

**State of California
Office of Administrative Law**

In re:
Workers Compensation Appeals Board

Regulatory Action:

Title, California Code of Regulations

Adopt sections: 10582.5, 10770.1

Amend sections: 10770

Repeal sections:

NOTICE OF FILING AND PRINTING ONLY

Government Code Section 11343.8

OAL File No. 2012-0508-01 FP

The Workers' Compensation Appeals Board proposed to adopt sections 10582.5 and 10770.1 and amend section 10770 in Title 8 of the California Code of Regulations concerning dismissal of inactive lien claims for lack of prosecution, lien conferences and lien trials, and the filing and service of lien claims. This regulatory action is exempt from review by the Office of Administrative pursuant to section 11351 of the Government Code.

OAL filed this regulation(s) or order(s) of repeal with the Secretary of State, and will publish the regulation(s) or order(s) of repeal in the California Code of Regulations.

Date: 5/21/2012

RAIG TARPENNING

Craig S. Tarpenning
Senior Staff Counsel

For: DEBRA M. CORNEZ
Director

Original: Steven Smith
Copy: Rick Dietrich

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2011-0726-07	REGULATORY ACTION NUMBER 2012 0508 01FP	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED FILED
 IN THE OFFICE OF

2012 MAY 21 PM 3:02

2012 MAY -3 AM 10:37
 OFFICE OF
 ADMINISTRATIVE LAW

Debra Bowen
 DEBRA BOWEN
 SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY
WORKERS' COMPENSATION APPEALS BOARD

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) WCAB Rules of Practice and Procedure	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Article 8, Section 10582.5; Article 13, Section 10770.1
	AMEND Article 13, Section 10770
TITLE(S) 8	REPEAL

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input checked="" type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Rick Dietrich	TELEPHONE NUMBER 415 703-4554	FAX NUMBER (Optional) 415 703-4549	E-MAIL ADDRESS (Optional) rdietrich@dir.ca.gov
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8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 5/04/2012
TYPED NAME AND TITLE OF SIGNATORY Ronnie G. Caplane, Chairwoman	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 21 2012

Office of Administrative Law

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 01-09) (REVERSE)

INSTRUCTIONS FOR PUBLICATION OF NOTICE AND SUBMISSION OF REGULATIONS

Use the form STD. 400 for submitting notices for publication and regulations for Office of Administrative Law (OAL) review.

ALL FILINGS

Enter the name of the agency with the rulemaking authority and agency's file number, if any.

NOTICES

Complete Part A when submitting a notice to OAL for publication in the California Regulatory Notice Register. Submit two (2) copies of the STD. 400 with four (4) copies of the notice and, if a notice of proposed regulatory action, one copy each of the complete text of the regulations and the statement of reasons. Upon receipt of the notice, OAL will place a number in the box marked "Notice File Number." If the notice is approved, OAL will return the STD. 400 with a copy of the notice and will check "Approved as Submitted" or "Approved as Modified." If the notice is disapproved or withdrawn, that will also be indicated in the space marked "Action on Proposed Notice." Please submit a new form STD. 400 when resubmitting the notice.

REGULATIONS

When submitting regulations to OAL for review, fill out STD. 400, Part B. Use the form that was previously submitted with the notice of proposed regulatory action which contains the "Notice File Number" assigned, or, if a new STD. 400 is used, please include the previously assigned number in the box marked "Notice File Number." In filling out Part B, be sure to complete the certification including the date signed, the title and typed name of the signatory. The following must be submitted when filing regulations: seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification) and the complete rulemaking file with index and sworn statement. (See Gov. Code § 11347.3 for rulemaking file contents.)

RESUBMITTAL OF DISAPPROVED OR WITHDRAWN REGULATIONS

When resubmitting previously disapproved or withdrawn regulations to OAL for review, use a new STD. 400 and fill out Part B, including the signed certification. Enter the OAL file number(s) of all previously disapproved or withdrawn filings in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B). Submit seven (7) copies of the regulation to OAL with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). Be sure to include an index, sworn statement, and (if returned to the agency) the complete rulemaking file. (See Gov. Code §§ 11349.4 and 11347.3 for more specific requirements.)

EMERGENCY REGULATIONS

Fill out only Part B, including the signed certification, and submit seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). (See Gov. Code § 11346.1 for other requirements.)

NOTICE FOLLOWING EMERGENCY ACTION

When submitting a notice of proposed regulatory action after an emergency filing, use a new STD. 400 and complete Part A and insert the OAL file number(s) for the original emergency filing(s) in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B). OAL will return the STD. 400 with the notice upon approval or disapproval. If the notice is disapproved, please fill out a new form when resubmitting for publication.

CERTIFICATE OF COMPLIANCE

When filing the certificate of compliance for emergency regulations, fill out Part B, including the signed certification, on the form that was previously submitted with the notice. If a new STD. 400 is used, fill in Part B including the signed certification, and enter the previously assigned notice file number in the box marked "Notice File Number" at the top of the form. The materials indicated in these instructions for "REGULATIONS" must also be submitted.

EMERGENCY REGULATIONS - READOPTION

When submitting previously approved emergency regulations for re adoption, use a new STD. 400 and fill out Part B, including the signed certification, and insert the OAL file number(s) related to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B).

CHANGES WITHOUT REGULATORY EFFECT

When submitting changes without regulatory effect pursuant to California Code of Regulations, Title 1, section 100, complete Part B, including marking the appropriate box in both B.3. and B.5.

ABBREVIATIONS

Cal. Code Regs. - California Code of Regulations
Gov. Code - Government Code
SAM - State Administrative Manual

For questions regarding this form or the procedure for filing notices or submitting regulations to OAL for review, please contact the Office of Administrative Law Reference Attorney at (916) 323-6815.

California Code of Regulations, Title 8
Chapter 4.5. Division of Workers' Compensation
Subchapter 2. Workers' Compensation Appeals Board--Rules and Practice
Procedure

Article 8. Hearings

§ 10582.5. Dismissal of Inactive Lien Claims for Lack of Prosecution

(a) A lien claim may be dismissed for lack of prosecution on a petition filed by a party or on the Workers' Compensation Appeals Board's own motion if the lien claimant fails to file a declaration of readiness to proceed by the earlier of:

(1) 180 days after the lien claimant becomes a "party" within the meaning of section 10301(x)(3); or

(2) 180 days after a lien conference or lien trial at which the lien claim was at issue is ordered off calendar.

The 180-day period of subdivision (a)(1) is computed from the date that the original owner of the lien claim became a party or would have become a party if it still owned the lien claim.

(b) At least 30 days prior to filing a petition to dismiss a lien claim for lack of prosecution, the petitioner shall send a letter to the lien claimant and, if represented, to the lien claimant's attorney or representative of record, stating petitioner's intention to file such a petition.

(c) A petition to dismiss a lien claim for lack of prosecution shall be accompanied by all of the following:

(1) A copy of the 30-day letter referenced in subdivision (b).

(2) A declaration under penalty of perjury stating whether:

(A) the lien claimant has served the petitioner with a declaration of readiness and, if so, the date of such service.

(B) the petitioner has received any billing(s) from the lien claimant and, if so, stating either:

(i) the petitioner made a reasonable and good faith payment on each billing consistent with all existing law(s), where applicable, including but not limited to the following: (I) Lab. Code, § 4603.2(b)(1) and Cal. Code Regs., tit. 8, § 9792.5(c) for medical treatment liens; (II) Lab. Code, § 4622(c) and Cal. Code Regs., tit. 8, § 9794(b) & (c) for medical-legal

liens; and (III) Cal. Code Regs., tit. 8, § 9795.4(a) for interpreter liens; or

(ii) the reason(s) why no such payment or tender of payment was made.

(C) the petitioner has timely served all medical reports and medical-legal reports on the lien claimant, to the extent required by section 10608(f).

(d) In addition to the requirements of subdivision (c), a petition to dismiss a lien claim for lack of prosecution shall be accompanied by the following, as applicable:

(1) If the petition seeks dismissal under section 10582.5(a)(1) based on the lien claimant's failure to file a declaration of readiness to proceed within 180 days after the underlying case has resolved within the meaning of section 10301(x)(3)(A), the petition shall be accompanied by:

(A) a copy of an order approving a compromise and release agreement, a stipulated Findings and Award, an adjudicated Findings and Award, or any other decision or order resolving the underlying case; and

(B) if this decision or order was served by designated service under section 10500(a), proof that it was served on the lien claimant.

(2) If the petition seeks dismissal under section 10582.5(a)(1) based on the lien claimant's failure to file a declaration of readiness to proceed within 180 days after the injured employee or the dependent(s) of a deceased employee "choose(s) not to proceed with his, her, or their case" within the meaning of section 10301(x)(3)(B), the petition shall be accompanied by a declaration concisely stating facts to support the "choose(s) not to proceed" allegation. This declaration, at a minimum, shall specify based on the petitioner's knowledge and belief:

(A) the nature and date of the last activity by the injured employee or the dependent(s) of a deceased employee relating to the case; and

(B) the nature and date of the last payment of disability indemnity.

(3) If the petition seeks dismissal under section 10582.5(a)(2), the petition shall be accompanied by a copy of the order taking the lien conference or lien trial at which the lien claim was at issue off calendar.

(e) A copy of the petition to dismiss a lien claim for lack of prosecution shall be served on each of the following, together with a proof of service:

(1) the lien claimant and, if represented, the lien claimant's attorney or representative of record;

(2) any defendant(s) in any case(s) listed on the lien claim or, if represented, the attorney or representative of record of any such defendant(s); and

(3) the injured employee and, if represented, the injured employee's attorney or representative of record.

(f) A lien claim shall not be dismissed for lack of prosecution unless:

(1) the Workers' Compensation Appeals Board has issued a notice of intention to dismiss with or without prejudice, giving the lien claimant at least 30 days to file written objection showing good cause to the contrary; and

(2) the lien claimant fails to timely object or the written objection, on its face, fails to show good cause.

Any objection to the notice of intention shall be filed with the Workers' Compensation Appeals Board and served on the defendant(s).

(g) If a defendant is designated to serve the notice of intention to dismiss under section 10500(a), the defendant shall serve the notice of intention within 10 business days. If the defendant does not receive a timely objection (taking into consideration the time extension provisions of sections 10507 and 10508), the defendant shall file and serve a proposed order dismissing the lien and copies of the notice of intention and the notice's proof of service.

(h) An order dismissing a lien claim for lack of prosecution shall be served only by the Workers' Compensation Appeals Board and not by designated service.

(i) All pleadings and declarations filed under this section shall be verified under penalty of perjury in the manner required for verified pleadings in courts of record.

(j) This section shall become operative on August 1, 2012 and, except as provided in subdivision (k), shall apply to all lien claims, regardless of the date of filing of the lien claim, the injured employee's date(s) of injury, or the date(s) on which the lien claimant provided the service(s) that are the subject of the lien claim.

(k) This section shall not apply to the lien claim(s) of any of the following: (1) the Employment Development Department; (2) the California Victims of Crime Program; (3) any lien claimant listed as being excepted under parts (A) through (C) of section

10228(c)(5); and (4) any governmental entity pursuing a lien claim for child support or spousal support.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903, 4903.5, 4903.6, 5404.5, Labor Code.

Article 13. Lien Claims

§ 10770. ~~Lien Procedure~~ Filing and Service of Lien Claims.

(a) Format of Lien Claims:

(1) Unless the lien claimant is excepted by parts (A) through (C) of section 10228(c)(5), any a lien claimant under Labor Code sections 4903 or 4903.1 shall file its lien claim: (A) ~~in writing~~ utilizing an optical character recognition lien claim form approved by the Appeals Board ~~completed in compliance with section 10228(c); or (B) electronically utilizing an e-form as approved by the Appeals Board~~ ~~Administrative Director or the Court Administrator.~~ or CT

(2) Lien claimants ~~excepted by set forth in~~ parts (A) through (C) of section 10228(c)(5) may file a lien claim utilizing ~~a non-optical~~ an optical character recognition form completed in compliance with section 10228(c) ~~provided that it is in the same format and contains the same information as the corresponding OCR form approved by the Appeals Board.~~

(b) Filing of Lien Claims with the Workers' Compensation Appeals Board:

(1) All lien claims filed shall be accompanied by: (1) a full statement or itemized voucher supporting the lien and justifying the right to reimbursement; and (2) a proof of service. Only original (i.e., initial or opening) lien claims accompanied by a proof of service shall be accepted for filing. Except as provided in subdivisions (g) or (h) of section 10233 or as ordered by the Workers' Compensation Appeals Board, no amended liens and no documentation in support of any lien (original or amended) will be accepted. If an original lien is filed with supporting documentation, the original lien shall be filed but not the supporting documentation.

Unless the lien claimant is concurrently filing an initial (case opening) application in accordance with section 10770.5, a lien claim that does not bear an adjudication case number previously assigned by the Workers' Compensation Appeals Board for the injury will not be accepted.

Any lien claim or supporting documentation submitted in violation of this subdivision shall not be deemed filed for any purpose, shall not be

acknowledged or returned to the lien claimant, and may be destroyed at any time without notice.

(2) Any amended lien or documentation supporting any lien (original or amended) previously filed or lodged for filing may be destroyed without notice.

(3) The service of a lien claim on a defendant, or the service of notice of any claim that would be allowable as a lien, shall not constitute the filing of a lien claim with the Workers' Compensation Appeals Board within the meaning of its rules of practice and procedure or within the meaning of Labor Code section 4903.1 et seq., including but not limited to section 4903.5.

(4) Where a lien has been served on any party under Labor Code section 4903.1(b), no party shall have an obligation to file that lien with the Workers' Compensation Appeals Board if:

(A) the lien has been paid in full; or

(B) a good faith partial payment has been made and:

(i) the lien claimant has been concurrently provided with a clear written explanation that both justifies the amount paid and specifies all additional information the lien claimant must submit as a prerequisite to additional or full payment, in conformity with the following, as applicable: (I) Lab. Code, § 4603.2(b)(1) and Cal. Code Regs., tit. 8, § 9792.5(c) for medical treatment liens; (II) Lab. Code, § 4622 and Cal. Code Regs., tit. 8, § 9794(b) & (c) for medical-legal liens; and (III) Cal. Code Regs., tit. 8, § 9795.4(a) for interpreter liens; and

(ii) no additional written demand for payment is made by the lien claimant within 90 calendar days after the partial payment.

(c) Service of Lien Claims and Supporting Documentation on the Parties~~All liens, along with the full statement or itemized voucher supporting the lien, shall be concurrently served as follows:~~

(1) All original and amended lien claims, together with a full statement or itemized voucher supporting the lien and a proof of service, shall be served on:

(A)(1) the injured worker (or, if deceased, the worker's dependent(s)) shall be served, unless:

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

~~(ii)(B)~~ the underlying case of the worker or dependent(s) has been resolved. For purposes of this subdivision, the underlying case will be deemed to have been resolved if:

~~(I)(i)~~ in a stipulated findings and award or in a compromise and release agreement, a defendant has agreed to hold the worker or dependent(s) harmless from the specific lien claim being filed and has agreed to pay, adjust, or litigate that lien claim;

~~(II)(ii)~~ a defendant had written notice of the lien claim in accordance with Labor Code section 4904(a) before the lien claim was filed and, in a stipulated findings and award or in a compromise and release agreement, that defendant ~~has agreed to hold the worker or dependent harmless from all lien claims and~~ has agreed to pay, adjust, or litigate all liens lien claims;

~~(III)(iii)~~ the application for adjudication of claim filed by the worker or the dependent(s) has been dismissed, and the lien claimant is filing or has filed a new application; or

~~(IV)(iv)~~ the worker or the dependent(s) choose(s) not to proceed with his, her, or their case.

~~(B)(2)~~ any employer(s) or insurance carrier(s) that are parties to the case ~~shall be served, and, if represented, their unless the employer(s) or insurance carrier(s) is/are represented by an attorney or other agent of record, in which event service may be made solely upon the attorney(s) or other agent(s) of record.~~

~~Service of a lien on a party shall constitute notice to it of the existence of the lien.~~

(2) The full statement or itemized voucher supporting the lien claim or amended lien claim shall include: (A) any amount(s) previously paid by any source for each itemized service; (B) a statement that clearly and specifically sets forth the basis for the claim for additional payment; (C) proof that the lien claimant is the service provider or owner of the alleged debt; and (D) a declaration under penalty of perjury under the laws of the State of California that all of the information provided is true and correct.

The requirement of proof that the lien claimant is the owner of the alleged debt may be satisfied if, as part of the declaration under penalty of perjury, the declarant states that the lien claimant possesses documents either establishing original ownership of the lien claim or establishing that the right to payment for the claimed services was transferred to the lien claimant by the original owner and any intermediate owners. The lien claimant shall furnish a copy of such documentation to any party or to the Workers' Compensation Appeals Board upon demand and shall have a copy available for immediate production at any lien conference or lien trial.

(3) When serving an amended lien claim, the lien claimant shall indicate in the box set forth on the lien form that it is an "amended" lien claim.

~~(d) The Workers' Compensation Appeals Board shall not accept for filing a lien that does not bear an adjudication case number previously assigned by the Workers' Compensation Appeals Board for the injury, unless the lien claimant is also filing an initial (case opening) application in accordance with section 10770.5.~~

~~(d)(e) The lien claimant shall provide the name, mailing address, and daytime telephone number of a person who will be available at the time of all conferences and trials, and who will have with authority to resolve the lien claim on behalf of the lien claimant.~~

~~(e)(f) After a lien has been filed, the lien claimant shall file any amendments to the lien, together with a full statement or itemized voucher supporting the amendment, and it shall serve the amended lien in accordance with subsection (e). When filing an amended lien, the lien claimant shall indicate on the box set forth on the lien form that it is an "amended" lien. For purposes of this subdivision, an "amended" lien claim includes: (1) a lien claim that is for or includes additional services or charges for the same injured employee for the same date or dates of injury; (2) a lien claim that reflects a change in the amount of the lien claim based on payments made by the defendant; and/or (3) a lien claim that has been corrected for clerical or mathematical error. A subsequent lien claim that adds an additional adjudication case number or numbers is an "amended" lien claim with respect to the adjudication case number(s) originally listed.~~

~~(f)(g) Within five business days after a lien claim has been resolved or withdrawn, the lien claimant shall notify provide written notification to:~~

(1) the Workers' Compensation Appeals Board;

(2) the party defendant(s); or, if represented, their attorney(s); and

(3) the worker or dependent(s) (except as provided in subsection (e)) or, if represented, the attorney(s) for the worker or dependent(s), except that no such notification is required if the underlying case has been resolved as provided in subdivision (c)(1)(A)(ii)(I) through (IV).

(g)(h) The lien claimant shall be notified by the The Workers' Compensation Appeals Board shall either serve or, under sections 10500(a) and 10544, cause to be served notice on all lien claimants of each when any hearing is scheduled, whether or not the hearing directly involves that lien claimant's lien claim.

(h)(i) Inclusion of the injured employee's Social Security number on a lien claim form is voluntary, not mandatory. A failure to provide a Social Security number will not have any adverse consequences. Nevertheless, although a lien claimant is not required by law to include the employee's Social Security number, lien claimants are encouraged to do so because this will facilitate the processing and filing of the lien claim. Social Security numbers are used solely for identification and verification purposes in order to administer the workers' compensation system. A Social Security number will not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the applicant, or as permitted or required by statute, regulation, or judicial order.

(i) Any violation of the provisions of this section may give rise to monetary sanctions, attorney's fees, and costs under Labor Code section 5813 and Rule 10561.

(j) The provisions of subdivisions (b)(3), (b)(4), and (c)(2) shall not apply to any notice of claim or lien claim of: (1) the Employment Development Department; (2) the California Victims of Crime Program; (3) any lien claimant listed as being excepted under parts (A) through (C) of section 10228(c)(5); and (4) any governmental entity pursuing a lien claim for child support or spousal support.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903, 4903.1, 4903.4, 4903.5, 4903.6, and 4904, 4603.2, 4622, and 5813, Labor Code; Sections 9792.5, 9794, 9795.4, and 10561, title 8, California Code of Regulations.

§ 10770.1. Lien Conferences and Lien Trials.

(a) A lien conference shall be set (1) when any party, including a lien claimant who is a "party" as defined by section 10301(x)(3), files a declaration of readiness on any issue(s) directly relating to any lien claim(s); or (2) by the Workers' Compensation Appeals Board on its own motion at any time.

Unless otherwise expressly stated in the notice of hearing, all unresolved lien claims and lien issues shall be heard at the lien conference, whether or not listed in any declaration of readiness. An agreement to "pay, adjust or litigate" a lien claim or its equivalent, or an award leaving a lien claim to be adjusted, is not a resolution of the lien claim or lien issue.

To the extent feasible, the date of the lien conference shall be no sooner than 60 days after the date the notice of hearing for it is served.

(b) Nothing in this section shall preclude the Workers' Compensation Appeals Board, in its discretion, from: (1) setting a type of hearing other than that requested in the declaration of readiness, in accordance with section 10420; (2) issuing a ten-day notice of

intention to order payment of the lien claim, in full or in part, in accordance with section 10888; or (3) issuing a ten-day notice of intention to disallow the lien claim, in accordance with section 10888.

(c) When a party, including a lien claimant who is a “party” as defined by section 10301(x)(3), files a declaration of readiness on an issue directly relating to a lien claim, including any preliminary or intermediate procedural or evidentiary issue, the party shall designate on the declaration of readiness form that it is requesting a “lien conference” and shall not designate any other kind of conference or hearing. If a status conference or any other type of hearing is requested or is set on the calendar, that status conference or other type of hearing shall be deemed a “lien conference” and shall be governed by any and all rules applying to a “lien conference.”

(d) Notwithstanding section 10240, all defendants and lien claimants shall appear at all lien conferences and lien trials, either in person or by attorney or representative. Each defendant, lien claimant, attorney, and hearing representative appearing at any lien conference or lien trial: (1) shall have sufficient knowledge of the lien dispute(s) to inform the Workers’ Compensation Appeals Board as to all relevant factual and/or legal issues in dispute; (2) shall have authority to enter into binding factual stipulations; and (3) shall either have full settlement authority or have full settlement authority immediately available by telephone.

(e) For any lien claim(s) or lien issue(s) not fully resolved at the lien conference by an order signed by a workers’ compensation judge, the defendant(s) and lien claimant(s) shall prepare, sign, and file with the workers’ compensation judge a pretrial conference statement, which shall include: (1) all stipulations; (2) the specific issues in dispute; (3) all documentary evidence that might be offered at the lien trial; and (4) all witnesses who might testify at the lien trial. The right to present any issue, documentary evidence, or witness not listed in the pretrial conference statement shall be deemed waived, absent a showing of good cause. This subdivision shall apply regardless of which action the Workers’ Compensation Appeals Board takes under subdivision (f).

(f) If any lien claim(s) or lien issue(s) cannot be fully resolved at the lien conference, the Workers’ Compensation Appeals Board shall take one of the following actions:

(1) set a lien trial;

(2) upon a showing of good cause, allow a one-time continuance of the lien conference to another lien conference, after which a lien trial shall be set; or

(3) upon a showing of good cause, order the lien conference off calendar.

The action taken shall apply to all unresolved lien claim(s) or lien issue(s).

(g) Discovery shall close on the date of the lien conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can

demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the lien conference.

(h) If a lien claimant fails to appear at a lien conference, the Workers' Compensation Appeals Board may issue a notice of intention to dismiss the lien claim with or without prejudice in accordance with section 10562(d)(1) and/or section 10241(b)(2).

If a defendant is designated to serve the notice of intention to dismiss under section 10500(a), the defendant shall serve the notice of intention within 10 business days. If the defendant does not receive a timely objection (taking into consideration the time extension provisions of sections 10507 and 10508), the defendant shall file and serve a proposed order dismissing the lien and copies of the notice of intention and the notice's proof of service.

An order dismissing a lien claim for failure to appear shall be served only by the Workers' Compensation Appeals Board and not by designated service.

(i) The Workers' Compensation Appeals Board may order that any unresolved lien claim(s) or lien issue(s) be submitted for decision solely on the exhibits listed in the pretrial conference statement if: (1) no witnesses are listed in the pretrial conference statement; or (2) witnesses are listed but no good cause is shown for *any* witness to testify at trial. Good cause may be established by offers of proof made at the lien conference.

If the disputed lien claim(s) or lien issue(s) are submitted for decision at the lien conference, the workers' compensation judge shall prepare minutes of hearing and a summary of evidence listing: (1) all exhibits offered in evidence; (2) the identity of the party or lien claimant offering each exhibit; and (3) whether or not each exhibit is admitted in evidence. This descriptive listing shall be filed and served no later than the date of the decision on the submitted issues.

(j) After a lien conference or lien trial has been ordered off calendar, no party or lien claimant shall file a new declaration of readiness for at least 90 days. The declaration of readiness shall designate that a "lien conference" is requested and shall state under penalty of perjury that there has been no hearing on the lien claim(s) or lien issue(s) within the preceding 90 calendar days.

Nothing in this subdivision shall preclude the Workers' Compensation Appeals Board from (1) restoring the lien claim(s) or lien issue(s) to the lien conference or lien trial calendar on its own motion or (2) restoring the lien claim(s) or lien issue(s) to the lien conference or lien trial calendar less than 90 calendar days after the most recent hearing.

(k) If a defendant was designated to serve a lien claimant with notice of a lien conference or lien trial under sections 10500(a) and 10544, the defendant shall bring a copy of its proof of service to the lien conference or lien trial and, if the lien claimant fails to appear, the defendant shall file that proof of service with the Workers' Compensation Appeals Board.

(l) Any violation of the provisions of this section may give rise to monetary sanctions, attorney's fees, and costs under Labor Code section 5813 and Rule 10561.

(m) The provisions of subdivisions (e), (g), and (h) shall not apply to the lien claim(s) of any of the following: (1) the Employment Development Department; (2) the California Victims of Crime Program; (3) any lien claimant listed as being excepted under section 10228(c)(5); and (4) any governmental entity pursuing a lien claim for child support or spousal support.

Note: Authority cited: Sections 133, 5307, 5309, and 5708, Labor Code. Reference: Sections 4903, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 5502, and 5502.5, Labor Code; Sections 351 and 352, Evidence Code; Sections 10250, 10250.1, 10301(u), 10364(a), 10561, 10629, and 10770-10772, title 8, California Code of Regulations.