. At many Boards they have had to pay for parking and they have also incurred mileage expenses which are not reimbursable.
15. Benefits to Insurers - By making all appearances electronic, except for Trials and Expedited Hearings, Insurers save on legal fees for attorneys traveling to the Board.
16. Benefits to Attorneys - Electronic appearances are more efficient while still providing opportunities for attorneys to learn from colleagues regarding novel claims and defenses given that the appearances are public. Attorneys simply need to "stay on the line" to observe arguments made and Judicial opinions delivered.

Thank you for allowing me the opportunity to convey my support of these changes.

1. Jay Shergill, , [jshergill@purintonlaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cjshergill%40purintonlaw.com), 10550, The WCAB emergency en banc decision Case No. MISC. NO. 260 suspended Rule Section 10500 and the requirement for witnesses and signatures, in favor of "Signatures on the forms from all parties may be
 electronic". Will there be a permanent suspension of this rule or revision to 10500?

Thank you

1. Stephanie M Smith, , , 10815, "Good cause" needs to be defined for subsection (b). For subsection (c), will the hearing determining whether a hearing should be electronic, be held electronically or in person? There also needs to be an objection process when a hearing is set in person. Many of us are still being advised by our physicians to avoid in person hearings at this time. For trials, why not have the first setting be virtual, since 99% of trials don't go forward? If the parties complete stips and issues on the record virtually, then the parties can agree to appear in person at the next trial date, if testimony is needed and the parties wish to appear in person. Lien trials do NOT need to be held in person. The WCAB is unnecessarily exposing people to the risks of COVID when in person hearings are not needed, and we've established that with 16 months of a very efficient virtual hearing calendar.
2. Charles Mix, Mix & Namanny APC, Charles Mix, 10816, subsection (b) ") creates a rebuttable presumption that all appearances at a hearing conducted electronically pursuant to rule 10815 will also be electronic." Why a rebuttable presumption? What is there to rebut or presume when the hearing was simply classified as being electronic in the first place? Not sure why this section is needed at all.
3. Charles Mix, Mix & Namanny APC, , 10745, My proposed ideas are better suited for this regulation section, but it is also essentially to avoid what I think will result from 10815 Subsections (c) & (d). These sections seem like they will put unnecessary pressure and a voluminous amount of work on the respective PJs. I regularly have cases against more than 3 defendants. Perhaps if regulation 10745 would expanded upon, we could avoid numerous petitions being lodged by numerous parties to a matter.

Ideas:

Any hearing that does not result in the matter going off calendar, the WCJ SHALL set the following hearing to be held electronically or in person, pursuant to the joint request of the parties.

Any party at a hearing may make an oral motion citing \*good cause for the following hearing to be held electronically and the judge SHALL order.

Any party that objects to the matter being set electronically may file a petition pursuant to regulations 10510 and 10815.

\*Good cause should not require the moving party to detail personal health matters.

1. Flores, , , 10745, This comment is for Lien Conferences and Trials. It may be safer for all parties especially in Southern California that Lien Conferences and Lien Trials to be set as remote hearings by default. On lien conferences, there is no real advantage in having them in-person when the same outcome can be achieved remotely. In fact, remote lien conference appearances has been productive and less hostile because the parties are under the "supervision" of the court as a scheduled for a hearing, the judge has options to control the situation. By reducing the in-person appearances of the parties on a lien conference which are often multiple, we are reducing unnecessary exposure to the virus and people are still able to do their work. As for lien trials, the reality is they have the least priority in the So Cal WCAB and often gets continued. If the Lien trials can be done remotely or at least have a preliminary remote appearance early in the morning, the judge can decide which case will go on the record. Only the case that will actually go on the record will come down to the Board within an hour or two or in the afternoon. This way parties are not unnecessarily exposed to the virus if their case is not going to be heard anyway which is often the case in the So Cal Boards. This is an efficient way to handle the reality at the So Cal Boards plus all the parties can save the time and money from having to come down to court.
2. Julia Smithson, Self, as a defendants' representative, 951-956-8545 [heilbronjulia@gmail.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cheilbronjulia%40gmail.com), 10755, I am deeply concerned about the DWC's decision to resume in-person hearings in the middle of an out-of-control pandemic, where a large portion of the population refuses to comply with CDC guidelines for masking, distancing, and vaccination. My concern is that the DWC will quickly turn into a hostile workplace, given the highly-charged energy between those who believe the CDC and those who do not. Does the Chief Judge have a plan for dealing with, or eliminating, the hostility that would invariably arise and cause disruptions and potential stress injuries?
3. Julia Smithson, Self, as defendant representative, 951-956-8545 [heilbronjulia@gmail.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cheilbronjulia%40gmail.com), 10752, I am deeply concerned about the DWC's decision to resume in-person hearings in the middle of an out-of-control pandemic. I would be willing to attend in-person only if vaccinations, proper masking, and the 6-foot rule are required per CDC and California State guidelines. If these guidelines are not adopted as mandates, will there be an option for attorneys and hearing representatives to continue remote hearings without having to submit a "good cause" request?
4. Amber Martin, Mehr and Associates , 9497779444, 10745, The new rule should be a case shall be conducted electronically and not “may” and this should be for all hearings including trials and expedited hearings. There is no reason to have trials in person. Covid is still here and there are now more variants. Not all people can be vaccinated. Most injured workers have pre existing conditions that put them at risk to show up in person. We have been doing trials and EH electronic for a while now with no issues and they are still moving forward better than what we were in person. Injured workers don’t need to pay for parking and use money they don’t have, injured workers and all attorneys/judges/staff don’t need to put themselves at risk by being in person. Also it would be impossible to social distance in person. To have people show up in person to just find out there trial is continued used to be devastating to an injured worker since most again do not have money to pay for parking, or they drove hours to get to court or they had to take time off work but once it was changed to electronic this is not happening to an injured worker anymore. By staying electronic for all hearings and trials saves lives since we will not be spreading the virus, saves the environment with less people on the roadways and is most effective and efficient since no party is wasting time being in person when we don’t need to be. Again this rule should be changed to all hearing and trials shall be electronically held
5. Amber Martin, Mehr and Associates , 9497779444, 10750, The new rule should be “a case shall be conducted electronically” and not “may” and this should be for all hearings including trials and expedited hearings. There is no reason to have trials in person. Covid is still here and there are now more variants. Not all people can be vaccinated. Most injured workers have pre existing conditions that put them at risk to show up in person. We have been doing trials and EH electronic for a while now with no issues and they are still moving forward better than what we were in person. Injured workers don’t need to pay for parking and use money they don’t have, injured workers and all attorneys/judges/staff don’t need to put themselves at risk by being in person. Also it would be impossible to social distance in person. To have people show up in person to just find out there trial is continued used to be devastating to an injured worker since most again do not have money to pay for parking, or they drove hours to get to court or they had to take time off work but once it was changed to electronic this is not happening to an injured worker anymore. By staying electronic for all hearings and trials saves lives since we will not be spreading the virus, saves the environment with less people on the roadways and is most effective and efficient since no party is wasting time being in person when we don’t need to be. Again this rule should be changed to all hearing and trials shall be electronically held
6. Amber Martin, Mehr and Associates , 9497779444, 10759, The new rule of parties needing to e file the ptcs by close of msc is not necessary. The trial judge will not be reviewing the ptcs the day of msc. It delays the case setting for trial and delays the courts line if the ptcs is not filed by msc date. Parties should be able to e file the ptcs at least 20 days prior to trial since exhibits need to be e filed by then as well so for consistency this would work better. Or at least provide an exception for the judge to change the timeline date Since all boards work differently.
7. Amber Martin, Mehr and Associates , 9497779444, 10815, The new rule should be a case shall be conducted electronically and not “may” and this should be for all hearings including trials and expedited hearings. There is no reason to have trials in person. Covid is still here and there are now more variants. Not all people can be vaccinated. Most injured workers have pre existing conditions that put them at risk to show up in person. We have been doing trials and EH electronic for a while now with no issues and they are still moving forward better than what we were in person. Injured workers don’t need to pay for parking and use money they don’t have, injured workers and all attorneys/judges/staff don’t need to put themselves at risk by being in person. Also it would be impossible to social distance in person. To have people show up in person to just find out there trial is continued used to be devastating to an injured worker since most again do not have money to pay for parking, or they drove hours to get to court or they had to take time off work but once it was changed to electronic this is not happening to an injured worker anymore. By staying electronic for all hearings and trials saves lives since we will not be spreading the virus, saves the environment with less people on the roadways and is most effective and efficient since no party is wasting time being in person when we don’t need to be. Again this rule should be changed to all hearing and trials shall be electronically held
8. Amber Martin , Mehr and Associates , 9497779444, 10816, No petition for electronic shall be needed since all hearings and all trials and EH should be electronic

The new rule should be a case shall be conducted electronically and not “may” and this should be for all hearings including trials and expedited hearings. There is no reason to have trials in person. Covid is still here and there are now more variants. Not all people can be vaccinated. Most injured workers have pre existing conditions that put them at risk to show up in person. We have been doing trials and EH electronic for a while now with no issues and they are still moving forward better than what we were in person. Injured workers don’t need to pay for parking and use money they don’t have, injured workers and all attorneys/judges/staff don’t need to put themselves at risk by being in person. Also it would be impossible to social distance in person. To have people show up in person to just find out there trial is continued used to be devastating to an injured worker since most again do not have money to pay for parking, or they drove hours to get to court or they had to take time off work but once it was changed to electronic this is not happening to an injured worker anymore. By staying electronic for all hearings and trials saves lives since we will not be spreading the virus, saves the environment with less people on the roadways and is most effective and efficient since no party is wasting time being in person when we don’t need to be. Again this rule should be changed to all hearing and trials shall be electronically held

1. Amber Martin, Mehr and Associates , 9497779444, 10817, The new rule should have all testimony electronic. All hearings, trials and EH should be electronic

The new rule should be a case shall be conducted electronically and not “may” and this should be for all hearings including trials and expedited hearings. There is no reason to have trials in person. Covid is still here and there are now more variants. Not all people can be vaccinated. Most injured workers have pre existing conditions that put them at risk to show up in person. We have been doing trials and EH electronic for a while now with no issues and they are still moving forward better than what we were in person. Injured workers don’t need to pay for parking and use money they don’t have, injured workers and all attorneys/judges/staff don’t need to put themselves at risk by being in person. Also it would be impossible to social distance in person. To have people show up in person to just find out there trial is continued used to be devastating to an injured worker since most again do not have money to pay for parking, or they drove hours to get to court or they had to take time off work but once it was changed to electronic this is not happening to an injured worker anymore. By staying electronic for all hearings and trials saves lives since we will not be spreading the virus, saves the environment with less people on the roadways and is most effective and efficient since no party is wasting time being in person when we don’t need to be. Again this rule should be changed to all hearing and trials shall be electronically held

1. Stephanie Rosil, , [srosil@bradfordbarthel.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Csrosil%40bradfordbarthel.com), 10815, I believe all hearings should mandatorily be electronic while the coronavirus continues to have a high impact on our community. The covid-19 infection/death numbers are higher than they were last year in August 2020 at this time. I am unsure why we would re-open at this moment and make electronic hearings only optional when we remained closed last year as covid infections were lower. I imagine the number of infected individuals will increase dramatically in the winter as they did last year. I am a mother with an unvaccinated 7 month old. In order to protect unvaccinated children, elders with preexisting conditions, and people who are high risk I strongly urge the courts to remain electronic for all hearings. The injured workers themselves are a vulnerable community who should not be required to come to court for a five minute hearing that could have been resolved quickly via the conference lines. Since hearings have been electronic, applicant attorneys are increasingly available to resolve issues and cases. Finally, I see no reason to reopen the WCAB at all, this is a new era and technology has deemed in person conferences unnecessary. I would urge any attorney who is unable to successfully practice in this way to adapt to the changing times.
2. Jonathan Dodart, PLBSH, [jondodart@plblaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cjondodart%40plblaw.com), 10815, "Any matter" that may be set for Electronic Hearing SHOULD include TRIALS, EXPEDITED HEARINGS, LIEN CONFERENCES and SAU TRIALS which are proposed to be in-person. This should also include any hearings that are continuances from prior conferences, especially if those hearing were initially set electronically. In-person appearances should be wholly optional and up to the request of the parties.
3. Jonathan Dodart, PLBSH, [jondodart@plblaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cjondodart%40plblaw.com), 10816, This section should be changed to apply to IN-PERSON appearances. A party should have to show good cause as to why an electronic appearance is not sufficient, unless otherwise stipulated to by the parties.
4. Jonathan Dodart, PLBSH, [jondodart@plblaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cjondodart%40plblaw.com), 10817, This section should be changed to apply to IN-PERSON appearances. A party should have to show good cause as to why an electronic appearance is not sufficient, unless otherwise stipulated to by the parties.
5. Jerry Chang, Perona Langer, , 10816, All that we ask is for a uniform set of rules for every WCAB regarding in-person/virtual/hybrid versions of trial/hearings starting 10-1. What we hear from judges across SoCal is mixed. 10-1 is a week away, yet we've heard nothing from the WCAB/DIR.
6. John P Kamin, , , 10815, This is in response to the proposed CCRs 10815, 10816, 10817.

It is my understanding that the latest rule proposal is for all hearings to be remote, with the exception of trials and expedited hearings being in-person hearings. Unfortunately, even this smaller number of “in-person” hearings will create unnecessary exposures for injured workers, judges, courthouse administrative staff, court reporters, interpreters, attorneys, witnesses, hearing representatives, security guards, CHP officers, EDD/UEF and other affiliated agencies, and others. As we all know, trials rarely go forward on the first trial date. This is because courthouses in urban areas are still scheduling four or more trials and expedited hearings a day, even though judges have informed the undersigned that they are supposed to be limited to 4. One of my more recent trial days had at least six cases set for trial or expedited hearing, including a case with numerous parties. This means that in a single courtroom on a trial day could have a range of 15 to 35 people heading to a WCAB just for trials, depending on the number of parties, witnesses and interpreters. Outbreaks with unfortunate consequences will be likely, especially when one considers the combination of a) airborne nature of the virus, b) poorly-ventilated courtrooms with no open windows, c) shared elevators just to reach the courtroom, d) breakthrough infections are occurring for the vaccinated and those with antibodies, e) Covid-19 exposures already occurring in California administrative law buildings without “in-person” appearances, e) the fact that many judges/attorneys/representatives fall into older and higher risk categories.

What makes more sense is to have the trial judge operate a trial calendar by phone, and designate which trial will be appearing in-person on a future date. After all, the past 18 months have shown us that teleconferencing and videoconferencing technology has eliminated the need for parties to appear in-person for tasks like a) going over the pretrial conference statement, b) discussing which issues should be tried, c) designating exhibits, d) reading all of the aforementioned categories and appearances into the record, etc.

Should a party or a judge decide that in-person testimony is necessary for a trial – that is understandable, and the undersigned agrees that could be done in-person. For a large number of trials, the actual testimony is a fraction of the amount of time spent “at trial,” with the remainder being activities that precede the reading of information into the record, or the actual reading of issues and evidence into the record.

But with as many as 4-7 trials and expedited hearings being set for one day, why would all of those parties and witnesses need to revolve around the same courtroom throughout the day when only one or two of those trials will actually go forward with witness testimony? Now multiple this times two to four for the actual number of judges with trial days, and one suddenly has anywhere from 8 to 28 cases with people circulating around the same courthouse. Multiple those 8 to 28 times a) at least two attorneys, b) an applicant, c) the person who helped the applicant get to the courthouse, d) an interpreter, and suddenly we are talking about an additional 40 to 140 people who are revolving around a WCAB office, when 90% of them will not even go forward with trial?

Should this lead to further exposures, this will have negative consequences to our professional counterparts. While we are all professionals who maintain professional relationships, nobody wants to see an opponent or court employee who we’ve known for years get sick. When an outbreak does undoubtedly occur, that will harm the judicial economy of those parties on the cases that were present on the day of the trial outbreak, which will have a ripple effect. A single outbreak could put as many as 150 people in quarantine for a 10-day period, thus harming the WCAB’s ability to function

1. John P Kamin, , , 10815, Proposed comment on CCR 10815, 10816, 10817 (cont'd)

A single outbreak could put as many as 150 people in quarantine for a 10-day period, thus harming the WCAB’s ability to function efficiently.

The WCAB also does not control the particulars of each building, as they are the lessees, not the landlords. For example, the Los Angeles WCAB District Office presumably has lacked the authority or technological capacity or budget to make all six elevators work simultaneously, as thousands of people who work for different agencies go to all 10 floors in that building. The Marina Del Rey WCAB was down to a single functioning elevator in March 2020, through no fault of the WCAB. To expect all these parties to funnel through the same 1 to 3 elevators is a recipe for disaster, even if everyone is abiding by every single mask mandate and PPE.

Then consider that there are those of us with a) unvaccinated children who are too young to get vaccinated, b) elderly parents who are still at high risk of a breakthrough infection, and c) preexisting conditions that could make a infection fatal. This group includes everybody – applicants, judges, attorneys, courthouse staffers, interpreters, hearing representatives, court reporters, and others.

The unvaccinated children are not just the potential victims of a potential WCAB outbreak, but also are potential disease vectors themselves. Unvaccinated children could contract the virus at at school, and could pass Covid-19 to their parents who then unwittingly brings it to court and exposes others to the virus. The undersigned knows of at least 3-4 examples of this happening at schools in the first month of school.

Unfortunately, there are also many who do and will continue to refuse to abide by PPE mandates, which will create additional exposures in common areas.

All of this could be avoided by simply leaving all appearances as remote appearances, with cases that are ripe for testimony to go forward with in-person testimony.

This proposed solution also solves the other problem that plagued the WCAB for years – parties showing up to court with too many appearances, who are unprepared for trial. The undersigned has unfortunately spent hundreds of hours waiting for other parties who had too many appearances on calendar, or failed to properly organize their exhibits. Others use such delays as a deliberate tactic to their advantage – the undersigned can recall a few who intentionally disappear for as long as 3 to 6 hours in a row, just to troll defendants in hopes of tempting the defendant into increasing settlement authority. This happens on all types of cases that are set for trial, including cases-in-chief.

We have seen and enjoyed a sudden increase in efficiency as the world of teleconferences and videoconferencing has eliminated many of these unnecessary delays and waits. To mandate the return to unnecessary in-person hearings not only rewards those who prefer to utilize the “deliberate delay” tactic, it also creates additional danger by unnecessarily exposing hundreds – and eventually thousands – to the Delta variant and subsequent variants.

1. Kristi Robles, Gilson Daub and Self, [kristi.robles@gilsondaub.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Ckristi.robles%40gilsondaub.com), 10815, I believe electronic hearings should be the default and in person hearings/trials/appearances should occur only upon a petition showing good cause. Attorneys have been much more productive and waste a lot less of their client's time and money by appearing remotely. In person appearances should certainly be the exception. thank you.
2. Ashley Romeo-Boles, Defense, Gilson Daub, 10816, I believe electronic hearings should be the default and in person hearings/trials/appearances should occur only upon a petition showing good cause, rather than the other way around. Not just due to the increased issues with COVID 19 infection, but due to the fact that the Board will not be set up with meeting or work spaces inside of the building, it makes it much more difficult to accomplish work tasks while waiting for your turn(or have the ability to plug int a power source). Moreover, the attorneys have been much more productive and waste a lot less of their client's time and money by appearing remotely. As such, given the ability of the process to have worked thus far, it seems more appropriate that in person appearances are the exception rather than the requirement. Thank you for your time and consideration on this issue.
3. Patrick Hawkins, , [patrickhawkins@plblaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cpatrickhawkins%40plblaw.com), 10815, "Any matter" that may be set for Electronic Hearing SHOULD include TRIALS, EXPEDITED HEARINGS, LIEN CONFERENCES and SAU TRIALS which are proposed to be in-person. This should also include any hearings that are continuances from prior conferences, especially if those hearing were initially set electronically. In-person appearances should be wholly optional and up to the request of the parties. There are still significant public safety concerns regarding COVID-19 variants and most experts expect the fall and winter seasons to once again lead to significant outbreaks. Additionally, there are no considerations being made for attorneys or injured workers who may be immunocompromised or live with individuals who are immunocompromised.
4. Patrick Hawkins, , [patrickhawkins@plblaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cpatrickhawkins%40plblaw.com), 10816, This section should be changed to apply to IN-PERSON appearances. A party should have to show good cause as to why an electronic appearance is not sufficient. There are still significant public safety concerns regarding COVID-19 variants and most experts expect the fall and winter seasons to once again lead to significant outbreaks. Additionally, there are no considerations being made for attorneys or injured workers who may be immunocompromised or live with individuals who are immunocompromised.
5. Patrick Hawkins, , [patrickhawkins@plblaw.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cpatrickhawkins%40plblaw.com), 10817, This section should be changed to apply to IN-PERSON testimony. A party should have to show good cause as to why an electronic testimony is not sufficient. There are still significant public safety concerns regarding COVID-19 variants and most experts expect the fall and winter seasons to once again lead to significant outbreaks. Additionally, there are no considerations being made for attorneys or injured workers who may be immunocompromised or live with individuals who are immunocompromised.
6. Karina Gordon, , , 10305, I have noted the efficiency of call-in hearings, especially with preparation by attorneys prior to a hearing; and would like to see that continue.

With regard to in-person verus phone/zoom Trial. I recommend not having a one size fits all regulation. For example, a Trial, both case and chief or Lien Trial, where no witnesses are called, or a witness may be called, but credibility is not at issue, can be by zoom. On the other hand, an AOE/COE psyche Trial, for example, where the applicant may testify and witnesses may be called to testify and credibility is of concern, should be in-person.

1. Diane Worley, California Applicants' Attorneys Association, [diane@caaa.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cdiane%40caaa.org), 10625, CAAA overall finds the proposed revisions reasonable, but we do have concerns regarding the addition of electronic service in Regulation 10625.

While e-mail communications provide a level of convenience, ease, and accepted expediency in the digital world we all now live in, this means of communications should only be used for service of documents by the parties in workers compensation cases, by agreement.

This would be consistent with current Regulation 10205.6 pertaining to establishing a designated preferred method of service.

If an agreement is not reached, then service should be by first class mail.

If the documents are to be served on an unrepresented injured worker, unrepresented dependent or unrepresented uninsured employer, then the service shall be made by first class mail.

Allowing the serving party to dictate the manner of service is inconsistent with Rule 10205.6.

Additionally, electronic (e-mail) service will increase opportunities for hacking. The recipient must carefully check the address of the sender to make sure it is not a phishing attack. If the sender is a new law firm or adjuster that the recipient doesn’t recognize, downloading the attachment would be risky at best. What if the e-mail goes into a spam folder? Has service been effectuated? Not all parties and law firms are comfortable with electronic service. Parties should be allowed to agree to electronic service as a preferred method of delivery for documents, and if it is as efficient as its proponents claim, in time, most parties will agree to accept electronic service voluntarily. However, allowing an opposing party to impose it seems unwise. Therefore, we recommend the following changes to proposed Regulation 10625 (please note the form does not allow strike out or underlining to highlight the recommended deletions or additions so the following is CAAA's recommended final redraft ):

§ 10625. Service by Parties.

1. 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.
2. A document may be served using the following methods:
3. Personal service;
4. First class mail; or
5. An alternative method that will effect service that is equivalent to or more expeditious than first class mail; or,
6. Electronic service if the serving and receiving parties have previously agreed to this method of service.
7. If the documents are to be served on an unrepresented injured worker, unrepresented dependent or unrepresented uninsured employer, then the service shall be made by first class mail.
8. “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.
9. Where a party receives notification that the service to one or more parties failed, the server shall re-serve the document on all 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.
10. Jesse Salazar, , , 10815, Given the low vaccination rates across the country, the COVID-19 pandemic will not be going away any time soon. As such, the DIR ought to make permanent the virtual operations the WCAB has been operating under since March 2020. Electronic Hearings/Trials ought to be the default option for all Hearings/Trials. The DIR should not allow a party to obtain an in person Hearing/Trial without filing a Petition and convincing the Presiding Judge that there is good cause for it to be in person. The Workers' Compensation community has successfully adapted to the virtual operations at the WCAB. This proposed Regulation allows a party to obtain an in person Hearing/Trial, which essentially forces the opposing party in that situation to litigate over their safety. This is unacceptable. Everything should remain virtual as a default for the health and safety of the parties involved, the WCAB staff, and general public who would be exposed from those who contract COVID-19 at the WCAB's district offices. This is also why it is so perplexing that the DIR would, without any forewarning, require Trials be in person starting October 1, especially on such short notice.
11. Gregory Grinberg, Gale Sutow and Associates, [ggrinbeg@galesutow.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cggrinbeg%40galesutow.com), 10815, Hearing for Public Comment re WCAB Regulations

My name is Gregory Grinberg and I am the managing partner of the Bay Area South office of Gale Sutow and Associates. Gale Sutow and Associates is a state-wide Workers’ Compensation Defense firm. Our attorneys appear at all venues within the state. I submit this comment today to add my voice to the chorus calling for a delay and deferral of return of in-person trials at the Workers Compensation Appeals Board.

The COVID19 virus is very real, and very serious, and has had a cascade impact upon the world, let alone California. The evidence has consistently shown that while some people may be safer, and some people less safe, there is no one who is completely safe from the risk posed by this virus. Vaccinated and unvaccinated; young and old; healthy or with comorbidities – sadly people from all walks of life and all categories have died or been seriously ill due to COVID19, and the long-term effects of this exposure are still unknown to us.

A return to the WCAB will mean the departure of at least some employees from attorneys’ offices, both applicant and defendant, as well as the WCAB. While many of our employees and the attorneys themselves were prepared to continue working in a remote capacity to limit their exposure, and the exposure of their family members, to COVID19, I am certain that many employees of both applicant and defense law firms will resign rather than face this hazard. The same will likely prove true for the essentially employees of the individual Boards, many of which have had difficulty in hiring over the last several years.

The end result will be that key members of the community that make it possible to render speedy justice and adjudication of issues will simply not be there. Injured workers who fear being exposed by going to the Board in person, might forego seeking benefits, while defense witnesses, with the same reasoning, might decline to attend a trial for fear of exposure.

So far, LifeSize has provided an adequate alternative to appearing in person, and whatever technical limitations we may be experiencing right now, I respectfully submit that tolerating those “bugs” is far preferable to the risk that awaits us all if we return to in-person trials before it is safe to do so.

Respectfully submitted,

Gregory Grinberg

1. Jesse Salazar, , , 10816, Given the low vaccination rates across the country, the COVID-19 pandemic will not be going away any time soon. As such, the DIR ought to make permanent the virtual operations the WCAB has been operating under since March 2020. Electronic Hearings/Trials ought to be the default option for all Hearings/Trials. Therefore, the DIR ought to amend this proposed Regulation to narrowly define what "good cause" is for purposes of the Petition to change the Hearing/Trial to in person. The safety and health of everyone in the Workers' Compensation community, including their respective families require the DIR to limit in person Hearings/Trials to a very specific type of case.
2. Jesse Salazar, , , 10817, Given the low vaccination rates across the country, the COVID-19 pandemic will not be going away any time soon. As such, the DIR ought to make permanent the virtual operations the WCAB has been operating under since March 2020. Therefore, Electronic Testimony ought to be the default. If a party can establish good cause (which should be defined and narrowed) for converting a Hearing/Trial to in person, then that same party ought to establish good cause as to why the witnesses likewise have to be in person. If we have learned anything from the last year and half, the Workers' Compensation community has been able to adapt to the virtual operations. In my experience, things function better now at the WCAB district offices than they did pre-pandemic when everything was in person. Electronic Hearings/Trials are quicker and have resulted in fewer continuances than pre-pandemic times.
3. Robert McLaughlin, McLaughlin & Sanchez, APC, 7801 Mission Center Ct., 10305, Julie Podbereski, Regulations Coordinator

Department of Industrial Relations

Division of Workers’ Compensation

455 Golden Gate Ave, 9th Floor

San Francisco, CA 94102

Re: Proposed Additions and Amendments to Title 8 California Code of Regulations Section 10300-10999, Electronic Hearing Regulations.

Dear Ms. Podbereski:

We thank all the staff of the Workers’ Compensation Appeals Board for their work during these trying times and appreciate the opportunity to comment on the proposed regulations.

First, the Appeals Board in the Initial Statement Of Reasons indicates these regulations are being proposed in part given the success of remote proceedings. However, there is concern amongst some in the workers compensation community as to the efficacy in the handling and the resolution of issues/claims through hearings and trials (including expedited hearings) by remote proceedings. Many practitioners and participants in the workers compensation system believe cases are handled more effectively and efficiently in a face-to-face, in-person situation. Therefore, to make sure these rules are effectuating the California Constitution’s goal of resolving claims expeditiously, inexpensively and without encumbrance we recommend a sunset provision be put in sunsetting out these regulations in 2 years unless re-adopted before the sunset deadline. Then after 1 year of the implementations of these regulations the WCAB could have a study and/or survey performed on the effectiveness of remote proceedings in resolution of claims/issues versus in-person hearings. If there is any indication of less effectiveness through remote proceedings, the regulations can either not be renewed or amended to make remote proceedings more effective for all parties.

Regulation § 10305

(n) “Hearing”

The definition of hearing should be clarified to note it specifically includes expedited hearings. Traditionally expedited hearings are considered trials. However, the problem is the definition states, "any trial" and then later specifically references the term "lien trial". This creates an ambiguity in the meaning of “any trial” as it is unclear if expedited hearings are included. Why specifically reference “lien trial” separate from “any trial” if a “lien trial” is considered a sub-part of “any trial.” This would imply certain trials are excepted from the term “any trial” and as currently written the regulation could exclude expedited hearings. This should be clarified.

No definition of Witness.

There is no definition of "witness" provided. This should be added to make clear who is considered a witness versus an employer representative and/or a party.

Regulation § 10625(c).

To avoid confusion there should be clarification of when service by electronic means will be deemed completed for action to be taken in response to a document electronically served.

Regulation § 10759(b).

Having a “meet and confer” requirement is an excellent change. However, the problem arises as to when the "meet and confer" should occur. For example, a party can call the opposing party at 8:00 a.m. before an 8:30 a.m. Mandatory Settlement Conference (‘MSC’) and have complied with the “meet and confer” requirement. However, by the time the parties speak and are unable to resolve the issue(s), they will be unable to complete a Pretrial Conference Statement and get it uploaded into the EAMS in time for it to be available in FileNet for the Workers’ Compensation Judge to (‘WCJ’) review. It has been the experience of this office it takes anywhere from 4 hours, up to 48 hours for documents uploaded into EAMS to be available for the WCJ’s review. When the WCJ is unable to access the documents in FileNet it necessitates the continuance of the MSC. Therefore, a timeframe should be provided as to when the “meet and confer” is to occur so as not to delay the resolution of issues before the WCAB. Our suggestion is language be added indicating the parties shall meet and confer (6

1. Ryan Vego , Glauber Berenson Vego (Workers Compensation Law Practice for Applicant), (626) 796-9400, 10816, If you had have asked me two years ago, I would have thought there was no way my job could have been done from home/remotely. It turns out that we created a system out of necessity, that works better than the one we had previously. In my opinion, this system works better for the following reasons: 1) This system cuts out hours in the car (i.e. less pollution); 2) It more efficient for all the practitioners and the judges. Instead of being stuck at the court house all day, where wifi is bad, parties are able to get other work done during the dead time; 3) Even after covid it is safer for everyone to avoid large crowds and crowded waiting rooms; 4) It is also easier for my seriously injured clients, who also don't have money for gas and parking to attend hearings this way. this system allows better access on convenience for the seriously injured and low income; 5) It allows attorneys to appear at any board without having to travel and allows employers and the injured workers to choose the attorney of their choice regardless of where the attorney's office is located; 6) The vast majority of judges, attorneys and injured workers I talk to, like this system better and are hoping that we can keep this regulation and keep all hearings remote. Parties will still have the option to request in person testimony when needed. Please for my family's sake and for the sake of the attorney's and judge's in this field, and for the sake of the injured workers, please keep this regulation intact, to ensure remote hearings continue in this safer and more efficient manner.
2. Jay Shergill, Purinton, Jimenez, Labo & Wu, [jay@pdrater.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cjay%40pdrater.com), 10816, 1) Board Rule § 10816 allows a party to provide notice they intend to appear electronically for any hearing upon a petition setting forth “good cause.”
3. What constitutes good cause to appear electronically?
4. Board Rule § 10815 sets forth the means for a party to object to a hearing or trial taking place by electronic means. There does not appear to be similar guidance under Board Rule § 10816 on requesting a live hearing or trial take place electronically.
5. Once a timely petition has been filed, is there any additional step that party needs to take to appear electronically or is such a petition presumed granted?
6. What if there is no response from the Board to such a notice of intention to appear electronically?
7. Board Rule § 10816 appears to relate to only the noticing party appearing electronically – and does not appear to require the hearing be conducted electronically for all parties. Prior to the pandemic the Board utilized the CourtCall system to permit one party to appear telephonically, irrespective of the preferences of other parties, and subject to judicial discretion.
8. Will the Board conduct hearings where some, but not all parties, are appearing electronically?
9. The WCAB decision “In Re: COVID-19 State of Emergency En Banc (Misc. No. 260),” 3/18/2020, suspended the requirement for witnesses and live signatures to settlement agreements as set forth in Cal. Code Regs., tit. 8, § 10500(b)(6) and DWC-CA forms 10214(c)-(e). Although parts of this decision relating to different regulations have been rescinded over the last 18 months, this particular change as it relates to allowing electronic signatures and witnesses has not been altered.
10. Will the WCAB En Banc Misc. No. 260 removing the requirement for live signatures and witnesses be made permanent or formalized in a regulation?
11. Michelle Kral , Defense Attorney, , 10611, i want to make a comment on staff and attorney health impacts of remote versus in person
12. Grace Kang, Vanderford & Ruiz, , 10305, Clarification requested regarding which hearings/trials will be remote and which will be in person.
13. Benjamin Khakshour, , , 10815, We hope to find a reasonable solution to trials in person so that attorneys are not waiting around idle at the WCAB while other proceedings are being heard. Also, my staff and I are not fully comfortable with appearing in court for health reasons. A suggestion would be to have the option to have parties appear remotely by video, at that party's discretion, which has been working well for my clients and my office. I have clients that are worried to appear in person at court as well. Ive had other parties use bringing people to court in-person as a threat or bargaining chip. Also. If in-person is insisted, can we read the Stipulation and Issues over the phone with the judge prior to the testimony portion, so that if we are appearing in person, it is certainly to go forward.
14. Zareh Zatikyan, , [zzatikyan@glauberberenson.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Czzatikyan%40glauberberenson.com), 10816, I believe that the rule should be electronic hearings and that good cause should have to be shown for why hearings should not be electronic, not the other way around. Electronic hearings have really "lit a fire" under everyone to be more proactive and more productive. Electronic hearings have forced parties to confer in advance and try to resolve disputes. In-person will do the opposite, taking us back to the days of attending a hearing with no idea what the other side actually intends on doing.
15. Shawna Clay, , , 10305, I believe that having people come back into the court houses would not be safe at this time due to COVID and the Delta variant. This would cause harm to court staff, lien reps, clients and the general public. I don't believe the virus is under control enough to have in person trials.
16. Brant Bruner, Goldberg Loren Los Angeles, [bbruner@goldbergloren.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cbbruner%40goldbergloren.com) (310)501-3220, 10815, As Applicant attorneys, we need to be able to continue to have virtual trials, expedited hearings, without having to either get the Defendant to agree beforehand, because most of the tine we can’t get a response from the Def until we are at court, or Petition the court beforehand, because most hearings won’t have sufficient timeframe for responses & a determination by a WCJ, and having an in person hearing to determine whether a case can have a virtual hearing is ridiculous, it should be the other way around! Moreover, having to petition to appear virtually for every single individual hearing will create an overburdening amount of work for us & our staff, which we won’t ever get paid for.. Moreover, going to half phone, half in person will cause an incredible amount of conflicts, and most attorneys will end up sitting at the board on the phone for an hour or two before anything can proceed in-person anyways! And this is before the safety & health concerns - social distancing is next to impossible in a worker’s compensation court room, or a WCAB lobby, or elevator… Most of my attorneys, and my clients will flat out refuse to appear in person with the threat of COVID still be real, vaccination or not! Also, by making in-person the rule, instead of the exception, it puts people at risk unnecessarily, and what’s going to happen is the ADA accommodation office is going to be inundated with requests & have to deal with literally almost every single hearing / trial on the courts calendar! So not only will having to request all this beforehand for each individual hearing inundate and overwhelm our offices & staff, it will also do the same to the WCAB PJs, line WCJs, and disability Unit! Going back to in-person so suddenly, when Delta variant is still a very real threat, is a nightmare - things should be kept at the current status quo, or make virtual the rule and in-person the exception, until COVID is no longer a legitimate threat - and if that is not for the foreseeable future, than so be it!
17. John D. Moloney, , [john@moloneylawoffice.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cjohn%40moloneylawoffice.com), 10815, Electronic hearings have resulted in increased efficiency at the Appeals Board level and with regard to both defense attorneys and applicants’ attorneys. They have also required greater communication between the parties which in turn has resulted in speedier resolution of issues. Electronic hearings have also resulted in the yet uncalculated benefit to the environment of eliminating the thousands of people across the State who previously drove to and from appearances at the various Appeals Board venues.

Given these benefits, I would suggest that Section 10815(a) be changed so as to state that: “All matters including trials shall be set for an electronic hearing as set forth in rule 10745.” The remainder of this section would remain the same allowing a party to object to the electronic hearing by stating good cause.

The effect of this change would be to make an electronic hearing the default setting thus continuing the benefits to the workers’ compensation system and the parties involved in it noted above.

Thank you.

1. Charlie Camareno, CorVel Corporation, [charlie\_camareno@corvel.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Ccharlie_camareno%40corvel.com), 10752, Thank you for allowing me to submit my written commentary on the issue of remote hearing procedures.

I manage the lien resolution unit for CorVel Corporation in Southern California. Prior to covid, our staff was limited in the amount of work that they could take on due to the need for multiple hearings to be attended on any given day. Attending a hearing at the WCAB in person meant that we spent whatever amount of time that was necessary on one singular file: travel time to the board, time at the board (half day or full day depending on the hearing type or whether we could find our lien claimants and discuss issues before the lunch hour), and then travel time from the board.

With caseloads near 100 files each, this left a potential of another 3-5 files that would go untouched for another day, creating delays in file closures for the claims adjuster, as well as the employer.

Since covid brought about remote appearances, we have found that we were able to allow our lien specialists the time that they need to not only attend hearings, but spend more of their work day addressing additional lien resolution rather than being on the road in traffic. Not only that, but southern california freeways are notoriously dangerous and the risk of being involved in a motor vehicle accident during rush hour is always high.

Because our team is not spending their time on the road, we have seen the following benefits with remote appearances:

1. the abiilty for us to take on new business all throughout the State of California rather than just being limited to Southern California (or having to incur additional travel costs to fly into Northern California).
2. More efficient and effective in-house lien resolution without the need to utilize/waste judicial resources on unnecessary litigation. Prior to Covid, we found that lien claimants were less reasonable in their negotiation and less cooperative with our requests for information because they could always threaten us with going to the board in hopes of getting a better offer from our hearing rep. All this did was incur additional costs for our customers and made us start over from scratch because often times the hearing representatives are not the same people we have been engaging in telephonic negotiations and they are unaware of the case facts. Since remote hearings were introduced, we have found lien claimants to be more cooperative and more willing to resolve their liens with us outside of the WCAB, saving it's use for only when absolutely necessary and eliminating much of the backlog that we have seen not only as a TPA, but for the WCAB overall.
3. For the last (almost) 2 years, we have adapted to this model and it has served us well. We have been able to attend hearings with ease and have seen less litigation. Our entire unit's business process has redeveloped itself around this model of remote appearances. To send us back to in-person hearings would require me to readjust the business process, but also means I would need to increase my staff in order to handle hearings and additional case files, putting my current clients at risk for sub-par service. Most of the hearing reps in Southern California moved out of Workers Comp, or out of the state as a whole, limiting the amount of readily available hearing representatives that I would be able to choose from in order to properly staff my hearing calendar. This could also cause undue burden and delays for the lien claimants and the WCAB with non-appearances and requested continuances due to lack of coverage.
4. Lastly, the overall public health issue still looms. While vaccinations for covid are readily available, not everyone is vaccinated, and we are still at risk for spreading the current and potential upcoming variants of this virus. Not to mention the amount of times I have personally seen attorneys and hearing reps at the board who have admitted they are "sick as a dog" but still showed up because they did not have coverage.
5. kenneth martinson gomez, abogado gomez, [kennethmesq@msn.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Ckennethmesq%40msn.com), 10815, I am against in-person Work Comp Hearings. At least require proof of vaccine
6. Ellen Sims Langille, Esq., California Workers' Compensation Institute, [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10305, General Consideration

The Institute appreciates the efforts of the WCAB to promote the modernization of the Public Comment on these Rules. However, we are greatly concerned that the WCAB has chosen to implement a requirement that electronic comments be made on a particular, text-limited submission form or not at all. A restriction to an online form impedes upon the public’s ability to maintain a record of comments submitted. Furthermore, the notice advises that submission of written comments must be received by the close of the comment period or such comments will not be considered. Presumably, these new requirements are designed to assist the WCAB in organizing the comments received – but they do little to encourage public engagement in the regulatory process.

Additional restrictions (such as the prohibition against letterhead, color, and other graphics, and a closure of comments at 4pm instead of the customary 5pm “close of business day”) further serve to limit and restrict public participation in a process that is already shrouded from most stakeholders.

The original December 2019 release of revised rules took effect mere days afterward, and even the WCAB judges had little to no knowledge of the new rules until weeks later. Implementation of the restrictive requirements outlined above is not indicative of a valid public process as required and creates practical issues for the entire community. CWCI urges the WCAB to permit more traditional methods of public comment (including email submission) for these and future proposals.

1. Ellen Sims Langille, Esq., California Workers' Compensation Institute, [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10305, Recommendation:

§ 10305. Definitions.

As used in this subchapter:

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

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

Discussion:

Because there may be occasion where service of a document is required on a business or other non-party that is not a person, CWCI recommends additional language to ensure compliance.

In workers’ compensation proceedings, all oral testimony is taken down by a court reporter but is only rarely “transcribed.” Rule 10800 governs the transcription of testimony upon receipt of a written request accompanied by payment of a fee. In order to avoid conflict between this definition and Labor Code section 5708, the Institute recommends deletion of language limiting the definition only to testimony that is transcribed.

1. Ellen Sims Langille, Esq., California Workers' Compensation Institute, [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10400, Recommendation:

§ 10400. Attorney Representatives.

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

Discussion:

We support the addition of a requirement for email addresses as part of the opening document. The WCAB’s intended change as indicated by the Initial Statement of Reasons was not correctly identified as new language in the Text of Regulations document.

1. Ellen Sims Langille, Esq., California Workers' Compensation Institute, [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10462, Recommendation:

§ 10462. Subsequent Injuries Benefits Trust Fund Applications.

1. After joinder of the Subsequent Injuries Benefits Trust Fund and no later than 30 days prior to the mandatory settlement conference or other hearing related to the Subsequent Injuries Benefits Trust Fund application, the applicant and the representative from the Division of Workers’ Compensation, Subsequent Injuries Benefits Trust Fund shall meet and confer in good faith as to the elements of Labor Code section 4751. If the meet and confer process does not result in agreement as to the elements of Labor Code section 4751, each participant shall file and serve a written position statement at least 10 days prior to the hearing.

Discussion:

The requirement that “all parties” participate in a meet and confer process related to SIBTF claims is far too broad. There is ordinarily no reason for parties such as the employer, insurer, claims administrator, or lien claimants to continue to participate in the case at the SIBTF stage, much less in an informal discussion as to whether the applicant has met the requirements of Labor Code section 4751. Conversely, the SIBTF is sometimes joined early in the case, long before SIBTF-related proceedings are undertaken. We recommend that the required participants to a meet and confer process under this rule be limited to the relevant parties and that such process be delayed until SIBTF issues are at hand.

In order for the meet and confer process to serve the intended purpose and to provide the assigned judge with the necessary information to effectively manage the hearing, the Institute recommends that additional formality be required via the filing of a written position statement.

1. Ellen Sims Langille, Esq., California Workers' Compensation Institute, [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10550, Recommendation:

§ 10550. Petition to Dismiss Inactive Cases.

1. The following documents shall be filed with a petition to dismiss:
2. A copy of the letter required by subdivision (b) of this rule; and
3. Any reply to the letter required by subdivision (b) of this rule.

Discussion:

The WCAB’s intended changes as indicated by the Initial Statement of reasons were not correctly identified in the Text of Regulations document.

1. Ellen Sims Langille, Esq., California Workers' Compensation institute, [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10610, Recommendation:

§ 10610. Filing and Service of Documents.

Unless a statute or rule provides for a different method, a requirement to “file and serve” a document means that the document must be filed as set forth in rule 10615 and served as set forth in rule 10625. The Workers’ Compensation Appeals Board may order the filing of a proof of service of a document.

Discussion:

Existing rule 10629 already requires a party designated to serve an order to also file a proof of service of that order. The associated burden of compliance, administration, postage, etc. of the existing rule typically falls to the defense.

Expansion of the requirement to now file a proof of service for every document that is filed and served is unwarranted and unnecessary. A better solution, while still accomplishing the desired result, would be to require the party to maintain the original proof of service until and unless ordered to file it at the WCAB -- if and when a dispute arises.

If appropriate, the recommended language could be coupled with a negative inference rule (i.e., failure to produce a Proof of Service permits an inference that the document was not served as alleged, or perhaps an evidentiary preclusion), which would encourage reliable recordkeeping.

1. Ellen Sims Langille, Esq., California Workers' Compensation Institute, [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10625, Recommendation:

§ 10625. Service by Parties.

1. Where a party receives notification that the service to one or more parties failed, the server shall re-serve the document on the recipient on whom service failed and execute a new proof of service within a reasonable amount of time.

Discussion:

Multiple service of a document on all parties, including those to whom service was correctly effected, is unnecessary, cumbersome, and expensive. Conversely, provision of a courtesy copy does not provide an adequate record of when service was actually and correctly effected. The Institute recommends a more simple solution of requiring corrected service with a new proof of service that confirms the correction.

1. Ellen Sims Langille, Esq., California Workers' Compensation Institute, [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10752, Recommendation:

§ 10752. Appearances Required.

1. Each required party shall have a person available with settlement authority at all hearings. A represented injured employee or dependent shall personally appear at any mandatory settlement conference.

Discussion:

The proposal has eliminated subsection (c), requiring the presence of the injured worker or their dependent. The whole point of the mandatory settlement conference is for the parties to engage in frank negotiations and resolve their disputes if possible. All parties, and even the WCAB itself, are well-served by a successful MSC that results in a settlement. But unlike the defense side, where the defense attorney has the power to bind their principal by signing a settlement document on the principal’s behalf, the in-person appearance of an injured worker is absolutely necessary to complete and sign a settlement document at the MSC. For MSCs conducted virtually, it is nevertheless preferable to have the injured worker appear so that a meeting of minds can be confirmed and even documented in the Minutes of Hearing. The Institute is not aware of widespread difficulties created by this long-standing rule of personal appearance nor of any pressing need to change the practice, and urges the WCAB to reconsider eliminating the requirement so that the very purpose of the MSC is not thwarted.

1. Ellen Sims Langille, Esq., California Workers' Compensation Institute , [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10759, Recommendation:

§ 10759. Mandatory Settlement Conferences.

1. The parties shall meet and confer at least one business day prior to the mandatory settlement conference. Failure to respond to a good faith effort to meet and confer under this subsection may result in sanctions pursuant to 8 CCR 10421, at the discretion of the conference judge. Absent resolution of the dispute(s), the parties shall 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.
Discussion:

The ISOR suggests that this amendment requires a meet and confer process that will assist the parties in properly framing the issues so that trials can be conducted more efficiently. The Institute is in favor of encouraging the parties to get a head start on the process of identifying and framing the issues in dispute. However, without inclusion of deadlines or consequences, the “requirement” intended by the proposed language will not be effective.

1. Ellen Sims Langille, Esq., California Workers' Compensation Institute , [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10815, Recommendation:

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

1. Any party may object to an electronic hearing by filing and serving a written objection showing good cause within ten business days after service of a notice that a hearing will be conducted electronically.
2. 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 overrule the objection, or may set the issue of whether the hearing will be conducted electronically for a hearing.
3. 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 electronic hearing before the assigned workers’ compensation judge.

Discussion:

In light of the dangers presented by the ongoing pandemic, the Institute believes that it is premature to require parties or witnesses to attend any hearing in person, absent good cause to the contrary. We recognize that the DWC has issued a proclamation that all trials held on or after October 1, 2021, shall be in-person. We have serious concerns about this action from a public health standpoint, and will support any solution from the WCAB that permits it to continue without interruption its present (and proven successful) practice to hold hearings via virtual platforms, absent a showing of good cause.

In subsection (b), we suggest that any objection filed also be served on the other parties, so that all involved may be apprised of developments. In subsection (c), we recommend that the presiding judge be granted the discretion to rule on the issue of good cause forthwith and maintain the hearing as electronic if appropriate, in addition to the option to set the question for hearing. Finally, we recommend additional language in subsection (d) in order to clarify that no action by the presiding judge results in the electronic hearing as noticed.

1. Ellen Sims Langille, Esq., California Workers' Compensation institute, [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10816, Recommendation:

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

1. If a party intends to appear electronically at any hearing, they shall file and serve a notice no later than fifteen days prior to the scheduled hearing. Any party may object to such notice by filing a petition showing good cause pursuant to rule 10510.

Discussion:

Under the continuing circumstances of the global pandemic, and as supported by sound public health policy, the Institute believes that the opportunity to appear electronically should be as a matter of right, and suggests that the burden to show good cause be placed on a party opposing such electronic appearance. As presently written, the rule would impose too high of a burden and require too much formal litigation, particularly when it is considered that these proposed rules have been suggested precisely because a system for appearing electronically is in place and is working well. A sunset clause may be appropriate.

1. Ellen Sims Langille, Esq., California Workers' Compensation Institute, [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10817, Recommendation:

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

1. If a witness intends to testify electronically, the witness or the party offering the witness’s testimony shall file and serve a notice identifying the witness and containing the witness’s full legal name, mailing address, email address, and telephone number no later than fifteen days prior to the scheduled hearing. Any party may object to such notice by filing a petition showing good cause pursuant to rule 10510.

Discussion:

Under the continuing circumstances of the global pandemic, and as supported by sound public health policy, the Institute believes that the opportunity for a witness to appear electronically should be as a matter of right, and suggests that the burden to show good cause be placed on a party opposing such electronic appearance. As presently written, the rule would impose too high of a burden and require too much formal litigation, particularly when it is considered that these proposed rules have been suggested precisely because a system for appearing electronically is in place and is working well. A sunset clause may be appropriate.

1. Ellen Sims Langille, Esq., California Workers' Compensation Institute, [elangille@cwci.org](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Celangille%40cwci.org), 10818, Recommendation:

§ 10818. Recording of Proceedings.

1. Recording of proceedings shall be permitted only on written order by the Workers’ Compensation Appeals Board. Any person who wishes to record a proceeding shall file a written petition showing good cause pursuant to rule 10510 no later than thirty business days prior to the scheduled hearing. The Workers’ Compensation Appeals Board may hold a hearing on the request or rule on the request without a hearing. The 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.
2. [STRIKE ALL]

Discussion:

In subsection (a), we recommend that a deadline be attached to the timing of a petition to record proceedings in order that other parties may be kept apprised and provided with sufficient time to register an objection. Unofficial recordings of court proceedings have always been discouraged, and we question why a shift to virtual hearings might necessitate a relaxation of rules surrounding this practice.
In this same vein, we recommend striking subsection (b) in its entirety. It is in apparent conflict with subsection (a), in that (a) requires permission from the WCAB while (b) considers permission from the judge. If it is truly the WCAB’s intent here to allow either a recording authorized by the WCAB or a recording for personal use authorized by the judge, then the Institute questions the need for a separate subsection addressing personal use, inasmuch as the only official recording under subsection (e) is that of the designated court reporter, and any other recording is by definition for personal use.

1. James Rossi, Rossi Law Group, , 10815, I am the president of Rossi Law group. We are approximately 20 attorneys doing the defense of Worker’s Compensation claims. I have consulted with my attorneys and it was unanimous that everyone prefers the remote hearings other than for trials. The moral of my employees has been much better and the lack of stress of driving has improved the quality of their lives. We are going to be working remotely as the attorneys love being able to work from home. The attorneys can handle quite a few more cases because of the lack of travel which is a savings for the client. From a business owner perspective, not having 20 attorneys all over the roads is great peace of mind not only for safety and liability, but keeps vehicles off the road for numerous other positive affects. We strongly support remote hearings continuing as they have been with the exception of trials which we believe should be in person.
2. Kevin Mitchell, Mitchell & Storm, (714)656-8782, 10745, In regards to Person with underlying condition and have to stay away from people even though we have been vaccinated. I myself have chronic COPD and High Blood pressure, Can we be excuse for in person at this time and only do virtual lien trials. And if so is there a procedure to make sure this happens. It is still very dangerous out there.

Kevin Mitchell

Mitchell & Storm

1. Carrie Weaver, Colantoni, Collins, Marren, Phillips & Tulk, LLP, [cweaver@ccmpt.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Ccweaver%40ccmpt.com), 10815, With the availability of electronic appearances over the last year and a half, the workers’ compensation community has experienced collaboration of the parties, claim resolutions, and efficiently managed court calendars. It has been a positive and successful change. From a public health standpoint, it seems premature to return to in-person attendance for any hearings absent good cause in the middle of another wave of the pandemic with members of the community at high risk, certain age groups still ineligible for vaccination, and with the efficacy of the existing vaccines on the newer variants of the virus not yet determined. From a practical standpoint, the electronic appearance option increases access to hearings for witnesses, increases availability of interpreters, and allows Judges to offer hearings more regularly in remote areas. With the success the community has already seen from the availability of the electronic appearance option, a return to in person only attendance at hearings seems to be an unnecessary move backwards. We encourage an immediate adoption of Proposed Rule 10185 with an effective date of October 1, 2021.
2. Mindi Redden, Rossi Law Group, [mindi.redden@rossilawgroup.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cmindi.redden%40rossilawgroup.com), 10815, My colleagues and I have discussed the benefits to remote hearings extensively. Thus far, I have not heard any support in favor of returning to in-person hearings with the exception of trial. Obviously, the primary benefit to remote hearings is public safety. Further, remote hearings are far more efficient. Parties are more communicative in advance of hearings rather than waiting until the day of the hearing to discuss the issues. It also prevents the need to drive for long periods to participate in a 20 minute hearing. It frees up in-office time and availability of the parties to allow a more collaborative process.
3. Steven A. McGinty, Asst. Chief Counsel, Office of the Director-Legal Unit, Director of Industrial Relations as Administrator of the Subsequent Injuries Benefits Trust Fund, [smcginty@dir.ca.gov](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Csmcginty%40dir.ca.gov), 10462, We write on behalf of the Director of Industrial Relations to comment on the proposed amendments to section 10462. The Director is the trustee or administrator of the Subsequent Injuries Benefits Trust Fund (SIBTF or Fund) (Lab. Code, § 62.5, subd. (c)), and has a significant interest in regulations effecting administration of the Fund. In addition, the Director’s representatives have years of experience litigating and resolving SIBTF claims.

The WCAB proposes to add a meet and confer requirement to section 10462, by adding subdivision (d), “to assist the parties and the SIBTF in properly framing the issues and investigating claims for SIBTF benefits in a timely manner, so that such claims can be efficiently and effectively adjudicated.” Unfortunately, subdivision (d) will be burdensome, inefficient, and ineffective as currently written. It will not meet the stated specific purpose. Below we explain concerns about the proposed rulemaking and offer several reasonable alternative suggestions for amendments to section 10462 that will be more effective and less burdensome than the proposed amendment in carrying out the purpose of the proposed rulemaking.

As the WCAB is aware, there has been an enormous increase in the number of claims filed for SIBTF benefits. In the period FY ’13-’14 to FY’19-’20, the number of applications tripled from 755 to 2446 per year. (See Commission on Health and Safety and Workers’ Compensation (CHSWC) Annual Report for 2020 at p. 128 (<https://www.dir.ca.gov/chswc/Reports/2020/CHSWC_AnnualReport2020.pdf0>).) Experienced examiners are handling upwards of 1,209 cases each. In this environment, claims adjustment has been challenging.

One of the main challenges adjusters face is the failure of applicants to provide proper documentation of their claim timely or at all. Many applicants fail or refuse to provide medical-legal reports substantiating the normal benefits (subsequent injury) claim. Applicants tell adjusters to access the Electronic Adjudication Management Systems (EAMS) and look for medical reports. As the Board knows, not all medical reports obtained in the underlying normal benefits case are in EAMS. Applicants neglect or refuse to provide information regarding payments they received for or account of their alleged preexisting disability. The WCAB is aware of the latter problem having issued a panel decision recently on discovery of social security disability payments. A Board panel ruled that if necessary, a workers’ compensation judge (WCJ) may order document production from applicant regarding credit. (Angell v. Subsequent Injuries Benefits Trust Fund (2021) 86 Cal.Comp.Cases 419, 426 (panel).) The panel determined that, “relevant information and documentation available through applicant’s Social Security Administration on-line account…are sources of information and documentation within applicant’s possession, custody, and control.” (Id. at p. 429.) Unfortunately, the Board’s proposed amendment does not deal with this latter major problem SIBTF faces in evaluating claims. The lack of information about credit, a mandatory element of SIBTF claims under section 4753. Instead, the amendment to the rule focuses solely on the eligibility requirements of section 4751.

Moreover, the Board’s own rule hampers the timely resolution of SIBTF claims. Rule 10462, subdivision (c) permits applicants to wait until 30 days prior to a scheduled mandatory settlement conference to serve SIBTF with medical reporting. (Cont.)

1. Steven A. McGinty, Asst. Chief Counsel, Office of the Director- Legal Unit, Director of Industrial Relations as Administrator of the Subsequent Injuries Benefits Trust Fund, [smcginty@dir.ca.gov](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Csmcginty%40dir.ca.gov), 10462, (Comment continued.) Thus, a meet and confer requirement will not address the real causes of delay: the failure by applicants to provide documentary support for eligibility and credit in a manner that permits timely evaluation of claims.

Finally, the meet and confer requirement would be burdensome. Done properly, the meet and confer session would resemble an informal settlement conference. The proposed rule requires a meet and confer before each hearing (“[N]o later than 30 days prior to the mandatory settlement conference or other hearing,…) (Emphasis added.) Thus, there could be multiple meet and confer sessions for a single claim. Adjusters, already hard pressed for time to evaluate and prepare settlement authority for properly documented claims, would have to spend time preparing for meet and confer sessions.

Moreover, the rule would be duplicative. The Board has proposed a meet and confer for all claims prior to a mandatory settlement conference. (See proposed amendment to rule 10759, subd. (b).)

For more efficient and effective adjudication of SIBTF claims, we recommend the WCAB do the following:

* + Amend section 10462, subdivision (c) to add a requirement that the applicant for SIBTF benefits shall serve SIBTF and OD-Legal with all medical reports addressing medical-legal issues in the normal benefits claim simultaneously with the application for SIBTF benefits.
	+ Rewrite proposed section 10462, subdivision (d), to add a requirement that after the joinder of SIBTF, and before beginning discovery, the applicant must first request a status conference at which the parties will prepare a discovery plan for the WCJ to review. Further, that discovery must be complete before the applicant may file a declaration for readiness to proceed to a mandatory settlement conference.
	+ Add a new subdivision (e) to section 10462, as follows:

“Prior to filing a Declaration of Readiness to Proceed (DOR) requesting the setting of a Mandatory Settlement Conference in a SIBTF case, an applicant (or counsel) must serve on SIBTF Claims and OD-Legal, counsel for SIBTF, at least 30 days prior to the filing of the DOR, a communication providing, at a minimum, all of the following information: (1) the date of injury, nature of injury, final permanent disability established by award or stipulation, and ADJ case number for the subsequent industrial injury that is alleged as the basis for the SIBTF claim; (2) a copy of the Findings and Award, Stipulations and Request for Award or Compromise and Release that resolved the subsequent industrial injury, if such case is final as of that time; (3) a statement of the prior permanent partial disabilities that are alleged to have pre-existed at the time of the subsequent industrial injury and that are alleged as a basis for the SIBTF claim, (4) the alleged percentage of prior permanent partial disability that existed on the date of the subsequent industrial injury; (5) a list of the medical records and/or reports and/or other evidence that support the applicant’s position as to prior permanent partial disabilities; (6) a summary of the evidence alleged to establish that the prior permanent partial disabilities were actually labor disabling at the time of the subsequent industrial injury; (7) the applicant’s allegation as to the degree of their final permanent disability resulting from the combination of the subsequent industrial injury and the prior permanent partial disabilities; (8) a list of the medical records and/or reports that support the applicant’s position as to the degree of combined permanent disability; (9) the amount and source of payments applicant received for or on account of preexisting disability, and (10) the applicant’s settlement demand.

(Cont.)

1. Steven A. McGinty, Asst. Chief Counsel, Office of the Director-Legal Unit, Director of Industrial Relations as Administrator of the Subsequent Injuries Benefits Trust Fund, [smcginty@dir.ca.gov](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Csmcginty%40dir.ca.gov), 10462, (Comment continued.)

An applicant’s failure to serve timely the communication required by this subdivision, and/or failure to include all of the information required, shall be grounds for an Objection to the DOR, to the setting of a Mandatory Settlement Conference and to the setting of a trial.”

By ensuring that SIBTF has discovery early, that a WCJ reviews the parties' discovery plan, that discovery is complete, and that a coherent settlement demand, supported by all necessary records and a statement of all elements of the claim, has been submitted to SIBTF and OD-Legal, before a mandatory settlement conference is scheduled, the WCAB can meet its goal of efficiency and effectiveness in adjudicating SIBTF claims.

1. Marilee Bridges Hazen, submission is not on behalf of firm but as an anonymous individual with confidential health information, , 10815, First of all the WCAB and workers compensation community transitioned to a virtual operation as a result of the pandemic and for the most part the system has been operating efficiently. With the decision to return to in person hearings, I do have concerns. What protocols will be in place to protect the health and safety of all attendees at the WCABs? Who will enforce the protocols? What will be done if individuals do not comply with the recommendations? As it is the general public do not agree on appropriate measures (vaccines vs no vaccines; masks vs no masks; type of masks and proper wearing of masks; social distancing). In public places there have been altercations over what is required due to the pandemic.

At this time we do not know if there will be a surge especially with the flu season starting in September/October. Some illnesses are so easily transmitted and will there be a cleaning crew at the WCAB during operating hours? Just before the lockdown, I was at the WCAB in an attorney conference room. An attorney was getting sick and sneezing into their hand. That attorney left the room opening the door with the sneezed on hand. The attorney then went to the hearing room and using the sneezed on hand opened the only public access door to the hearing room. Presumably the attorney only had a cold; but we do not know for sure. Needless to say, the germs were on the doors which the attorneys, injured workers, staff, etc, had to also touch.

There are injured workers who do not want to travel due to covid. In one of my cases the applicant refused to fly from Arizona to California for a PQME evaluation and drove instead due to covid. Many of the injured workers are compromised in their health. Most likely there are judges, staff, and attorneys who are also compromised and more susceptible to becoming ill. Confidentially, I am a cancer survivor with one kidney and must be careful.

What will happen if a judge, staff member, attorney, injured worker, and/or witness contracts covid at the WCAB? There is a case whereby a Sees employee contracted covid allegedly at work. She brought covid home to her husband and daughter. Her husband died and there is now litigation as to the culpability of Sees. A less drastic consideration is the upheaval if a judge or attorney becomes ill with covid as to having to quarantine. There will be a disruption in the upcoming hearings as well as issues as to whoever they came in contact with.

Some of my colleagues advocate for a return to the way it was and to proceed with hearings in person. Some colleagues are concerned about the health and safety of others. Some have considered the benefit of less travel and less emissions into the environment. Others find virtual hearings more accommodating for witnesses, especially those who are at a distance from the WCAB.

Initially, I was concerned about remote hearings. I had done some remote hearings for Social Security prior to the pandemic and they actually went forward without a hitch. However, with workers compensation hearings and depositions, I was concerned about not being in person to observe the deponent or witness as to presentation, credibility, etc. With MSCs, I had doubts as to whether we would accomplish anything without being face to face. So far the hearings have been productive and efficient. For the most part, the opposing counsel is responsive prior to the hearing and we are able to appropriately address the issues in order to be prepared for the hearings whether we resolve the issue or have to set the matter for trial. The only hiccup has been when someone does not have stellar internet connection or a barking dog; however, we have been able to work through those issues. I have only had issues with one firm as far as failing to return calls and refusing emails and faxes.

In short I am concerned about the health and safety above all with a return to in person hearings.

1. Armando S. Mercado, Synapse Medical, Ronco Drugs, West Star PT, (818) 800-8314, 10745, I live with. 73 Year old adult with health issues and I cannot afford to get sick.
2. Slade Neighbors, Slade Neighbors, A Professional Law Corporation, Slade Neighbors, 10815, I am a defense attorney, have practiced work comp defense for 35 years, own a defense firm and fully support the proposed rules 10815 to 10817. I have had several trials using this method and found it much more efficient and effective than personal appearances. The parties should be given this option on conducting trials electronically. A great deal of time and costs are spent at the district office by travel and waiting around at the board for something that can be done by phone or LifeSize Video. I do not need to spend money for offices all over the state with such a system. Also, many trials, especially expedited, take less than 2 hours electronically. But when in person it turns into a full day. If the case does not proceed because of another trial or judge is out, it might only require 15 to 30 minutes by phone instead of several hours at the Board. We get much more done and do not have to bill clients for those many hours of an appearance. True, some trials will require physical appearances but this is rare and are provided for in the rules. A goal of work comp is efficiency and streamline approach when compared to civil. This fits the bill.
3. Richon Norris, , , 10816, Appearing in person in not only inefficient but it's dangerous given the spread of variants of the virus. The presumption should be trial virtually with parties able to petition for in person trials left to the discretion of the trial judge.
4. Patrick Namanny, Mix & Namanny, APC, [pnamanny@mixnamanny.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cpnamanny%40mixnamanny.com); or (949) 290-1430, 10756, To Whom It May Concern:

I'm concerned about the WCAB's proposed reopening for "In Person" Trials, effective October 1, 2021. Personally, I feel it's somewhat premature to do so, and would request that the decision to hold "in person" appearances of any nature be strongly reconsidered.

On purely a personal level, I'm an active practicing attorney, and at age 68, have a number of the underlying immune compromised conditions or symptoms that make me a prime target to contracting Covid-19 or one of it's many variants. Although both my wife [also a senior citizen] and I are both fully vaccinated, that is not a fool-proof measure from contracting the disease, and we of course don't know how long the vaccines can continue to be effective.

In any event, aside from myself, I truly believe that it's currently unreasonable to subject the health, safety and continued well-being of the general public [and their representatives] to appear for "in person" trials at the WCAB.

In workers' compensation lingo, it's arguably an unreasonable risk of harm that is tantamount to "serious and willful misconduct."

It's clearly premature to open the Boards back up for any "in person" appearances. The pandemic is not over! In fact, the number of cases are on the rise again in a number of states; and within just the last few weeks, have reached record highs in a number of counties in California. Furthermore, there are a number of new variants that are extremely contagious.

I do not feel comfortable exposing my clients, my employees or my family to what is clearly still an unreasonable risk of harm. It's important to remember that the potential harm we're referring to is very real, and potentially life-threatening; it's not merely the flu or a cold, as some have attempted to claim; it's deadly! Millions have already lost their lives to this pandemic; we should do all that we can to avoid adding to that number.

We have the proven technology to conduct the trials on a remote basis. We have been doing so for well over a year and there is no reason not to continue to do so until the risk of harm has been reasonably mitigated.

By requiring us to appear in person for trials, those of us appearing for the trial are not the only ones potentially being exposed. Everyone appearing are also potentially exposing each of their immediate families and co-workers or others that they subsequently come in contact with.

The mandatory use of masks does not eliminate the risk. And by allowing individuals to appear in person who are unvaccinated further compounds the problem. Individuals who are unvaccinated have a far greater incidence of contracting and carrying the virus, and thereby spreading it.

Finally, there are countless accounts of individuals of all ages that have contracted the virus and died. You may know of some personally. I do. And I don't want the WCAB's decision-making to add to that list.

For the aforementioned reasons, I respectfully request the Board reconsider their requirement to appear in person for all trials commencing October 1, 2021.

Sincerely,

Mix & Namanny

A Professional Corporation

Patrick N. Namanny

Senior Partner

1. Duane Livingston , N/A (Self -- licensed California attorney) , duanelivingston@gmail.com 805-701-2662, 10305, September 24, 2021

Re: Subsection (h) of section 10305, Title 8, California Code of Regulations:

1. "District office” means a location of a trial court of the Workers' Compensation Appeals Board and includes a permanently staffed satellite office.

I believe subsection (h) should instead read:

1. “District office” means a location of a trial court and/or administrative services of the Division of Workers' Compensation and includes a permanently staffed satellite office.

In short, the reasoning for this change is: I believe the trial courts -- i.e., such courts/hearing rooms which are presided by the workers' compensation administrative law judges (WCALJ) of the several DWC District Offices -- are NOT a part of the WCAB; rather, as explained below, the WCAB is an entity that stands apart from the DWC district office trial courts and WCALJs, and vice versa. (NOTE: I discussed this with DWC Chief Judge Paige Levy about 3-4 years ago and, as I recall, she agreed with me.)

DISCUSSION

Upon a thorough review of the any applicable Labor Code provisions and the regulations of Title 8 of the California Code of Regulations, as discussed below, the DWC district offices (the trial courts/hearing rooms and otherwise) are simply not a part of the WCAB.

While the WCAB arguably is an entity under the umbrella of DWC – except for the exercise of judicial powers vested to it under the Labor Code (Labor Code section 111)-- in most respects, the DWC and the WCAB remain separate entities under the umbrella state agency of the Department of Industrial Relations of the State of California (DIR). While many in the practice of California workers’ compensation law (including many well-respected and knowledgeable attorneys, workers’ compensation administrative law judges [WCALJ or WCJ], and many others) make daily references to the DWC courtrooms/adjudication hearing rooms and the respective, corresponding WCALJs of the twenty-eight (28) local DWC district offices as the “WCAB” (or, the “Board”), this appears to simply be incorrect. (See Labor Code sections 19, 27, 50, 56, 110, 111, 112, and 115; see also the web site of the California Department of Industrial Relations in the respective descriptions of the DWC and WCAB.)

The composition of the WCAB is specifically defined at subsection (a) of Labor Code section 110, as well as at Labor Code sections 111 and 112). In short, the members of the WCAB are commissioners – not administrative law judges – and the primary task of the WCAB is to review and make decisions on petitions for reconsiderations (cf., “appeals”) as to the orders of the WCALJs of the DWC trial courts. (See Labor Code section 115.) Indeed, there is nothing in these Labor Code provisions that define or indicate – expressly or implicitly -- that WCALJs and the trial courts in which they preside are a part of the WCAB.

The local DWC district offices and its trial courts are no more “the WCAB” – or a part of the WCAB -- than the several county California superior courts are a part of the respective several California court of appeal districts; and, subdivision (h) of section 10305 should not reflect this. And, of course, to the extent he Labor Code and the provisions of Title 8, California Code or Regulations conflict, the Labor Code pre-empts the regulations.

In sum, the wording of subsection (h) of section 10305 should be changed as I indicate above, as the WCAB and the trial courts of the DWC District offices should remain separate and distinct entities. (NOTE: This would not change the authority given the WCAB to promulgate regulations applicable both to it and the DWC district office trial courts. [See Labor Code section 111.])

Respectfully submitted,

Duane Livingston

California State Bar # 141010

805-701-2662

[duanelivingston@gmail.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cduanelivingston%40gmail.com)

1. Robert Haag, Rehab Solutions (Lien Claimant), [roberth@rehabsolutions.us.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Croberth%40rehabsolutions.us.com), 10815, It is felt that "Remote" hearings, testimony, etc. should remain as it has significantly increased the efficacy of lien hearings. In addition, it has helped to decrease the risk of transmission of the ongoing novel coronavirus (COVID-19) which is why the change in the matter transpired in the first place.
2. Diane Dubois, Rehab Solutions Lien Claimant, [dianed@rehabsolutions.us.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cdianed%40rehabsolutions.us.com), 10817, I agree with the testimony given this morning regarding the Trials to remain remote. Please consider that we are still in a pandemic and the public health risk is too high. It is still a necessary precaution to remain remote. From a Lien Claimant prospective; the remote hearings have been more productive in escalating the amount of lien settlements which will lower the burden on the WCAB. If we have to go to Lien Trial, we have a much higher chance of providing our witnesses remotely, Especially for the Oxnard WCAB for applicant testimony. I agree that finding interpreters willing to take the health risk will be difficult. At the lien conference, if one party objects to remote Trial, It should not be set for automatic in person, but rather be the Judges decision after hearing both sides to make it a fair process and not give one party leverage as a bad faith tactic to inconvenience the other party and cause unnecessary harassment.
3. M Elena Wilson, , [Elewilsonint@gmail.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5CElewilsonint%40gmail.com), 10815, Good afternoon. Thank you for allowing the opportunity to address concerns via written form. -1. With regard to the in person appearances to administrative hearings (Workers Comp) and maybe applicable to other settings as well, I understand the desire to see the expresión of witnesses for veracity and credibility purpose, facial expressions, gestures, etc., however that will not be possible in person. Witnesses must obey the mask at all times mandate and the facial expressions will therefore be unavailable to the court. It is a better possibility in video appearance since there’s no in home mandate to wear a mask.
4. Simultaneous interpreting will continue to be impossible since 6ft apart for social distancing is a protection to everyone attending the venue including interpreters and sizing of rooms will be an issue. Interpreters will continue to be unable to whisper to the witness due to social distancing measures for protection. The interpreter’s health and welfare is in grave jeopardy Court Interpreters have lost their lives due to Covid infection at work and deserve to be protected as much as anyone else present.
5. I understand liability for contracting the virus has been addressed for state employees only. Is the state prepared for the consequences of enforcing everyone to the rule to appear in person which includes non employee elements such as Witnesses, Defense Attorneys, Applicant Attorneys, Hearing Representatives, Court Reporters, Interpreters, Lien Claimants, etc., when the availability to appear virtually is denied. It is not the employer enforcing the rule but the State of California. This impacts the many with suppressed immune system conditions who are at high risk and are forced to be in person or else lose their work and income.
6. Lobbies and waiting áreas will continue to be a focus of contagion due to the number of trial settings that include at least one if not more witnesses called to testify.
7. Is there a possibility to have Hybrid hearings that allow attorneys to be present and witnesses on camera to prevent the possibility of a high number of people present at court at once.
8. We know that the majority of cases settle on the date of trial and since that is a reality we know and understand, should the in person mandate be imposed only to those cases that have exhausted every possibility to be resolved otherwise. Allowing first and second time settings to continue to appear virtually or be called for a later in the day schedule.

Thank you again for allowing me to expose my concerns and hope decisions and measures are considered for the benefit of everyone involved.

Thank you again

M Elena Wilson

Ca. Certified interpreter.

1. Jonathan Alvanos, , , 10815, There is little reason to have any hearing be mandatory in person. Hearings (non-trials) are exceedingly quick and are usually chaotic and require long lines to see a judge. Telephonically there are no such issues. As for trials, they are quick and easily done over LifeSize. Not only is the time and effort to get to the Board an inefficient use of resources, there is possible way the Board will be made safe to those who enter. In Riverside, the rooms are too confined, there is no ventilation, no ability to distance. Even at trial, you are right next to someone else. This is entirely unfair to those who have young children who are unable to be vaccinated or those who live with someone who is high risk. A trial should be petitioned to be in-person, not vice versa. Same with witness testimony and any other hearing.
2. Ani Balian, Citywide Scanning Service, Inc., [nonibr@citywidescanningservice.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cnonibr%40citywidescanningservice.com), 10759, Pursuant to § 10759(c) any paper or record having a different author/provider and/or a different date is considered a separate “document” and must be listed as a separate exhibit. However, subsection (3) exempts EOBs from this standard. Many Defendant’s list as exhibits “EOB/EOR/OBJ Various” and submit 30+ pages of bulk EORs with no order to them nor identification as to which invoices they are for. On the contrary, providers are required to submit each invoice as a different exhibit due to the different dates of the invoice/DOS. Moreover, there is no way of telling if Defendant added any EORs to their bulk set after placing them on the exhibits list as no page count is identified, nor dates, nor for which invoice each EOR/EOB/OBJ is for. This leaves window open in favor of Defendant to be able to alter their EOB exhibits without provider or WCAB notice/knowledge. Defendant’s bulk “various” EORs do not allow provider the proper due process of reviewing the proposed evidence in order to be able to submit counter evidence if necessary. Timeliness and compliance in EORs is defendant burden to sustain. Our experience, as med-legal cost petitioner, has proven that by lumping all EOR together in a large PDF file, the EORs are not efficiently adjudicated. Courts do not take tame to break down each EOR, match it to an invoice and review timeliness and compliance of the document. The adjudication of EORs directly affects the reimbursement of the medical-legal services.
3. Anne Balian, Citywide Scanning, Inc.[, nonIBR@citywidescanning.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5CnonIBR%40citywidescanning.com), 10625, The officially listed chosen method of service submitted to the DWC in the UAN database should not be removed as the official method of service for a participant.

Otherwise pasties in the system could be subject to claims of service on a myriad of old and outdated email addresses that are no longer current.

There is no need to remove that existing regulatory subsection of the UAN database definition of the officially chosen method of service for a provider and will only lead to potentil chaos.

1. Shayne McDaniel, , , 10305, I believe the appearances should remain in person for the following reasons:
2. Virtual is more efficient
3. Due to the size of the courtrooms social distancing is impossible
4. Esteban Ramirez, Ramirez & Associates, [esteban@ramirezassociates.net](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cesteban%40ramirezassociates.net), 10817, Please reconsider the motion to appear at the WCAB for CIC Trials and LT. Until the COVID pandemic is over it is our responsibility to keep all people safe from unwanted exposer. After hearing everyone's position it is clear I cannot risk appearing for a Trial at the WCAB venue without risking the health of all the people their and my family at home. I am a father of two children and they cannot be vaccinated yet. It is simply too soon to appear in court and take that risk. Please reconsider.
5. Ani Balian, Citywide Scanning Service, Inc., [nonibr@citywidescanning.com](file:///C%3A%5CUsers%5CZane%20Dundon%5CDownloads%5Cnonibr%40citywidescanning.com), 10625, Pursuant to current § 10625(b)(4) a document may be served using a party’s preferred method of service. In the proposed amendments this section is removed and electronic service is permitted. However, for those whose preferred method of service is electronic, this is not ensured and leaves the decision of method of service to the opposing party making the service. In addition, preferred method of service allows parties to specify the appropriate information for electronic service. Without this ability, parties can serve any such email or fax number and claim they served the opposing party. There is no room for allowance of specifying information for electronic service. Often times, parties file documents one or two days prior to a hearing. If the opposing party is allowed to choose which method of service they carry out and they conduct service via mail, the receiving party will not receive said documents until after the hearing. Allowing parties to choose their own preferred method of service or to minimally specify the information for their preferred electronic service ensures timely and efficient service and allows proper time for possible due process matters.
6. Eva Bilac, , , 10305, This email is not reference to any particular regulation, but rather is in regards to the decision to return to in person hearings.

I am an attorney and I only speak for myself and not the organization where I work. However, I can honestly say I speak for many attorneys, defense and applicant attorneys, and other litigants when I opine it is ill advised to return to in person trials, expedited hearings and lien trials. I hold this opinion for the same reasons expressed by those who spoke today. I think it is telling that there were 208 who attended the open forum and not one person spoke in favor of returning to in person hearings.

I share some of my thoughts:

1. For over 19 months we have proven remote hearings are not only as efficient as in person hearings but actually more efficient.
2. It is better to error on the side of caution…the pandemic is not yet over.
3. A return to in person hearings exposes all of us, especially those with medical conditions and those who are in the vulnerable age bracket; this is true even for those who are fully vaccinated. Although those who have medical conditions can apply for accommodation, you are forcing people to share health issues which they would rather keep private. Those who are in the vulnerable age bracket and do not have health issues are still at risk and would not be able to file for accommodation. The decision to go back is discriminatory to the most vulnerable population.
4. There is no more ill use of time than to force in person lien trials. Most of these cases, like cases in chiefs, are settled and when a lien trial does go forward most are submitted.
5. As stated by a few of the people who spoke, the consequences of going back to in person is far broader than the pandemic. We are experiencing unprecedented climate issues and in California we add to it many fold in our use of cars and the roads. We as a community have an opportunity to take action and set an example for other State agencies and organizations. We can join private companies who have concluded that telework and remote work is a benefit for all.

Thank you.