#### **Volume WRK1**

## CHAPTER 1. OVERVIEW OF WORKERS' COMPENSATION LAW

## I. PURPOSE AND NATURE OF WORKERS COMPENSATION

- § 1:1 Purpose and policy of workers' compensation laws
- § 1:2 Constitutional authority for workers' compensation system
- § 1:3 Workers' Compensation Act; general features
- § 1:4 Overview of the 2012 reform, including Senate Bill 863
- § 1:5 Workers' Compensation Act; public records— Privacy

#### II. WORKERS' COMPENSATION INSURANCE

- § 1:6 Generally
- § 1:7 State Compensation Insurance Fund and insurance carriers
- § 1:8 Self-insurance; Self-Insurers' Security Fund
- § 1:9 Effect of failure to secure workers' compensation payment
- § 1:10 Uninsured Employers Fund
- § 1:11 Terms required in workers' compensation insurance policy
- § 1:12 Scope of policy coverage; exclusions
- § 1:13 Reformation of policy

## III. ADMINISTRATION OF WORKERS' COMPENSATION SYSTEM

§ 1:14 Division of Workers' Compensation; Administrative Director and Court Administrator

§ 1:15 Workers' Compensation Appeals Board; workers' compensation judges § 1:16 Office of Benefit Assistance and Enforcement; Office of Benefit Determination **Industrial Medical Council** § 1:17 IV. JURISDICTION § 1:18 Nature and extent of Appeals Board jurisdiction § 1:19 Appeals Board's incidental powers § 1:20 Appeals Board's contempt power § 1:21 Concurrent jurisdiction of Board and California courts § 1:22 Exclusive jurisdiction and jurisdiction to determine jurisdiction § 1:23 Injury or employment outside California Interstate commerce; Federal Employers Liability § 1:24 Act § 1:25 Federal Employees' Compensation Act Federal remedies for sea, longshore, and harbor § 1:26 workers

#### V. EMPLOYMENT RELATIONSHIP

Requirement of relationship; presumption of § 1:27 employment § 1:28 Requirement of contract for hire § 1:29 General and special employment § 1:30 Independent contractors § 1:31 Statutory definition of employee and employer § 1:32 Law enforcement personnel § 1:33 Firefighters § 1:34 Domestic workers § 1:35 Volunteers for public and nonprofit agencies § 1:36 Other volunteers § 1:37 Juvenile court wards, traffic offenders, and probationers Persons providing services to receive charitable § 1:38

- § 1:41 Other persons covered or excluded by statute; miscellaneous persons
- § 1:42 Election to come under Act

#### VI. CONDITIONS OF COMPENSATION

§ 1:43	Generally; post-termination claims for prior
	injuries
§ 1:44	Intoxication
§ 1:45	Self-inflicted injury and suicide
§ 1:46	Injury to initial physical aggressor in altercation
§ 1:47	Injury from felonies and other criminal conduct
§ 1:48	Injuries arising in recreational, social, or athletic
	activity

#### VII. INJURY ARISING OUT OF EMPLOYMENT

§ 1:49	General factors; burden of proof
§ 1:50	Injury from assault by employer or third party
§ 1:51	Altercations between employees
§ 1:52	Horseplay
§ 1:53	Injuries following seizures
§ 1:54	Industrial aggravation of preexisting disease or condition; subsequent nonindustrial injury
§ 1:55	Injury from medical treatment
§ 1:56	Injuries arising from termination of employment

#### VIII. COURSE OF EMPLOYMENT

#### A. GENERALLY

§ 1:57	Nature of requirement
§ 1:58	Injury outside regular work hours or duties
§ 1:59	Bunkhouse rule
§ 1:60	Unauthorized acts; work performed in forbidden
	manner
§ 1:61	Injury during personal activities and breaks

## B. GOING AND COMING RULE AND EXCEPTIONS

§ 1:62	Going and coming rule; commercial traveler exception
§ 1:63	Extension of premises under rule
§ 1:64	Special mission exception
§ 1:65	Exception where wages covered time of injury
§ 1:66	Special risk exception
§ 1:67	Exception where transportation required or provided by employer

§ 1:68 Dual purpose exception; work done at home

IX. TYPES OF INJURIE	
----------------------	--

- § 1:69 Definition of injury
- § 1:70 Specific and cumulative injury; occupational and other compensable disease
- § 1:71 Psychiatric injury

## X. PRESUMPTIONS AND SPECIAL BENEFITS FOR CERTAIN PUBLIC EMPLOYEES

- § 1:72 Presumption of industrial causation
- § 1:73 Application of presumption to specified conditions and employees
- § 1:74 Paid leave of absence
- § 1:75 Special death benefits
- § 1:76 Scholarships for dependents of peace and firefighters
- § 1:77 Special health benefits

#### XI. TIME LIMITS

- § 1:78 Employee's notice of injury; employer's required response to notice
- § 1:79 Employee's filing of claim form; employer's required response to claim
- § 1:80 Commencement of proceedings to collect benefits
- § 1:81 New and further disability benefit claims; reopening Board orders and awards
- § 1:82 Vocational rehabilitation request; new and further disability; five year limitation
- § 1:83 Death benefits
- § 1:84 Petition for contribution
- § 1:85 Serious and willful misconduct and employer discrimination
- § 1:86 "Date of injury" for purposes of time limits
- § 1:87 Circumstances extending time limits
- § 1:88 Waiver and estoppel

#### XII. FORMS

§ 1:89 Data entry sheet

**Bibliography** 

#### CHAPTER 2. MEDICAL TREATMENT

#### I. OVERVIEW

- § 2:1 Effect of September 2003 and April 2004 reforms on the extent and scope of medical treatment required to be provided—Plus some changes by reason of the 2012 reform (Senate Bill 863)
- § 2:2 Information sources for physicians

## II. EMPLOYEE NOT COVERED BY CONTRACT WITH HEALTH CARE ORGANIZATION

#### A. INTRODUCTION

- § 2:3 Duty to provide treatment
- § 2:4 Distinguished from disability indemnity
- § 2:5 Apportionment
- § 2:6 Value and duration
- § 2:7 Health care service plan as exclusive provider

#### B. NOTICE REQUIREMENTS

- § 2:8 Notice of injury
- § 2:9 Notice of employee rights

#### C. EXTENT OF BENEFIT

#### 1. Generally

- § 2:10 Treatment by physician
- § 2:11 Definition of physician
- § 2:12 Doctor not licensed in California
- § 2:13 Treatment per agreement
- § 2:14 Injury to artificial members and other devices
- § 2:15 Medical examination expenses

#### 2. Required Treatment

- § 2:16 Overview
- § 2:17 Treatment by family counselor or social worker
- § 2:18 Nursing services by family or spouse
- § 2:19 Housekeeping services
- § 2:20 First aid and emergency treatment

#### California Civil Practice

#### D. FEES

1 17707777077	
I. Overview	7

_			
8 2.21	Reaso	nahlenes	30

- § 2:22 Medical fee schedule
- § 2:23 Fees in excess of schedule
- § 2:24 Contested fees
- § 2:25 Collection from employee

#### 2. Effect of Employee Health Plan

- § 2:26 Generally; fee different from medical fee schedule
- § 2:27 Physician and treatment within employee benefit plan
- § 2:28 Physician or treatment not within employee benefit plan

#### E. SELECTION OF PHYSICIAN

#### 1. By Employer

- § 2:29 Initial right to select
  - 2. By Employee

#### a. Overview

- § 2:30 Predesignation of personal physician
- § 2:31 Thirty days after injury
- § 2:32 Consulting physician
- § 2:33 Physician at employee's own expense

#### b. Procedure

- § 2:34 Duties of employee
- § 2:35 Duties of selected physician or facility
- § 2:36 Duties of employer

#### 3. Change of Physician

- § 2:37 By employee
- § 2:38 By employer

#### F. REFUSAL OF TREATMENT

- § 2:39 Employer's refusal to provide
- § 2:40 Resumption of control after refusal
- § 2:41 Employee's refusal to accept

## G. MEDICAL TREATMENT DISPUTES AND UTILIZATION REVIEW

- § 2:42 Treatment dissolute issues under Labor Code § 4062
- § 2:43 Utilization review under § 4610—Introduction; general principles
- § 2:44 Utilization review—Requirements for making and communicating utilization decisions
- § 2:45 Resolution of medical treatment disputes

## III. EMPLOYEE COVERED BY CONTRACT WITH HEALTH CARE ORGANIZATION

#### A. INTRODUCTION

- § 2:46 Governing law; scope and limitations
- § 2:47 Nature of contract; notice to employees
- § 2:48 Effect of contract
- § 2:49 Effect of collective bargaining
- § 2:50 Fees
- § 2:51 Certification as health care organization; duration

### B. CHOICE AND CHANGE OF PROVIDER OF TREATMENT

- § 2:52 Choosing health care organization or designating personal physician
- § 2:53 Choosing health care organization
- § 2:54 Change of physician

## C. REQUEST FOR CHIROPRACTIC OR ACUPUNCTURE TREATMENT

- § 2:55 Duty to provide
- § 2:56 Guidelines; resolution of disputes

#### D. EMPLOYEE'S CONTROL OF TREATMENT

- § 2:57 Effect of coverage for nonoccupational injuries
- § 2:58 No coverage for nonoccupational injuries: after 90 days
- § 2:59 Coverage for nonoccupational injuries: after 180 days
- § 2:60 Coverage when employer or workers' compensation insurer no longer contracts with treating health care organization

#### IV. MEDICAL PROVIDER NETWORKS (MPN)

- § 2:61 Governing law
- § 2:62 Scope of medical treatment
- § 2:63 Choice of treating physician
- § 2:64 Independent medical review
- § 2:65 Transfer of care into a medical provider network
- § 2:66 Economic profiling
- § 2:67 Continuity of care
- § 2:68 Qualifications and approval process
- § 2:69 Network modification
- § 2:70 Suspension or revocation

#### V. FORMS

- § 2:71 Notice of employee rights
- § 2:72 Employee predesignation of physician
- § 2:73 Petition for order requiring employee to select employer—Designated physician
- § 2:74 Letter to carrier regarding denial of benefits
- § 2:75 Letter to treating physician
- § 2:76 Enclosure to treating physician
- § 2:77 Follow up letter to treating physician
- § 2:78 Enclosure for follow up letter to physician
- § 2:79 Letter to physician regarding lien claim
- § 2:80 Instructions to physician on filing lien claim
- § 2:81 Treating physician's determination of medical issues
- § 2:82 Primary treating physician's progress report [PR-2]
- § 2:83 Primary treating physician's permanent and stationary report [PR-3]

**Bibliography** 

#### CHAPTER 3. DEATH BENEFITS

#### I. LEGAL PRINCIPLES

#### A. BENEFITS AVAILABLE

- § 3:1 Accrued compensation
- § 3:2 Burial expenses
- § 3:3 Death benefit
- § 3:4 Effect of preexisting disease

xvi

§ 3:31

## B. CONDITIONS ON PAYMENT OF DEATH BENEFIT

DEMETI
Limitations period; date of injury
Limitations period in asbestosis cases
Limitations period in HIV-related disease cases
Tolling of limitations period
Statutory rate of death benefit
Manner of payment
Allocation to dependents
Setting apart or reassigning benefits
Lump sum payments
Death without dependents
Procedure for payment to Department of Industrial Relations
Death of dependent
Compromise and release
DETERMINATION OF DEPENDENCY
Relevance of dependency
Presumption of dependency
Dependency as fact question
Date of injury for purposes of dependency
Familial dependents
Good faith members of household
Determining spousal dependency
SPECIAL RULES RELATING TO PUBLIC EMPLOYEES
Members of Public Employees' Retirement System
Procedure on application for death benefit
Scholarships for dependents of certain employees
DEATH BENEFITS FOR PUBLIC OFFICIALS
Entitlement to special death benefit
Persons to whom benefit is payable
Choice of benefit

Processing claim for special death benefit

#### II. FORMS

- $\S~3:32$  Application for adjudication of claim (death case), WCAB Form 1A
- $\S~3:33$  Application for adjudication of claim (death case), DIA WCAB Form 2
- § 3:34 Petition for appointment of guardian ad litem and trustee, DIA WCAB Form 8
- § 3:35 Compromise and release (dependency claim), DWC-CA form 10214 (d)
- § 3:36 Stipulations with request for award (death case), DWC-CA form 10214 (b)
- § 3:37 Notice of employee death, DIA Form 510

#### **Bibliography**

#### CHAPTER 4. COMPUTATION OF TEMPORARY AND PERMANENT DISABILITY

#### I. LEGAL PRINCIPLES

#### A. CATEGORIES OF DISABILITY

#### 1. Temporary Disability

- § 4:1 Overview
- § 4:2 Temporary partial disability
- § 4:3 Temporary total disability
- § 4:4 No apportionment of temporary disability

#### 2. Permanent Disability

- § 4:5 Overview
- § 4:6 Permanent disability ratings

### B. APPORTIONMENT OF PERMANENT DISABILITY

- § 4:7 Overview—Reform of April 2004
- § 4:8 Comparison with the law before the reform of April 2004
- § 4:9 Prior disability
- § 4:10 Aggravation of preexisting disease
- § 4:11 Subsequent unrelated nonindustrial injury
- § 4:12 Cumulative injuries or occupational disease

xviii

#### § 4:13 Compensation from Subsequent Injuries Fund

## C. COMPUTATION OF AVERAGE WEEKLY EARNINGS

_	ъ.	ъ.		
1.	Basic	Prin	cin	les

4.1		
		zerview

- § 4:15 What constitutes average weekly earnings
- § 4:16 Time of injury

#### 2. Minimum and Maximum Rates

- § 4:17 Temporary disability and permanent total disability
- § 4:18 Permanent partial disability

## 3. Computations For Specific Types of Employment

- § 4:19 Statutory formula
- § 4:20 Earning capacity
- § 4:21 Permanent full-time employment
- § 4:22 Irregular wages or wages paid by specified pay period
- § 4:23 Multiple employment
- § 4:24 Part-time employment
- § 4:25 Seasonal, intermittent, or temporary employment

### 4. Employees Subject To Special Computation Laws

- § 4:26 Permanently incapacitated minor employees
- § 4:27 Volunteer firefighters injured in performance of duty
- § 4:28 Peace officers injured in performance of duty
- § 4:29 Public safety officers injured after termination of active service
- § 4:30 Employees with previous disabilities or compensation
- § 4:31 Prison inmates and juvenile offenders
- § 4:32 Antipoverty program workers
- § 4:33 Partners
- § 4:34 State military personnel

#### D. DISABILITY PAYMENTS

#### 1. Basic Principles

§ 4:35 Overview

#### California Civil Practice

§ 4:36	Manner of payment
§ 4:37	= ·
§ 4:38	Late payments
	2. Temporary Disability
§ 4:39	Amount of payments
§ 4:40	Waiting period
§ 4:41	Aggregate payments for single injury causing temporary disability
§ 4:42	Petition to decrease or terminate temporary disability
§ 4:43	Leave of absence with pay in lieu of temporary disability benefits
	3. Permanent Disability
§ 4:44	Amount and duration of payments
§ 4:45	Life pension
II. F	ORMS

§ 4:46 Permanent disability benefits schedule—
Generally
§ 4:47 —Cumulative effect
§ 4:48 Temporary and permanent disability and death benefits schedules
§ 4:49 Petition to terminate liability for temporary disability indemnity
§ 4:50 Letter notifying employer of duty to contact treating physician about failure to provide adequate reports

**Bibliography** 

#### **CHAPTER 5. PENALTIES**

#### I. LEGAL PRINCIPLES

#### A. INTRODUCTION

§ 5:1 Nature of penalties

#### B. SERIOUS AND WILLFUL MISCONDUCT

1. Overview

§ 5:2 Governing law

TABLE OF	CONTENTS
§ 5:3	Causation
§ 5:4	Insurance covering misconduct
	2. What Constitutes Misconduct
	General principles
	Actual versus constructive knowledge
	Violation of duty to provide safe employment Violation of safety order
3 3.3	3. Who Must Engage In Misconduct
§ 5:9	Employers and designated representatives
§ 5:10	Temporary versus permanent conditions
	4. Procedure
§ 5:11	Statute of limitations
§ 5:12	Pleadings
C.	PAYMENT DELAYED OR REFUSED
§ 5:13	Governing law
§ 5:14	Amount to which penalty applies
§ 5:15	Existence and reasonableness of delay
§ 5:16	Multiple and successive penalties
§ 5:17	Minor delinquencies
§ 5:18	Compensation from Uninsured Employers Fund
§ 5:19	Insurer's insolvency
D.	DISCRIMINATION AGAINST INJURED EMPLOYEES
§ 5:20	Policy against discrimination
$\S 5:21$	Amount of increased compensation
$\S 5:22$	Prohibited discrimination
§ 5:23	Justification for discrimination
$\S 5:24$	Time of discrimination and injury
§ 5:25	Discrimination permitted by statute
§ 5:26	Procedure
E.	FAILURE TO SECURE PAYMENT OF COMPENSATION
§ 5:27	Duty to secure payment of compensation
§ 5:28	Increased compensation
§ 5:29	Penalty inapplicable

#### F. ILLEGAL EMPLOYMENT OF MINORS

- § 5:30 Increased compensation
- § 5:31 False representation of age

#### II. FORMS

- § 5:32 Application for increased compensation for serious and willful misconduct by employer [Lab. Code, § 4553]
- § 5:33 Answer to application for increased compensation for serious and willful misconduct by employer
- § 5:34 Petition for penalty [Lab. Code, § 5814]
- § 5:35 Petition for award of increased compensation for discrimination [Lab. Code, § 132, subd. (a)]
- § 5:36 Petition for penalty for failure to pay medicallegal expenses [Lab. Code, § 4622]

# CHAPTER 6. ATTORNEYS' CONSIDERATIONS, RIGHTS, AND DUTIES

### I. CASE EVALUATION OF APPLICANT'S COUNSEL

#### A. LEGAL PRINCIPLES

#### 1. Initial Client Interview

- § 6:1 Establishing attorney-client relationship
- § 6:2 Evaluating compensation claim and any other causes of action
- § 6:3 Client questionnaire; authorization form
- § 6:4 Attorney's fee; attorney's fee disclosure statement
- § 6:5 Legal forms and documentation
- § 6:6 Concluding the interview

### 2. Communicating with Client and Other Parties

- § 6:7 Notifying employer; exchange of claim forms and other information
- § 6:8 Follow-up communications with client
- § 6:9 Substitution or dismissal of attorney
- § 6:10 Notifying employment development department of disability claim

§ 6:11	Notifying creditors
§ 6:12	Notifying employee's health insurance carrier
§ 6:13	Notifying treating physician
	3. Rehabilitation
§ 6:14	Request for benefits/supplemental job
	displacement vouchers
§ 6:15	Periodic reports
	4. Medical Evaluations and Other Discovery
§ 6:16	Medical considerations; selecting AME or QME (panel procedure)
§ 6:17	Medical considerations; Medical Provider Network (MPN)
§ 6:18	Medical considerations; Utilization Review (UR)
§ 6:19	Notice of appointment; communications with AME and panel QME
§ 6:20	Deposition and subpoena of records
	5. Resolving the Case
§ 6:21	Advantages of settlement
§ 6:22	Computing the settlement offer; effect of the panel procedure
§ 6:23	Computing the settlement offer; effect of changes in the rating schedule
§ 6:24	Advising applicant regarding settlement— Generally
§ 6:25	—Medicare set-aside
§ 6:26	Preparing and executing settlement documents
§ 6:27	Approval of settlement
§ 6:28	Hearings
§ 6:29	Closing the file
В.	FORMS
	1. Initial Client Interview
§ 6:30	Client questionnaire
§ 6:31	Client authorization form
§ 6:32	Memorandum to applicant with information about workers' compensation
§ 6:33	Attorney fee disclosure statement
§ 6:34	Anti-kickback declaration to accompany application

§ 6:35	Letter transmitting notice of claim
	2. Communications with Client and Other Parties
§ 6:36	Declaration of service by mail
§ 6:37	Letter transmitting application, claim form, and attorney disclosure statement
§ 6:38	Letter to carrier transmitting file-endorsed copy of application
§ 6:39	Letter requesting wage history information
§ 6:40	Letter to client confirming representation
§ 6:41	Letter to applicant declining representation after review of documents
§ 6:42	Letter to applicant confirming nonrepresentation
§ 6:43	Letter to client explaining limited representation
§ 6:44	Referral thank you letter
§ 6:45	Follow-up letter inquiring as to client's status
§ 6:46	Substitution of attorneys
§ 6:47	Notice of dismissal of attorney
§ 6:48	Petition to withdraw as attorney of record
§ 6:49	Transmittal of petition to withdraw
§ 6:50	Order allowing attorney to withdraw
§ 6:51	Letter advising Employment Development Department of claim dispute
§ 6:52	Letter to client's creditors or collection agency
§ 6:53	Letter to client's private health insurer
§ 6:54	Letter designating treating physician from MPN list
§ 6:55	Letter advising client regarding ADA/FEHA rights
	3. Rehabilitation
§ 6:56	Letter to carrier requesting provision of a supplemental job displacement voucher
	4. Medical Evaluations and Other Discovery
§ 6:57	Letter to insurer regarding agreement on AME
§ 6:58	Letter objecting to treating physician's medical determinations
§ 6:59	AME appointment letter
§ 6:60	Letter to AME (or Designated Panel QME)
§ 6:61	Notice of deposition
§ 6:62	Deposition instructions and informational sheet

§ 6:88

§ 6:89

§ 6:63	Request for deposition attorney's fees
	5. Resolving the Case
§ 6:64	Settlement proposal letter from applicant's counsel to insurer
§ 6:65	Letter recommending acceptance of defendant's settlement offer
§ 6:66	Letter explaining settlement documents (stipulations)
§ 6:67	Letter explaining settlement documents (compromise and release authorized by client)
§ 6:68	Letter transmitting settlement documents to insurer
§ 6:69	Request for approval of settlement by WCJ
§ 6:70	Transmittal of declaration of readiness to proceed
§ 6:71	Notice to client of hearing
§ 6:72	Notice to client of trial
§ 6:73	Confirmation of new hearing date
§ 6:74	Notice to client of new trial date
§ 6:75	Letter to client concluding representation
§ 6:76	Request for three—Member panel Lab. Code, § 4062.2
§ 6:77	Designation of mpn physician
§ 6:78	Notice of utilization review denial to client
§ 6:79	Notice of utilization review denial to treating physician
II. P	ERSPECTIVE OF DEFENSE COUNSEL
A.	LEGAL PRINCIPLES
	1. Initial Evaluation of File
§ 6:80	Overview of defense counsel's rights and duties
§ 6:81	Ninety-day investigation period
§ 6:82	Employment status
§ 6:83	Identifying proper defendants
§ 6:84	Available defenses
§ 6:85	Ascertaining third-party liability
§ 6:86	Identifying additional issues
§ 6:87	Considering medical issues

Anti-kickback affidavit required for filing of answer (and application)

Completing medical file before 1991

2. Discovery

#### CALIFORNIA CIVIL PRACTICE

§ 6:90	Medical evaluations after the April, 2004 reform, plus some of the changes from the 2012 reform [Senate Bill 863]
§ 6:91	Medical evaluation relating to disability rating
§ 6:92	Deposing applicant
§ 6:93	Scheduling and conducting deposition
§ 6:94	Reviewing the file
§ 6:95	Defense counsel's role
§ 6:96	Ascertaining need for additional discovery
§ 6:97	Obtaining and reviewing medical reports
§ 6:98	Obtaining and copying medical and other records
§ 6:99	Selecting an AME or QME
§ 6:100	After selection of an AME or QME
В.	FORMS
§ 6:101	Notice of representation of defendant
§ 6:102	Anti-kickback affidavit to accompany answer
§ 6:103	Notice of deposition
§ 6:104	Deposition inquiries
§ 6:105	Deposition scheduling request form
§ 6:106	Deposition calendar file memorandum
§ 6:107	Cancellation of deposition file memorandum
§ 6:108	File at a glance
§ 6:109	Authorization for release of medical records
§ 6:110	Appointment request file memorandum
§ 6:111	Notice to claimant of QME or AME examination appointment
§ 6:112	File memorandum regarding AME letter and medicals
§ 6:113	Letter to QME or AME regarding examination and report
§ 6:114	Order compelling attendance at medical examination
§ 6:115	Preliminary medical report sheet

#### CHAPTER 7. SETTLEMENT

#### I. LEGAL PRINCIPLES

#### A. METHODS OF SETTLEMENT

§ 7:1 Overview

xxvi

_		72 OOT(121110
Ş	7:2	Compromise and release
	7:3	Stipulations with request for award
	7:4	Partial settlements
	В	. CONSIDERATIONS IN SETTLING CLAIMS
8	7:5	Considerations in selecting settlement option
	7:6	Valuation and other strategic considerations in compromise and release agreement
§	7:7	Considerations applicable to vocational rehabilitation
-	7:8	Considerations applicable to third party action
_	7:9	Third party compromise and release
	7:10	Considerations applicable to death benefit claims
	7:11	Considerations in cases involving multiple injuries
_	7:12	
§	7:13	Effect of settlement
	C	. DOCUMENTING THE SETTLEMENT
§	7:14	
_	7:15	
	7:16	alleged
§	7:17	Execution of agreement
	D	PROCEDURE; SETTING ASIDE THE SETTLEMENT
Ş	7:18	Filing and service of documents
	7:19	Approval
8	7:20	Hearing
_	7:21	Voiding or setting aside settlement
	7:22	Attorney's fees
Ι	I. F	FORMS
§	7:23	Stipulations with request for award and award, DWC-WCAB form 10214 (a)
§	7:24	Compromise and release, DWC-CA form 10214 (c)
§	7:25	Compromise and release (dependency claim), DWC-CA form 10214 (d)
§	7:26	Rodgers waiver in compromise and release
§	7:27	Thomas waiver in compromise and release

- § 7:28 Offer of proof in support of Thomas waiver
- § 7:29 Sumner waiver for use in compromise and release
- § 7:30 Order approving compromise and release, DIA WCAB Form 65
- § 7:31 WCJ's findings supporting order approving compromise and release

#### **Volume WRK2**

## CHAPTER 8. INITIAL CLAIMS PROCEDURES

#### I. LEGAL PRINCIPLES

#### A. INITIATING THE CLAIM

#### 1. Notice of Claim

- § 8:1 Before 1990
- § 8:2 Postreform: claims for injuries sustained from 1990 through 1993
- § 8:3 Postreform: claims for injuries after after the April 2004 reform
- § 8:4 Information request and employer's response

#### 2. Representation

- § 8:5 Attorney disclosure and special considerations
- § 8:6 Nonattorney representatives

#### 3. Venue

- § 8:7 Overview
- § 8:8 Prehearing activity and venue
- § 8:9 Retroactive effect of venue provisions

#### B. AFTER NOTICE OF CLAIM IS FILED

#### 1. Payment of Compensation

- § 8:10 Presumption of compensability
- § 8:11 Effect of presumption of compensability
- § 8:12 Timing of payments and late payment supplements

#### 2. Prehearing Board Activity

§ 8:13 Requests for Board action

xxviii

\$ 8:14 \$ 8:15 \$ 8:16 \$ 8:17 \$ 8:18 \$ 8:19	Petition for discovery order  "Other" preapplication or prehearing matters Joinder and dismissal of proper parties Petition for attorney's fees Filing of lien claims Dismissal of notice of claim
C.	POSTREFORM DEVELOPMENT OF MEDICAL RECORD
	1. Overview
§ 8:20 § 8:21 § 8:22	Effect of 1989 and 1993 legislation Effect of the April 19, 2004 legislation Panel procedure subsequent to the April 19, 2004 legislation, and some comments concerning the 2012 reform [Senate Bill 863]
§ 8:23 § 8:24 § 8:25	Employers' consultative medical reports Determination of medical issues, generally Determination of medical issues; spinal surgery
	2. Formal Medical Evaluation
	a. Overview
§ 8:26 § 8:27	Use of qualified medical evaluators Cases where liability is denied
	b. Unrepresented Claimants
§ 8:28 § 8:29	Pre-1994 procedure Post-1993 and post-2002 procedure
	c. Represented Claimants
§ 8:30 § 8:31 § 8:32	Overview Pre-1994 procedure Post-1993 procedure
	3. Restrictions on Physicians
§ 8:33 § 8:34	Referral restrictions Ghostwriting restrictions
	4. Payment of Medical-Legal Bills
§ 8:35 § 8:36 § 8:37	Nature of medical-legal expenses Timely payment and penalty Prima facie reasonable amount

§	8:38	Objection to medical-legal charges
		5. Reforms of the Medical-Legal Reporting System
§	8:39	Some past problems with medical-legal reporting system addressed by reforms before SB 899
§	8:40	Some "solutions" from the 1993 reform legislation
		6. Rating
§	8:41	Before the 2004 reform took effect
§	8:42	Ratings, after the 2004 reform took effect
§	8:43	Apportionment and summary ratings
I	I. FO	ORMS
	A.	INITIATING THE CLAIM
§	8:44	Notice of claim, DWC Form 1 (1990–1993 "window period")
§	8:45	Notice of claim, DWC Form 1 (post-1993)
	В.	PREHEARING DISCOVERY AND ATTORNEY'S FEES
§	8:46	Petition for attorney's fee
§	8:47	Objection to petition for attorney's fee
	8:48	Order allowing attorney's fee
§	8:49	Request to counsel for Lab. Code § 5710 attorney's fee
§	8:50	Order of Labor Code Sec. 5710 attorney's fee
	C.	JOINDER AND DISMISSAL OF PARTIES
	8:51	Petition for dismissal of party defendant
	8:52	Order of dismissal of party defendant (15 days from date)
_	8:53	Petition for joinder of party defendant
§	8:54	Order joining party defendant, WCAB Form 53
	D.	MEDICAL EXAMINATIONS
§	8:55	Petition for order compelling medical examination and suspending benefits

Order compelling attendance at medical examination and notice of intention to suspend

- benefits or suspending benefits [Lab. Code, § 4053]

  § 8:57 Petition for order barring benefits for failure to appear at medical examination

  § 8:58 Order barring benefits [Lab. Code, § 4054]

  E. DISMISSAL OF CASE

  § 8:59 Petition to dismiss for lack of prosecution

  § 8:60 Letter of intent to request dismissal

  § 8:61 Applicant's request for dismissal of case, WCAB
- Form 43 § 8:62 Objection to petition for dismissal for lack of prosecution
- § 8:63 Order of dismissal, after Notice of Intention
- § 8:64 Order denying dismissal after objection to notice of intention
- § 8:65 Notice of intention to dismiss

#### F. RATING EVALUATIONS

- § 8:66 Employee's permanent disability questionnaire, DEU Form 100
- § 8:67 Request for summary rating determination, DEU Form 101
- § 8:68 Request for reconsideration of summary rating by administrative director, DEU Form 103

#### **Bibliography**

#### CHAPTER 9. HEARING PROCEDURE

#### I. LEGAL PRINCIPLES

#### A. REQUESTS FOR HEARING

- § 9:1 Effect of reform legislation
- § 9:2 Declaration of readiness
- § 9:3 Application
- § 9:4 Objections to request for setting
- § 9:5 Venue

#### B. TYPES OF PROCEEDINGS

#### 1. Hearings and Conferences

§ 9:6 Regular and conference hearings

§ 9:7	Pretrial conference and rating pretrial
§ 9:8	Expedited hearings
	2. Mandatory Settlement Conferences
§ 9:9	Where application was filed before December 31, 1993
§ 9:10	Where application is filed after December 31, 1993
§ 9:11	Closing of record
	3. Arbitration
§ 9:12	Initiation of arbitration
§ 9:13	Mandatory arbitration
§ 9:14	Voluntary arbitration
§ 9:15	Arbitrator lists
§ 9:16	Duties and authority of arbitrator
§ 9:17	Binding arbitration
§ 9:18	Construction trades, alternative dispute
5 - 1 - 0	resolution
C	. OBJECTIONS AFTER NOTICE
§ 9:19	Notice
§ 9:20	Failure to appear
§ 9:21	Challenge to assigned WCJ
§ 9:22	Automatic reassignment
§ 9:23	Disqualification for cause
§ 9:24	Recusal
§ 9:25	Continuance
§ 9:26	Order taking off calendar
D	. REGULAR HEARING PROCEDURES
	1. Conduct and Prehearing
§ 9:27	Conduct of hearing
§ 9:28	Prehearing stipulations; issues
	2. Testimony
§ 9:29	Lay testimony
§ 9:30	Interpreters
§ 9:31	Direct medical testimony
§ 9:32	Visual documentation
	3. Documentary Evidence
§ 9:33	Nature of evidence

xxxii

§ 9:34	Medical reports
§ 9:35	Transcripts of deposition testimony
§ 9:36	Medical records
§ 9:37	Nonmedical records
§ 9:38	Medical fee schedule
§ 9:39	Duty to file and serve reports and records
E.	PROOF
§ 9:40	Burden of proof
§ 9:41	Conclusive presumptions
$\S 9:42$	Rebuttable presumptions
§ 9:43	Stipulations
§ 9:44	Weight of evidence
F.	POSTTRIAL PROCEDURE
§ 9:45	Disposition
§ 9:46	Time for decision
§ 9:47	Findings of fact
§ 9:48	Awards
§ 9:49	Repeal of § 4065
§ 9:50	Opinion on decision
§ 9:51	Service of final determinations
§ 9:52	Interest
§ 9:53	Availability of Board file
G.	COLLECTION AND ENFORCEMENT OF AWARD
§ 9:54	Procedures available
§ 9:55	Conversion of judgment
§ 9:56	Stay of execution
§ 9:57	Uninsured Employers Fund
§ 9:58	Labor Commissioner
§ 9:59	Insolvency
II. F	ORMS
§ 9:60	Application for adjudication of claim, DWC WCAB Form 1A (Rev. 5/2020)
§ 9:61	Answer, WCAB/DWC Form 10
§ 9:62	Answer, WCAB Form 2
§ 9:63	Declaration of readiness [DWC-CA form 10250.1]

xxxiii

#### CALIFORNIA CIVIL PRACTICE

§ 9:64	Declaration of readiness for expedited hearing and decision [DWC-WCAB form 10208.3]
§ 9:65	Petition for automatic reassignment, DIA WCAB Form 115
§ 9:66	Subpoena, DWC WCAB 30
§ 9:67	Subpoena duces tecum, DWC WCAB 32
§ 9:68	Notice of hearing, DIA WCAB Form 12
§ 9:69	Notice to attend and produce
§ 9:70	Arbitration submittal form, DWC-CA form 10297
§ 9:71	Arbitration submittal order, WCAB Form 33
§ 9:72	Request for DWC Authorization Number, DWC Form AD-3
§ 9:73	Public Records Request Form
§ 9:74	Request for walk-through declarations of readiness
СНА	PTER 10. RECONSIDERATION

#### I. LEGAL PRINCIPLES

#### A. STATUTORY GROUNDS

§ 10:1	Overview
§ 10:2	Board acted in excess of its powers
§ 10:3	Fraud
§ 10:4	Evidence does not justify findings
§ 10:5	Newly discovered evidence
§ 10:6	Findings of fact do not support decision

#### B. PARTIES AND PROCEDURE

§ 10:7	Who can file
§ 10:8	What is final order, decision, or award; who is "aggrieved"
§ 10:9	Time limits; filing at proper office
§ 10:10	Service
§ 10:11	Verification
§ 10:12	Answer

#### C. PREPARATION OF PETITION

in petition

xxxiv

Requests for transcripts Exhibits
BOARD ACTION
Overview; who's who at the Board
Workers' compensation judge and petition for reconsideration
Assignment to panel
Time frame
Evidentiary standards
Dismissal
Denial or grant with a decision after reconsideration
Grant for additional evidence
Grant on board motion
Successive petitions
EFFECTS OF RECONSIDERATION
Stay
Interest

#### II. PROCEDURAL CHECKLIST

§ 10:31 Checklist of matters to be considered in petitioning for reconsideration

#### III. FORMS

§ 10:30 Multi-party cases

§ 10:32	Petition for reconsideration, DWC/WCAB FORM
	45
§ 10:33	Petition for reconsideration
§ 10:34	Answer to petition for reconsideration
§ 10:35	Order denying reconsideration and incorporating
	workers' compensation judge's report
§ 10:36	Report and recommendation on petition for
	reconsideration

### **CHAPTER 11. JUDICIAL REVIEW**

#### I. LEGAL PRINCIPLES

A. JURISDICTION; AVAILABLE REMEDIES

§ 11:1 Overview

§ 11:2	Writ of review		
§ 11:3	Writ of mandate		
§ 11:4	Writ of prohibition		
§ 11:5	Writ of habeas corpus		
B.	PETITIONING FOR WRIT OF REVIEW		
	1. Conditions Precedent		
§ 11:6	Requirement regarding reconsideration; waiver		
§ 11:7	Requirement that order, decision, or award be		
	final		
	2. Scope of Review		
§ 11:8	Overview		
§ 11:9	Lack of substantial evidence to support order, decision, or award		
§ 11:10	Adequacy of Board's findings of fact to support		
	order, decision, or award under review		
§ 11:11	Unreasonableness of award		
§ 11:12	Board's actions without or in excess of its		
	powers		
	3. Procedure		
§ 11:13	Parties		
§ 11:14	Time limitation		
§ 11:15	Statement of material evidence; exhibits		
§ 11:16	Format of petition		
§ 11:17	Verification of petition		
§ 11:18	Filing petition; proper appellate district; number of copies		
§ 11:19	Service; proof of service of petition		
§ 11:20	Stay of Board's order, decision, or award; execution of undertaking		
§ 11:21	Answer and brief; reply brief; service		
C.	DECISION BY COURT OF APPEAL; REHEARING; REVIEW BY SUPREME COURT		
§ 11:22	Summary denial of writ; citation of unpublished opinions of WCAB and writ denied summaries		

Grant of writ of review; return of writ

Hearing and decision in court of appeal following grant of petition for review

xxxvi

§ 11:23

§ 11:24

- § 11:25 Rehearing
- § 11:26 Review by California Supreme Court
- § 11:27 Costs and attorney's fees

#### II. PROCEDURAL CHECKLIST

§ 11:28 Matters to be considered in petitioning for review and responding to petition

#### III. FORMS

- § 11:29 Cover for petition for writ of review
- § 11:30 Topical index of petition for writ of review
- $\$  11:31 Petition for writ of review [Lab. Code,  $\$  5950, 5952]
- § 11:32 Allegation when petitioner is dependent of deceased employee
- § 11:33 Allegation when petitioners are defendants
- § 11:34 Answer to petition for writ of review

#### **CHAPTER 12. LIEN CLAIMS**

#### I. LEGAL PRINCIPLES

#### A. LIENS ALLOWABLE

- § 12:1 Overview
- § 12:2 Allowable liens
- § 12:3 Attorney's fees
- § 12:4 Medical expenses
- § 12:5 Medical-legal expenses
- § 12:6 Living expenses
- § 12:7 Burial expenses
- § 12:8 Unemployment benefits
- § 12:9 Crime victim indemnification
- § 12:10 Asbestos workers' benefits
- § 12:11 Taxes

#### B. PROCEDURE

#### 1. Overview

- § 12:12 Filing a lien claim
- § 12:13 Effect of lien claim by Employment Development Department

xxxvii

#### California Civil Practice

§ 12:14	Board's powers where no lien requested
§ 12:15	Objection to lien claim
§ 12:16	Burden of proof
§ 12:17	WCAB's determination
§ 12:18	Lien claim attorney's fees
§ 12:19	Time for resolution of lien claims
§ 12:20	Requests for payment or dismissal of lien claims before hearing
§ 12:21	Consolidation
	2. Compromise and Settlement
§ 12:22	Procedure
§ 12:23	Effect on lien claimants generally
§ 12:24	Effect on unemployment compensation lien claims

#### II. FORMS

- § 12:25 Notice and request for allowance of lien
- § 12:26 Lien objection letter

## CHAPTER 13. SUPPLEMENTAL PROCEEDINGS

#### I. LEGAL PRINCIPLES

reopen

#### A. INTRODUCTION

- § 13:1 Supplemental proceedings, generally
- $\S~13:2~$  Continuing jurisdiction in supplemental proceedings; five-year rule

### B. REOPENING AND CLAIMS FOR NEW AND FURTHER DISABILITY

§ 13:3 Reopening for good cause and claim for new and further disability, generally
§ 13:4 Reopening for good cause
§ 13:5 Requirement and meaning of "good cause"
§ 13:6 Prior Board action required to reopen for good cause
§ 13:7 Actions subject to Board's authority to reopen
§ 13:8 Findings of employment excluded from power to

xxxviii

§ 13:9	Time limits on filing petition to reopen for good cause
§ 13:10	Reopening to claim new and further disability benefits
§ 13:11	Meaning of "new and further disability"
3 13:12	Time limits for new and further disability claims
§ 13:13	Reopening to claim vocational rehabilitation services
§ 13:14	Drafting and serving a petition to reopen
§ 13:15	Response to petition to reopen; grounds for summary dismissal
§ 13:16	Appeals Board action on petition to reopen
C.	COMMUTATION OF AWARD
§ 13:17	Commutation of periodic benefits to lump sum; benefits commutable
§ 13:18	Conditions warranting commutation
§ 13:19	Procedure for commutation; petition and objection
§ 13:20	Determining amount of commuted lump sum
§ 13:21	Commutation where employer is uninsured
§ 13:22	Partial commutation to satisfy liens; attorney fees
§ 13:23	Payment of commuted lump sum; payment receipt and certificate
D.	PROCEEDINGS FOR SUBSEQUENT INJURY FUND COMPENSATION
§ 13:24	Subsequent Injuries Fund compensation
§ 13:25	Requirements for Subsequent Injuries Fund compensation
§ 13:26	Award and compensation from Subsequent Injuries Fund
§ 13:27	Application for Subsequent Injuries Fund compensation; time limits
E.	CONTRIBUTION PROCEEDINGS
§ 13:28	Contribution for occupational disease and cumulative injury liability
§ 13:29	Employers and insurers liable for contribution
F.	OTHER SUPPLEMENTAL PROCEEDINGS
§ 13:30	Proceedings to obtain credit or restitution

#### § 13:31 Removal to Board

#### II. PROCEDURAL CHECKLIST

§ 13:32 Matters to be considered in filing petitions for supplemental relief

#### III. FORMS

§ 13:33	Petition to reopen for good cause, WCAB Form 42 [Lab. Code, § 5803]
§ 13:34	Petition for new and further disability benefits [Lab. Code, § 5410]
§ 13:35	Petition for commutation of future payments, WCAB Form 49 [Lab. Code, § 5100]
§ 13:36	Petition for commutation of future payments [DCW Form 49]
§ 13:37	Order commuting future payments [Lab. Code, § 5100]
§ 13:38	Application for Subsequent Injury Fund benefits
§ 13:39	[Lab. Code, §§ 4751 et seq.] Petition for contribution among employers under
	award for cumulative injury [Lab. Code, § 5500.5]
§ 13:40	Order of contribution under award for

cumulative injury [Lab. Code, § 5500.5]

## CHAPTER 14. VOCATIONAL REHABILITATION

#### I. LEGAL PRINCIPLES

#### A. OVERVIEW

O	- 4 -	A -		• 7 • .	0.	1
0	14:1	App	lıcat	วปประ	7 ot	law

- § 14:2 Purpose
- § 14:3 Definitions
- § 14:4 Restrictions on referral for rehabilitation
- § 14:5 Restrictions on insurers' charges

#### B. OBTAINING VOCATIONAL BENEFITS

#### 1. Rights and Duties of Employer

- § 14:6 Provision of rehabilitation services
- § 14:7 Declination of rehabilitation

§ 14:8	Assignment of qualified rehabilitation representative
§ 14:9	Notice of rights
§ 14:10	Pending determination of medical eligibility
§ 14:11	On determination of medical eligibility
§ 14:12	During contested eligibility
§ 14:13	On determination of ineligibility
§ 14:14	Development of plan
§ 14:15	Reward for development of preferred plan
§ 14:16	Change of representative
§ 14:17	Interruption or deferral of services
§ 14:18	Termination of employer's liability
	2. Rights and Duties of Employee
§ 14:19	Right to rehabilitation and other benefits
§ 14:20	Employee injured during rehabilitation
§ 14:21	Right to decline services
§ 14:22	Employer's failure to comply
§ 14:23	Employee's failure to cooperate
§ 14:24	Development of plan
§ 14:25	Change of representative
§ 14:26	Interruption or deferral of services
§ 14:27	Termination of rehabilitation services
§ 14:28	Additional services—Employee injured before 1994
§ 14:29	—Employee injured on or after January 1, 1994, and before 2004
	3. Duties of Qualified Rehabilitation
	Representative, Treating Physician, and Vocational Evaluator
§ 14:30	Pre-1994 duties of qualified rehabilitation representative
§ 14:31	Treating physician's determination of medical eligibility
§ 14:32	Independent vocational evaluator
	4. Duties of Rehabilitation Unit
§ 14:33	Statutory obligations
§ 14:34	Review of plan
§ 14:35	Disputed issues
§ 14:36	Interruption or deferral of services
§ 14:37	Termination of rehabilitation services

§ 14:38 § 14:39	Conferences Appeal of determination of the rehabilitation unit
C.	PROCEDURAL MATTERS
\$ 14:40 \$ 14:41 \$ 14:42 \$ 14:43 \$ 14:44 \$ 14:45 \$ 14:45 \$ 14:47 \$ 14:48 \$ 14:49 \$ 14:50	Settlement or commutation of services Advisory committee Requirements for forms, notices, and reports Requirements relating to notice only Reproduction of forms and notices Reinstatement of rehabilitation services Period for requesting rehabilitation benefits Continuing jurisdiction Rehabilitation Unit file retention Fee schedule Attorney's fees
II. FO	RMS
A.	DWC FORMS
§ 14:51	Treating physician's report of disability status, DWC Form RU-90
§ 14:52	Description of employee's job duties, DWC Form RU-91
§ 14:53	Notice of offer of modified or alternate work, DWC Form RU-94
§ 14:54	Case initiation document, DWC Form RU-101
§ 14:55	Vocational rehabilitation plan, DWC Form RU-102
§ 14:56	Request for dispute resolution, DWC Form RU-103
§ 14:57	Notice of termination of rehabilitation services, DWC Form RU-105
§ 14:58	Employee statement of declination of vocational rehabilitation services, DWC Form RU-107-A
§ 14:59	Notice of potential eligibility, DWC Form RU-500-W
§ 14:60	Reminder notice, DWC Form RU-500-X
§ 14:61	Denial of vocational rehabilitation services, DWC RU-500-Y
§ 14:62	Intent to withhold maintenance allowance, DWC RU-500-Z $$

§ 14:63	Appeal of determination and order of the Rehabilitation Unit
В.	LETTERS AND OTHER FORMS
§ 14:64	Letter regarding status of rehabilitation program
§ 14:65 § 14:66	Request for interruption of benefits Letter requesting VRTD or VRMA information
§ 14:67	Request for withholding of attorney's fees
§ 14:68 § 14:69	Record of attorney activity Letter transmitting petition for attorney's fees
§ 14:70	Petition for rehabilitation attorney's fees
§ 14:71	Order for rehabilitation attorney's fees
	PTER 15. TORT ACTIONS AGAINST
	LOYERS, INSURERS, AND OTHER LOYEES
I. AC	TIONS AGAINST EMPLOYERS
_,	
A.	
§ 15:1 § 15:2	General principles Statutory exceptions
§ 15:3	Persons barred from bringing action
§ 15:4	Particular injuries
В.	APPLICATION OF EXCLUSIVE REMEDY RULE
	1. Circumstances of Employment
§ 15:5	Status as employee
§ 15:6 § 15:7	Multiple employers Dual capacity
§ 15.7 § 15:8	Uninsured employer
§ 15:9	Conditions of compensation unmet
§ 15:10	Risks not assumed under compensation bargain
	2. Particular Causes of Action
§ 15:11	Assault
§ 15:12 § 15:13	Fraudulent concealment Products liability
-	v

#### California Civil Practice

§ 15:14	Failure to provide power press guard
§ 15:15	Negligent medical care
§ 15:16	Wrongful termination, discrimination, or harassment
§ 15:17	Breach of contract
	3. Procedure
§ 15:18	Jurisdiction
§ 15:19	Plaintiff's pleadings
§ 15:20	Defendant's pleadings
§ 15:21	Statute of limitations
§ 15:22	Damages
§ 15:23	Employee's complaint for damages alleging assault by employer [Lab. Code, § 3602, subd. (b)(1)]

#### II. ACTIONS AGAINST OTHER EMPLOYEES

§ 15:24	Exclusive remedy rule
\$ 15:25	Statutory exceptions to exclusive remedy rule
\$ 15:26	Liability of employee and employer; indemnity
\$ 15:27	Scope of employment
\$ 15:28	Employees of different employers; government
,	employees

#### III. ACTIONS AGAINST INSURERS

§ 15:29	Exclusive jurisdiction of WCAB
§ 15:30	Conduct outside proper role of insurer

**Bibliography** 

## CHAPTER 16. TORT ACTIONS AGAINST THIRD PARTIES

#### I. LEGAL PRINCIPLES

#### A. OVERVIEW

§	16:1	Availa	bility	of	action
0	100	TAT /	C		

§ 16:2 Nature of action

§ 16:3 Parties to action

§ 16:4 Distinction between employee and employer action

xliv

	В.	EMPLOYER'S SUBROGATION RIGHTS
§ : § :	16:5 16:6 16:7 16:8	Overview Employer's action against third party Employer intervention in employee action Employer's lien
	C.	PRELIMINARY CONSIDERATIONS
	16:9 16:10	Maximizing employee recovery Representation
	D.	EVALUATING THE CASE
	16:11 16:12	Identifying third party liability Investigating the case
	E.	INSTITUTING THE ACTION
§ : § : § :	16:13 16:14 16:15 16:16 16:17	Filing complaint in subrogation Time for filing complaint Tolling of time for filing Compliance with applicable claims statute Notice; service of complaint
	F.	JOINING THE ACTION
	16:18 16:19	Joinder, intervention and consolidation Time for intervention
	G.	SETTLING THE ACTION
§ :	16:20 16:21 16:22 16:23	Release or settlement with tortfeasor With one of multiple defendants Effect of settlement of compensation claim Notice of settlement or of impending settlement
	Η.	TRYING THE ACTION
_	16:24 16:25	Prima facie case, generally Evidence of safety statutes

#### DEFENDING THE THIRD PARTY I.

§ 16:28 Comparative fault of employee

Notice of judgment

Evidence of compensation

§ 16:25

§ 16:26 § 16:27

#### California Civil Practice

\$ 16:29 \$ 16:30 \$ 16:31 \$ 16:32 \$ 16:33 \$ 16:34	Comparative fault of employer Failure to give notice of action Statute of limitations Exclusive remedy rule "Fireman's rule" Indemnification
J.	ASSESSING DAMAGES
\$ 16:35 \$ 16:36 \$ 16:37 \$ 16:38 \$ 16:39	Items recoverable Reduction of damages Computation of damages and reimbursement Segregation of damages Joint and several liability
K.	ASSESSING ATTORNEY'S FEES AND EXPENSES
\$ 16:40 \$ 16:41 \$ 16:42 \$ 16:43	Determination by court; priority Allocation of attorney's fees Active v. passive counsel Necessity of benefit
II. FO	ORMS
§ 16:44	Third party compromise and release, WCAB Form 17
§ 16:45	Complaint in intervention

## CHAPTER 17. EMPLOYERS' CREDIT RIGHTS

Order approving compromise and release, WCAB Form 67

Declaration for order allowing intervention and

#### I. LEGAL PRINCIPLES

Notice of lien

#### A. RIGHT TO CREDIT

Complaint for subrogation

BAJI 16.75 (1992 Re-Revision)

§ 17:1 Overview

xlvi

§ 16:46

§ 16:47

§ 16:48

§ 16:49

§ 16:50

- § 17:2 Benefits against which credit applies
- § 17:3 Application of credit against benefits
- § 17:4 Waiver

#### B. AMOUNT OF CREDIT

- § 17:5 Determination
- § 17:6 Reduction for employer negligence

#### C. PROCEDURE

- § 17:7 Jurisdiction of Appeals Board
- § 17:8 Time for granting credit
- § 17:9 Petition for credit
- § 17:10 Procedure where there is no objection to petition
- § 17:11 Procedure where there is objection to petition

#### II. FORMS

- § 17:12 Petition for credit
- § 17:13 Order granting petition for credit
- § 17:14 Conditional order granting petition for credit
- § 17:15 Objection to credit

#### **Table of Laws and Rules**

**Table of Cases** 

Index