PUBLICATION UPDATE

Route to: ☐ _____ ☐ _____ ☐ _____ ☐ _____
☐ _____ ☐ _____ ☐ _____ ☐ _____

California Law of Employee Injuries and Workers' Compensation

Publication 00270 Release 67 April 2008

HIGHLIGHTS

Legislation

- Legislative actions affecting workers' compensation have been added.

Administrative Regulations

- Changes made through Register 2007, No. 44 (11/12/2007) have been added.

Cases and Decisions

- Recent important case law is included.

CALIFORNIA STATUTES. Legislation affecting workers' compensation enacted during the 2007 legislative section have been added, including the following:

Insurer Deposits; Non-California Insurers. In amending Insurance Code Section 11691, the legislature has required an insurer domiciled in a state where the deductible held by a large-deductible policy is paid to the estate of the insurer instead of to the guarantee association to base its California deposit for large-deductible policies on the gross amount owed, not on the net. [*See* Ch. 2, § 2.30[3].]

Medical Treatment; Utilization Schedule. The legislature has provided that the limitations on the number of visits for specified therapies set forth in Labor Code Section 4604.5(d)(1) do not apply to visits for post-surgical physical medicine and post-surgical rehabilitation services provided in compliance with a post-surgical treatment utilization schedule established by the Administrative Director. [*See* Ch. 22, § 22.05[6][b].]

Payroll Verification Audits. The legislature has provided that, if an employer fails to provide for access by the insurer or its authorized representative to its records, to enable the insurer to perform an audit to determine the remuneration earned by the employer's employees during the policy period, the employer will be liable for a total premium for the policy equal to three

times the insurer's then-current estimate of the annual premium on the expiration date of the policy. [*See* Ch. 2, § 2.16.]

Temporary Disability; Maximum Period. The legislature has amended Labor Code Section 4656 to provide that aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability will not extend for more than 104 compensable weeks within a period of five years *from the date of injury*. [*See* Ch. 7, § 7.02[1].]

Inpatient Facility Fees for Burn Cases. The legislature has authorized the Administrative Director, commencing January 1, 2008, to adopt and revise, no less frequently than biennially, an official medical fee schedule for inpatient facility fees for burn cases. [*See* Ch. 22 § 22.05[2].]

Insurer Reserves. In amending Insurance Code Sections 923.5 and 11558, the legislature has repealed the requirement that workers' compensation insurers deposit 65 percent of earned premiums into reserve accounts. [*See* Ch. 2, § 2.70[2].]

CALIFORNIA REGULATIONS.

Medical Treatment Utilization Schedule. In promulgating 8 Cal. Code Reg. §§ 9792.20-9792.23, the Administrative Director has adopted, as required by Lab. Code § 5307.27, a medical treatment utilization schedule. [*See* Ch. 22, § 22.05[6][b].]

CALIFORNIA CASES.

Civil Actions; Employer Incentive Bonus Calculations. The California Supreme Court in *Prachasaisoradej v. Ralphs Grocery Co.* (2007) 42 Cal. 4th 217, has held that an employer's employee bonus plan based on a profit figure reduced by the store's expenses, including the cost of workers' compensation insurance, cash and inventory losses, and third-party tort claims, did not violate California law. [*See* Ch. 2, § 2.10[2].]

Discrimination; Labor Code § 132a. The court of appeal in *Andersen v. W.C.A.B.* (2007) 149 Cal. App. 4th 1369, has held that an employer discriminated against an employee by requiring the employee, who had returned to work following industrial injuries, to use earned vacation time rather than sick leave to attend medical appointments needed to care for those industrial injuries, while permitting employees with non-industrial injuries to use their sick leave for medical appointments. [*See* Ch. 10, § 10.11[1].]

Third-Party Actions; Settlement; Notice and Consent. The court of appeal in *McKinnon v. Otis Elevator Co.* (2007) 149 Cal. App. 4th 1125, has held that, pursuant to Labor Code Sections 3853, 3859, and 3860(a), when an employer fails to adequately notify its employee of its subrogation lawsuit and proposed settlement involving an alleged third-party tortfeasor and fails to obtain the employee's consent to settlement of that suit, and when the settling alleged third-party tortfeasor, prior to settlement, was or reasonably should have been aware of the possibility of the employee's claim for damages against that alleged tortfeasor, the tortfeasor cannot use mere settlement and dismissal of the employer's subrogation action to bar the employee from maintaining an action for damages against the alleged tortfeasor. [*See* Ch. 11, § 11.42[4][b].]

Workers' Compensation Coverage; Contractors' Licenses; Suspension of License. The court of appeal in *Wright v. Issak* (2007) 149 Cal. App. 4th 1116, in which plaintiff contractor sued defendant homeowners for, inter alia, breach of contract, seeking allegedly unpaid compensation, has held that plaintiff, as an unlicensed

contractor, could not sue for payment for work that required a license, that plaintiff's contractor's license had been automatically suspended, pursuant to Business & Professions Code Section 7125.2(a)(2), for failure to obtain workers' compensation insurance, and that suspension of a license for failure to *obtain* workers' compensation insurance does not require the notice from the registrar of contractors that is required for suspension of a license for failure to *maintain* workers' compensation insurance. [*See* Ch. 3, § 3.134.]

Permanent Disability; Retroactive Application of 2005 Permanent Disability Rating Schedule; Comprehensive Medical-Legal Report. The court of appeal in *Costco Wholesale Corp. v. W.C.A.B. (Chavez)* (2007) 151 Cal. App. 4th 148, has held that, pursuant to Labor Code Section 4660(d), a pre-2005 comprehensive medical-legal report permitted the use of the 1997 schedule for rating permanent disabilities only if that report indicated the existence of permanent disability, and that the notice mandated by Labor Code Section 4061 is required to be given together with the last payment of temporary disability indemnity, so that, pursuant to Labor Code Section 4660(d), such notice permitted the use of the 1997 schedule only if the employer were required to give it prior to 2005. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Retroactive Application of 2005 Permanent Disability Rating Schedule. The court of appeal in *Zenith Insurance Co. v. W.C.A.B. (Azizi)* (2007) 153 Cal. App. 4th 461, has held that the notice mandated by Labor Code Section 4061 is required to be given together with the last payment of temporary disability indemnity, so that, pursuant to Labor Code Section 4660(d), such notice permitted the use of the 1997 schedule only if the employer were required to give it prior to 2005. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Retroactive Application of 2005 Permanent Disability Rating Schedule. The court of appeal in *Chang v. W.C.A.B.* (2007) 153 Cal. App. 4th 750, has held that the fact that the Administrative Director could have promulgated the 2005 schedule prior to the January 1, 2005, deadline mandated by Labor Code Section 4660(e) did not mean that, only if that schedule had been promulgated between April 19, 2004, the effective date of SB 899, and January 1, 2005, would the new schedule have applied to injuries sustained during 2004. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Retroactive Application of 2005 Permanent Disability Rating Schedule. The court of appeal in *Vera v. W.C.A.B.* (2007) 154 Cal. App. 4th 996, has held that a treating physician's report dated April 26, 2004, which stated that the employee had the existence of permanent disability but that the employee had not reached permanent and stationary status, was not a pre-2005 treating physician report indicating the existence of permanent disability, because a disability is not ratable if it has not reached permanent and stationary status. [*See* Ch. 8, § 8.02[4][a].]

Presumption of Industrial Causation; Heart Trouble; Police Officers. The court of appeal in *California Horse Racing Board v. W.C.A.B. (Snezek)* (2007) 153 Cal. App. 4th 1169, has held that the employee was not entitled to the heart trouble presumption because, even if the Appeals Board was correct that the employee, an investigator for the employer, was a police officer of a political subdivision, pursuant to Labor Code Section 3212, the only presumption that applied to that class of employees was the hernia pre-

sumption. [*See* Ch. 3, § 3.113[4][a].]

Petition to Reopen; New and Further Disability; Temporary Disability Benefits. The court of appeal in *Sarabi v. W.C.A.B.* (2007) 151 Cal. App. 4th 920, has held that the Appeals Board had jurisdiction to order additional temporary disability benefits more than five years after the date of injury because the employee had filed a timely petition to reopen and his new and further disability commenced within five years of the date of his injury. [*See* Ch. 31, § 31.05[3].]

California Insurance Guarantee Association; Other Insurance. The court of appeal in *California Insurance Guarantee Association v. W.C.A.B. (State Compensation Insurance Fund)* (2007) 153 Cal. App. 4th 524, has held that SCIF, at risk on a worker's specific injury, was jointly and severally liable to pay the worker temporary disability benefits, medical expenses, and vocational rehabilitation maintenance allowance, all of which had been paid to the worker by CIGA, at risk on the worker's cumulative trauma injury. [*See* Ch. 2, § 2.84[3][a].]

Attorney's Fees; Effect of SB 899. The court of appeal in *Vierra v. W.C.A.B.* (2007) 154 Cal. App. 4th 1142, has held that a written attorney's fee agreement between an employee and his attorney was not binding, that the legislature, in Labor Code Section 4906, has spoken clearly and decisively that attorney's fees in workers' compensation cases cannot exceed an amount that is "reasonable," and that the Appeals Board is the final arbiter of reasonableness in all cases. [*See* Ch. 20, § 20.02[1][b].]

Guardian ad Litem; Conservator; Payment for Services. The court of appeal in *Hodgman v. W.C.A.B.* (2007) 155 Cal. App. 4th 44, has held that the Appeals Board had no basis for restricting the compensation of a guardian ad litem and conservator of an incompetent injured worker to nonduplicative care and that the employer, not the estate of the injured worker, should bear the expense. [*See* Ch. 31, § 31.21[1].]

WCAB EN BANC OPINIONS.

WCAB En Banc Decisions; WCAB's Power to Rescind; Change in Membership of WCAB. The Appeals Board en banc in *Baglione v. Hertz Car Sales* (2007) 72 Cal. Comp. Cases 444 (Appeals Board en banc opinion) and *Pendergrass v. Duggan Plumbing* (2007) 72 Cal. Comp. Cases 456 (Appeals Board en banc opinion) has held that no statute, rule, or case law precluded the Board en banc from revisiting and reversing a prior Board en banc decision, and that a change in membership of the Board since the prior en banc decision now being revisited does not affect the Board's ability to reconsider the prior en banc decision. [*See* Ch. 28, § 28.01[1].]

Permanent Disability; Apportionment; Petitions to Reopen; Retroactive Application of SB 899. The Appeals Board en banc in *Vargas v. Atascadero State Hospital* (2006) 71 Cal. Comp. Cases 500 (Appeals Board en banc opinion) has held that the apportionment provisions of SB 899 apply to the issue of increased permanent disability alleged in any petition to reopen that was pending on April 19, 2004, the date of SB 899's enactment, regardless of the date of injury. [*See* Ch. 8, §§ 8.04, 8.05[1].]

Temporary Disability; Maximum Duration of Payments. The Appeals Board en banc in *Hawkins v. Amberwood Products* (2007) 72 Cal. Comp. Cases 807, (Appeals Board en banc opinion) has held that the Labor Code Section 4656(c)(1) allowable period of payments, 104 compensable

weeks within two years from the "date of commencement of temporary disability payment," begins on the date when temporary disability is first *paid*, not on the date when temporary disability indemnity is first *owed*. [*See* Ch. 7, § 7.02[1].]

Temporary Disability; Time Limit of Award; Amputations. The Appeals Board en banc in *Cruz v. Mercedes-Benz of San Francisco* (2007) 72 Cal. Comp. Cases 1281 (Appeals Board en banc opinion) has held that various surgical procedures performed on an employee's back did not constitute "amputations," within the meaning of Labor Code Section (c)(2)(C), so that the employee was not entitled to additional temporary disability beyond that provided by Labor Code Section 4656(c)(1). [*See* Ch. 7, §§ 7.02[1], 7.04[2].]

WCAB SIGNIFICANT PANEL DECISIONS.

Medical Treatment; Disputes; Qualified Medical Evaluator Panels. The Appeals Board in *Romero v. Costco Wholesale* (2007) 72 Cal. Comp. Cases 824 (Appeals Board Significant Panel decision) has held that, for the purposes of Labor Code Sections 4062.1(e) and 4062.2(e), an employee has "received" a comprehensive medical-legal evaluation only when the employee attends and participates in a medical evaluator's examination. [*See* Ch. 22, § 22.06[1][b]; Ch. 32, § 32.06[2][b].]

Medical Liens; Outpatient Surgery Centers; Burden of Proof. The Appeals Board in *Stokes v. Patton State Hospital* (2007) 72 Cal. Comp. Cases 996 (Appeals Board Significant Panel decision) has held that it could not determine from the record whether the lien claimant was claiming that it was merely a properly accredited "outpatient setting" where surgeries were performed, as allowed by Health & Safety Code Section 1248(c) and Business & Professions Code Section 2285, such that a fictitious-name permit from the California Medical Board was not required, or it was claiming that it provided medical treatment as a "clinic," within the definition of Health & Safety Code Sections 1200 and 1204(b)(1), such that it was required to possess both a license and a fictitious-name permit from the Medical Board. [*See* Ch. 30, § 30.04[12][c][ii].]

WCAB PANEL DECISIONS.

CAUTION: *The panel decisions cited below have not been designated "significant panel decisions'' by the Workers' Compensation Appeals Board. Practitioners should proceed with caution when citing to these panel decisions and should also verify the subsequent history of these decisions. WCAB panel decisions are citeable authority, particularly on issues of contemporaneous administrative construction of statutory language [see Griffin v. WCAB (1989) 209 Cal. App. 3d 1260, 1264, fn. 2, 54 Cal. Comp. Cases 145].* However, WCAB panel decisions are not binding precedent, as are en banc decisions, on all other Appeals Board panels and workers' compensation judges [see Gee v. Workers' Comp. Appeals Bd. (2002) 96 Cal. App. 4th 1418, 1425 fn. 6, 67 Cal. Comp. Cases 236].

Penalties; Delay in Furnishing Supplemental Job Displacement Voucher; Attorney's Fees. The Appeals Board, in a Panel Decision, has held in *Stonebraker v. Master Cooling Corporation*, 2007 Cal. Wrk. Comp. P.D. LEXIS 90 (Appeals Board panel decision) that a WCJ's award of a Labor Code Section 5814 penalty and the amount of Labor Code Section 5814.5 attorney's fees awarded were supported by the record, when the employer delayed provision of a supplemental job displacement voucher to the employee for over two months following the compromise and re-

lease. [*See* Ch. 35, § 35.110[3].]

Sanctions; Uninsured Employers Benefits Trust Fund. The Appeals Board, in a Panel Decision, has held in *Silva v. Jagpal, dba D-Best Express*, 2007 Cal. Wrk. Comp. P.D. LEXIS 36 (Appeals Board panel decision) that, when a sanction is warranted under Labor Code Section 5813 and 8 California Code of Regulations Section 10561, the Uninsured Employers Benefits Trust Fund may be sanctioned, like any other party. [*See* Ch. 27, § 27.10[6][b].]

Third Party Actions; Credit; Negligence. The Appeals Board, in a Panel Decision, has held in *Scott v. Downey Unified School District*, 2007 Cal. Wrk. Comp. P.D. LEXIS 35 (Appeals Board panel decision) that the WCJ must look beyond the four corners of a settlement agreement between the employee and his spouse and a third-party trucking company to determine whether the employee and his spouse structured the settlement so as to defeat the employer's credit rights. [*See* Ch. 11, § 11.44[3].]

Medical Treatment; Unreasonable Refusal. The Appeals Board, in a Panel Decision, has held in *Sanchez v. Sunrise Mushroom*, 2007 Cal. Wrk. Comp. P.D. LEXIS 19 (Appeals Board panel decision) that the employer did not bear its burden of establishing that the employee's refusal to undergo arthroscopic knee surgery was unreasonable and, thus, was not entitled, pursuant to Labor Code Section 4056, to have the employee's permanent disability award reduced because of that refusal. [*See* Ch. 5, § 5.05[9][b].]

Medical Treatment; Home Health Care. The Appeals Board, in a Panel Decision, has held in *Orozco v. Formost Construction*, 2007 Cal. Wrk. Comp. P.D. LEXIS 56 (Appeals Board panel decision) that the present value of home health care services provided by an employee's mother was $9,429 per month and that the employer unreasonably delayed payment of home care in a reasonable amount, entitling the employee to a 10-percent penalty up to the maximum of $10,000, when the employer admitted that it received a report from its own expert witness no later than January 16, 2007, that supported monthly payments of $4,156.44, but at the March 8, 2007, trial the parties stipulated that the employer was still paying the employee's mother $1,900. [*See* Ch. 5, § 5.02[6][b].]

Medical Treatment; American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines. The Appeals Board, in a Panel Decision, has held in *Lua v. Mission Linen Supply*, 2007 Cal. Wrk. Comp. P.D. LEXIS 2 (Appeals Board panel decision) that, when the employee reaches the chronic stage of recovery from the injury, and its complaints, specifically pain, continue, the reasonableness of medical treatment may be determined by reading the ACOEM *Guidelines* as whole, weighing, as appropriate, the acute stage recommendations, or lack thereof, as well as the recommendations regarding restoration of function. [*See* Ch. 5, § 5.03[4].]

Presumption of Industrial Causation; Heart Trouble; Police Officers. The Appeals Board, in a Panel Decision, has held in *Rodriguez v. City and County of San Francisco*, 2007 Cal. Wrk. Comp. P.D. LEXIS 1 (Appeals Board panel decision) that a police officer was entitled to the presumption of industrial causation of Labor Code Section 3212.5, when the Board found that the officer had diabetes, and that the AME's opinion was that diabetes is now considered equivalent to heart disease.

[*See* Ch. 3, § 3.113[4][f].]

UNPUBLISHED COURT OF APPEAL CASES.

CAUTION: *The following court of appeal cases were not certified for publication. Practitioners should proceed with caution when citing to these unpublished cases and should also verify the subsequent history of these cases.*

WCAB Procedures; Due Process. The court of appeal in *Agredano v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 381 (court of appeal opinion not published in official reports) has held that an employee was not denied due process by the failure of the Appeals Board to consider evidence of psychological injury, when the employee had stated in her declaration of readiness to proceed that the issues were temporary disability and medical treatment arising from an orthopedic injury to her hand, including the need to provide psychological treatment in order to cure or relieve from the effects of the hand injury, and that she was not pursuing a claim of psychological injury. [*See* Ch. 26, § 26.06[3].]

Expedited Hearings; Due Process; Permanent and Stationary. The court of appeal in *Agredano v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 381 (court of appeal opinion not published in official reports) has held that an employee was not denied due process when, at an expedited hearing, the WCJ found the employee's injured hand to be permanent and stationary, when the issue at the hearing was the employee's entitlement to additional temporary disability, and the finding regarding the employee's permanent and stationary status was incidental to adjudication of this issue. [*See* Ch. 24, § 24.11[1[c]; Ch. 25, § 25.09[2].]

Expedited Hearings; Due Process; Timeliness. The court of appeal in *Agredano v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 381 (court of appeal opinion not published in official reports) has held that an employee was not denied due process by the failure of the expedited hearing to take place, or by the failure of the decision to issue, within 30 days of the employee's filing of a declaration of readiness to proceed, as required by Labor Code Section 5502(b), because the failure to adhere to the statutory time requirements did not result in delay or deprivation of benefits for the employee. [*See* Ch. 26, § 26.02[1].]

Serious and Willful Misconduct by Employer. The court of appeal in *Elk Grove Unified School District v. W.C.A.B. (Stroth)* (2007) 72 Cal. Comp. Cases 399 (court of appeal opinion not published in official reports) has held that the element of "serious and willful misconduct" by the employer, deliberately failing to take corrective action, was not present, when the employer knew of the existing danger to the employee's safety and knew that the probable consequences of its continuance would involve injury to the employee, but had made repeated attempts to take corrective action, attempts that were thwarted by a third party, and was in the process of making another such attempt when the employee was injured. [*See* Ch. 10, § 10.01[3].]

Compromise and Release; Petition to Reopen; Good Cause. The court of appeal in *Phillips v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 406 (court of appeal opinion not published in official reports) has found good cause to reopen a pro per employee's case, pursuant to Labor Code Section 5803, that had been settled by compromise and release, when the court held that the circumstances surrounding the settlement contributed to a misunderstanding by the employee regarding his disputed earnings or rate of temporary disability indemnity and that his misunderstanding and mistake

or inadvertence were excusable. [*See* Ch. 28, § 28.03[1][b]; Ch. 29, § 29.05[3].]

Death Benefits; Suicide; Irresistible Impulse. The court of appeal in *Toshi v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 420 (court of appeal opinion not published in official reports) has held that substantial evidence, in light of the entire record, supported the Appeals Board's finding that decedent's suicide was not the product of an irresistible impulse and, thus, not compensable. [*See* Ch. 4, § 4.22[2].]

Presumption of Compensability. The court of appeal in *Leprino Foods v. W.C.A.B. (Owens)* (2007) 72 Cal. Comp. Cases 605 (court of appeal opinion not published in official reports) has held that the Appeals Board did not engage in a fatal error or deny the employer's due process rights by considering and applying, sua sponte, the 90-day presumption of compensability under Labor Code Section 5402(d) after the matter was submitted for trial. [*See* Ch. 24, § 24.01[4].]

Medical-Legal Procedure; Spinal Surgery; American College of Occupational and Environmental Medicine Guidelines. The court of appeal in *Laing v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 767 (court of appeal opinion not published in official reports) has held that Ch. 12 of the ACOEM Guidelines expressly concerns "[r]ecommendations on assessing and treating adults with potentially work-related back problems (i.e., activity limitations due to symptoms in the low back of less than three months duration)," so that the Appeals Board erred in applying the ACOEM Guidelines' presumptive correctness on the scope of medical treatment to an employee's industrial injury of the low back that was approximately 20 years old. [*See* Ch. 5, § 5.02[1]; Ch. 22, § 22.05[6][b], [c][i].]

Medical-Legal Procedure; Spinal Surgery; Second Opinions. The court of appeal in *Laing v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 767 (court of appeal opinion not published in official reports) has held that the Appeals Board was required to remand the case for compliance with the second opinion procedures mandated by Labor Code Section 4062(b), which required the Administrative Director to randomly select an orthopedic surgeon or a neurosurgeon for preparation of a second opinion report when, as here, the parties were unable to reach agreement on the selection of an AME. [*See* Ch. 22, § 22.06[2][b][i].]

Injury AOE/COE; Substantial Evidence. The court of appeal in *City of Turlock v. W.C.A.B. (STK09 YYZZZ)* (2007) 72 Cal. Comp. Cases 931 (court of appeal opinion not published in official reports) has held that substantial evidence supported the Appeals Board's finding of a causal connection between a sewage worker's employment and his contraction of hepatitis C. [*See* Ch. 4, § 4.02[2].]

Injury AOE/COE; Going and Coming Rule. The court of appeal in *Lamers v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 599 (court of appeal opinion not published in official reports) has held that a decedent's fatal automobile accident did not arise out of and occur in the course of employment, and that the decedent's wife was barred by the going and coming rule from collecting survivor benefits, when the court found that the fact that the decedent was working as a part-time security guard did not place him within any exception to the going and coming rule. [*See* Ch. 4, § 4.151[1].]

Injury AOE/COE; Going and Coming Rule; Special Mission. The court of appeal in *Rash v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 614 (court of appeal opinion not published in official reports) has held that

an employee/sheriff's deputy was injured AOE/COE in a traffic accident while returning from a college horseshoeing course to prepare his privately-owned horse for mounted duty. [*See* Ch. 4, § 4.157[2].]

Injury AOE/COE; Injury in Emergency. The court of appeal in *Bakersfield City School District v. W.C.A.B. (Boyd)* (2007) 72 Cal. Comp. Cases 1191 (court of appeal opinion not published in official reports) has held that an air-conditioning mechanic employed by a school district suffered an injury AOE/COE while traveling in a school district vehicle from one school to his next assignment at another school, when he assisted a police officer in apprehending a fleeing man because he was concerned that the man might try to run to one of four schools, all within three blocks of the incident. [*See* Ch. 4, § 4.137[1].]

Injury AOE/COE; Presumption of Compensability; Stipulations. The court of appeal in *Muna v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 1219 (court of appeal opinion not published in official reports) has held that the Appeals Board did not amend a stipulation in which the parties agreed that the employee sustained an admitted cumulative trauma injury and the employer reserved the right to rebut based on later evidence. [*See* Ch. 24, § 24.01[4].]

Medical Treatment; Spinal Surgery; Second Opinion. The court of appeal in *Sacramento County Office of Education v. W.C.A.B. (Burnett)* (2007) 72 Cal. Comp. Cases 954 (court of appeal opinion not published in official reports) has held that the employer was not liable for the costs of the employee's self-procured spinal surgery, when that surgery occurred before resolution of the second-opinion process. [*See* Ch. 22, § 22.06[2][b][i].]

Medical Treatment; Spinal Surgery; Second Opinion. The court of appeal in *Sacramento County Office of Education v. W.C.A.B. (Burnett)* (2007) 72 Cal. Comp. Cases 954 (court of appeal opinion not published in official reports) has held that the employee was not entitled to proceed with spinal surgery on the grounds that the employer did not timely initiate the required Appeals Board proceedings after the second-opinion physician issued a contrary opinion, when the parties had agreed to abide by the determination of the second opinion, so that the employer was relieved of this obligation. [*See* Ch. 22, § 22.06[2][b][ii][G].]

Medical Treatment; Applicability of ACOEM Guidelines. The court of appeal in *Sutton v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 1227 (court of appeal opinion not published in official reports) has held that the Appeals Board correctly remanded the matter to the WCJ for further development of the medical record to determine whether the employee was entitled to medical treatment and correctly instructed the WCJ to consider the presumptively correct ACOEM Guidelines, when the employee sustained injury AOE/COE in 1983, the parties entered into a stipulated award in 1985 providing that future medical care "may be" required, no specific evidence existed in the record that the employee required treatment falling within the ACOEM Guidelines, and Labor Code Section 4604.5(c) provides that the ACOEM Guidelines are presumptively correct on the issue of the extent and scope of medical treatment, "regardless of the date of injury." [*See* Ch. 5, § 5.02[1].]

Permanent Disability; Retroactive Application of 2005 Permanent Disability Rating Schedule. The court of appeal in *City of San Diego v. W.C.A.B. (Brooks)* (2007) 72 Cal. Comp. Cases 1071 (court of appeal opinion not published in official reports) has held that the 2005 Permanent

Disability Rating Schedule to rate an employee's disability due to hepatitis C when a QME's report dated June 2001 indicated that the employee had no permanent disability, but that same QME issued a supplemental report dated July 2005, indicating that the employee had 25-percent impairment of the whole person due to his chronic liver disease due to hepatitis C, and the sole cause for the difference between the two reports was the promulgation of the 2005 Permanent Disability Rating Schedule. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Retroactive Application of 2005 Permanent Disability Rating Schedule. The court of appeal in *Health Net, Inc. v. W.C.A.B. (Hansen)* (2007) 72 Cal. Comp. Cases 1093 (court of appeal opinion not published in official reports) has held that, for the 1997 Schedule for Rating Permanent Disabilities to apply to rating an employee's cumulative trauma industrial injury ending in June 2004, the employer must have been required to provide the notice required by Labor Code Section 4061 before January 1, 2005. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Retroactive Application of 2005 Permanent Disability Rating Schedule. The court of appeal in *Lyngso Garden Materials, Inc. v. W.C.A.B. (Ruiz)* (2007) 72 Cal. Comp. Cases 1097 (court of appeal opinion not published in official reports) has held that, for the 1997 schedule to apply, the employer must have been required to provide the notice required by Labor Code Section 4061 before 1/1/2005, but here the employee received temporary disability benefits from 12/17/2004 to 1/2/2006, and Labor Code Section 4061 makes clear that the employer must provide the required notice "[t]ogether with the last payment of temporary disability indemnity," so the employer was not required to provide notice before 1/1/2005, and the 2005 schedule applied. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Retroactive Application of 2005 Permanent Disability Rating Schedule. The court of appeal in *San Francisco Marriott v. W.C.A.B. (Yamat)* (2007) 72 Cal. Comp. Cases 1103 (court of appeal opinion not published in official reports) has held that an employer's duty to provide the notice required by Labor Code Section 4061 was not triggered simply by the commencement of temporary disability benefits, and that the employer was not required to provide the employee with such notice until 10/2005, when those benefits terminated, so that no exception listed in Labor Code Section 4660(d) justified use of the 1997 schedule. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Retroactive Application of 2005 Permanent Disability Rating Schedule. The court of appeal in *HSR, Inc. v. W.C.A.B. (Mariscal)* (2007) 72 Cal. Comp. Cases 1211 (court of appeal opinion not published in official reports) has held that the employee's treating physician's 12/22/2004 "check the box" report in which he purported to indicate the existence of permanent disability did not constitute substantial evidence "indicating the existence of permanent disability," as required by Labor Code Section 4660(d). [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Retroactive Application of 2005 Permanent Disability Rating Schedule. The court of appeal in *University of California, San Francisco v. W.C.A.B. (Rand)* (2007) 72 Cal. Comp. Cases 1108 (court of appeal opinion not published in official reports) has held that the 2005 Permanent Disability Rating Schedule applied when the pre-2005 comprehensive medical-legal report contained no indication of permanent disability and

the employer paid the employee temporary disability benefits through 7/22/2005, so that the notice required by Labor Code Section 4061 was not required until that date, and, therefore, no exception listed in Labor Code Section 4660(d) justified use of the 1997 schedule. [*See* Ch. 8, § 8.02[4][a].]

Presumption of Industrial Causation; Blood-Borne Infectious Disease; Police Officers. The court of appeal in *DuFour v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 1081 (court of appeal opinion not published in official reports) has held that the Labor Code Section 3212.8 presumption of a correlation between a blood-borne infectious disease and police employment becomes operative at trial only when basic facts giving rise to the presumption are established by pleadings, by stipulation, by judicial notice, or by evidence. [*See* Ch. 3, § 3.113[4][j].]

Temporary Disability; Maximum Duration of Payments. The court of appeal in *Gunzenhauser v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 1087 (court of appeal opinion not published in official reports) has held that Labor Code Section 4656(c)(1), limiting payment of temporary disability benefits to 104 weeks within two years from commencement of such payments, did not violate the mandate of the California Constitution, Article XIV, Section 4, that the legislature enact a complete system of workers' compensation that makes "adequate provisions for the comfort, health and safety and general welfare" of workers. [*See* Ch. 7, § 7.02[1].]

WCAB DECISIONS DENIED WRIT OF REVIEW.

CAUTION: *The following entries are "writ denied" cases. Practitioners should proceed with caution when citing to these cases and should also verify the subsequent history of these cases.*

Penalties; Delay in Payment of Medical Treatment. The Appeals Board in *California Insurance Guarantee Association v. W.C.A.B. (Lobos)* (2006) 71 Cal. Comp. Cases 1835 (writ denied) and *Lobos v. W.C.A.B.* (2006) 71 Cal. Comp. Cases 1887 (writ denied) has held that CIGA unreasonably delayed providing or authorizing surgery for a worker's industrial carpal tunnel condition and awarded a penalty pursuant to Labor Code Section 5814, as amended by SB 899. [*See* Ch. 10, § 10.40[1].]

Penalties; Delay in Payment of Benefits; Retroactive Application of SB 899; Due Process. The Appeals Board in *Mackey v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 365 (writ denied) has held that applying Labor Code Section 5814, as amended by SB 899, effective 6/1/2004, to calculate the penalties owing to an employee who filed his seventh penalty petition on 1/23/2001 was not a violation of the employee's due process rights, even though the penalty issue was originally scheduled for trial on 8/6/2001, prior to the amendment of Labor Code Section 5814, but was ordered off calendar by the WCJ for purposes of judicial economy and not heard until 4/24/2006. [*See* Ch. 10, § 10.40[1].]

Psychiatric Injuries; Good-Faith Personnel Actions. The Appeals Board in *County of Contra Costa v. W.C.A.B. (Aliotti-Scearcy)* (2006) 71 Cal. Comp. Cases 1857 (writ denied) has held that an employee's claim of psychiatric injury was not barred by the employee's transfer to a new department, which the Board found to be a good-faith personnel action, when the evidence indicated that the injury was predominantly caused by the employee's being forced to work with a difficult and abusive co-worker. [*See* Ch. 4,

§§ 4.02[3][f], 4.69[3][d].]

Psychiatric Injuries; Six-Month Employment Rule. The Appeals Board in *California Insurance Guarantee Association v. W.C.A.B. (Mills)* (2007) 72 Cal. Comp. Cases 1146 (writ denied) has held that an employee's claim for psychiatric injury was not barred by the six-month employment requirement, notwithstanding that the employee had been unable to work for a consecutive two-week period during her six months of employment due to non-industrial pancreatitis. [*See* Ch. 4, § 4.02[3][d].]

Psychiatric Injuries; Sudden and Extraordinary Employment Conditions. The Appeals Board in *California Insurance Guarantee Association v. W.C.A.B. (Tejera)* (2007) 72 Cal. Comp. Cases 482 (writ denied) has held that, although motor vehicle accidents generally are not extraordinary events, the circumstances in the present case were sufficient to be interpreted as "extraordinary" within the meaning of Labor Code Section 3208.3(d), so that, even though the employee had not worked for the employer for six months, the "sudden and extraordinary employment condition" exception of Labor Code Section 3208.3(d) applied. [*See* Ch. 4, § 4.02[3][d].]

Medical-Legal Procedure; Spinal Surgery; Prospective Application of SB 899. The Appeals Board in *Gateway Chevrolet/GM Motors v. W.C.A.B. (Welch)* (2006) 71 Cal. Comp. Cases 1864 (writ denied) has held that Labor Code Section 4062(b), setting forth the procedure for resolving spinal surgery disputes, applied to resolve the dispute over an employee's entitlement to spinal surgery for a 1997 injury, since SB 899, which enacted that statute, specifically states that it is to apply prospectively from the date of enactment, regardless of the date of injury. [*See* Ch. 22, § 22.06[2][b][i].]

Medical-Legal Procedure; Utilization Review. The Appeals Board in *City of Hayward v. W.C.A.B. (Rushworth-McKee)* (2007) 72 Cal. Comp. Cases 237 (writ denied) has held that an employer who obtains a utilization review medical report pursuant to Labor Code Section 4610, which approves surgery for an employee's injury, is not entitled to obtain a second opinion from a QME pursuant to Labor Code Section 4062. [*See* Ch. 22, §§ 22.05[6][c][iv], 22.06[2][a].]

Medical-Legal Procedure; Disputed Injuries. The Appeals Board in *Barrett Business Services, Inc. v. W.C.A.B. (Sanchez)* (2007) 72 Cal. Comp. Cases 834 (writ denied) has held that the reports of an employee's treating physician were not rendered inadmissible for the employee's failure to comply with the procedures set forth in Labor Code Sections 4062.2 and 4062(a) or on the ground that the treating physician was not within the employer's medical provider network, when the Board found that the employer provided no evidence that *it* had complied with Labor Code Section 4062(a). [*See* Ch. 22, § 22.06[2][a].]

Medical-Legal Procedure; Qualified Medical Evaluator. The Appeals Board in *Alvarado v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 1142 (writ denied) has held that the time limits prescribed by Labor Code Section 4062.2(c) for a party to strike a physician from a qualified medical evaluator panel run from the date of assignment of the three-member panel, not from the date of service of the panel on the parties. [*See* Ch. 22, § 22.06[1][a].]

Medical-Legal Procedure; Qualified Medical Evaluators; Failure to Timely Submit Report. The Appeals Board in

Fajardo v. W.C.A.B. (2007) 72 Cal. Comp. Cases 1158 (writ denied) has held that an employee was not entitled to a new panel qualified medical evaluator evaluation pursuant to Labor Code Section 4062.5, even though the original panel qualified medical evaluator failed to submit his report within the 30-day time frame. [*See* Ch. 22, §§ 22.06[5], 22.13.]

Employment Relationships; Independent Contractor. The Appeals Board in *Jobbagy v. W.C.A.B.* (2006) 71 Cal. Comp. Cases 1882 (writ denied) has held that an interpreter who frequently worked in the superior courts was an independent contractor, not an employee of the court. [*See* Ch. 3, § 3.06[2].]

Employment Status; Residential Employees; Homeowners' Insurance Policies. The Appeals Board in *Allstate Insurance Co. v. W.C.A.B. (Diaz)* (2006) 72 Cal. Comp. Cases 113 (writ denied) has held that a worker was an employee of a residential property owner on the date he was injured in a fall from the roof of a garage/storage unit that he was building on the property owner's property and that the homeowner's insurance policy provided workers' compensation coverage for the worker's injury. [*See* Ch. 3, § 3.36[1].]

Petitions to Reopen; New and Further Disability; Stipulated Awards. The Appeals Board in *Brown v. W.C.A.B.* (2006) 72 Cal. Comp. Cases 118 (writ denied) has found no good cause to reopen an employee's claim for new and further disability to his neck/cervical spine following the issuance of a stipulated award under which the parties stipulated to industrial low back and shoulder injuries but made no mention of an alleged industrial neck/cervical spine injury, when, prior to the stipulation, the AME had opined that the neck/cervical spine disability was non-industrial. [*See* Ch. 31, § 31.05[2].]

Permanent Disability; Apportionment. The Appeals Board in *Fry's Electronics, Inc. v. W.C.A.B. (Daryabeghi-Moghadam)* (2006) 72 Cal. Comp. Cases 131 (writ denied) has held that the opinion of the employer's QME apportioning 25 percent of the employee's overall permanent disability from orthopedic injuries to a pre-existing condition did not constitute sufficient evidence to support a finding of apportionment, when the QME failed to explain how the pre-existing condition caused disability or how he had determined an apportionment of 25 percent. [*See* Ch. 8, § 8.05[2][a].]

Permanent Disability; Retroactive Application of 2005 Permanent Disability Rating Schedule. The Appeals Board in *Escutia v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 254 (writ denied) has held that a report from the employee's treating physician stating that he was sending the report to "indicate the existence of permanent disability" and checking off boxes indicating that the employee was not yet permanent and stationary but would have permanent disability, did not constitute substantial evidence indicating the existence of permanent disability and, therefore, was insufficient under Labor Code Section 4660(d) to require application of the 1997 Schedule for Rating Permanent Disabilities. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; 2005 Permanent Disability Rating Schedule. The Appeals Board in *Alvarado-Salas v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 350 (writ denied) has held that *Aldi. v. Carr, McClellan, Ingersoll, Thompson & Horn* was binding precedent on Board and WCJs. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Application of 1997 Schedule for Rating Permanent

Disabilities. The Appeals Board in *Zurich American Insurance v. W.C.A.B. (Nunes)* (2007) 72 Cal. Comp. Cases 368 (writ denied) has held that a 2004 treating physician's report, indicating that the employee had a herniated disc, radiculopathy, and footdrop, and needed to use a cane, was sufficient to show the existence of permanent disability. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Application of 1997 Schedule for Rating Permanent Disabilities. The Appeals Board in *Eskaton Properties, Inc. v. W.C.A.B. (Ongsarte)* (2007) 72 Cal. Comp. Cases 662 (writ denied) has held that a treating physician's December 20, 2004, report, declaring the employee permanent and stationary and setting forth factors of permanent disability, gave rise to the employer's duty to provide the Labor Code Section 4061 notice, and neither the AME's subsequent determination that the employee did not become permanent and stationary until 2006 nor the parties' 2005 stipulation that the employee was temporarily disabled from December 29, 2004, negated that duty. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Application of 1997 Schedule for Rating Permanent Disabilities. The Appeals Board in *Tokio Marine and Fire Insurance Co. v. W.C.A.B. (Burnside)* (2007) 72 Cal. Comp. Cases 731 (writ denied) has held that the 1997 Schedule for Rating Permanent Disabilities applied to rate an employee's permanent disability stemming from injuries in 2002 and during a period from 1991 through 2003, when the Board found that form RU-90 prepared by the employee's treating physician on July 1, 2004, stating that the employee was a qualified injured worker entitled to vocational rehabilitation constituted a report from the employee's treating physician indicating the existence of permanent disability. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Applicability of 1997 Schedule for Rating Permanent Disabilities. The Appeals Board in *Xerox Corp., Inc. v. W.C.A.B. (Blair)* (2007) 72 Cal. Comp. Cases 1044 (writ denied) has held that the 1997 schedule for rating permanent disabilities applied, pursuant to Labor Code Section 4660(d), to rate the permanent disability resulting from an industrial injury to the employee's cervical spine and right upper extremity during 2003, when the treating physician indicated the existence of permanent disability in a 10/5/2004 report by reporting that after the employee's surgery her cervical spine lacked flexion and extension, the employee had temporary total disability for over one year and was, therefore, assumed to be a qualified injured worker, i.e., permanently disabled, and the employee was released to return to work prior to 1/1/2005, triggering the employer's duty to give Labor Code Section 4061 notice to the employee. [*See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Applicability of 1997 Schedule for Rating Permanent Disabilities. The Appeals Board in *Santa Rosa School District v. W.C.A.B. (Hagle)* (2007) 72 Cal. Comp. Cases 1312 (writ denied) has held that the 1997 Schedule for Rating Permanent Disabilities applied to rate the permanent disability stemming from an employee's 5/18/2004 right hip injury, when the employee was diagnosed with a hip fracture and underwent hip replacement surgery on the date of her injury, as documented in the medical treatment records prepared prior to 1/1/2005. *See* Ch. 8, § 8.02[4][a].]

Permanent Disability; Applicability of 1997 Schedule for Rating Permanent Disabilities. The Appeals Board in *Tenet/Doctors Medical Center v. W.C.A.B. (Reddrick)* (2007) 72 Cal. Comp. Cases 1319 (writ denied) has held that a

10/9/2004 comprehensive medical-legal report was sufficient to indicate the existence of permanent disability for the purpose of applying the 1997 Schedule for Rating Permanent Disabilities to rate an employee's permanent disability stemming from a 2003 injury, even though the employee's condition did not become permanent and stationary until 2005, following her surgery. *See* Ch. 8, § 8.02[4][a].]

Medical Treatment; ACOEM Guidelines. The Appeals Board in *Lake Tahoe Unified School District v. W.C.A.B. (Kelly)* (2006) 72 Cal. Comp. Cases 138 (writ denied) has held that an employee with 1996 industrial neck and back injuries was entitled to chiropractic treatment under Chapter 6 of ACOEM Guidelines even though the treatments did not cure her condition, but temporarily relieved her pain and restored her functional capacity. [*See* Ch. 22, § 22.05[6][b].]

Medical Treatment; American College of Occupational and Environmental Medicine Guidelines. The Appeals Board in *Glagola Construction Co. v. W.C.A.B. (Larios)* (2007) 72 Cal. Comp. Cases 1016 (writ denied) has awarded an employee further medical treatment to cure or relieve the effects of his December 2004 injury AOE/COE to his low back and spine, when the Board found that the suggested surgery was either outside the ACOEM Guidelines or, alternatively, within Chapter 6 of the Guidelines, which states that treatment to increase function in chronic pain patients is appropriate. [*See* Ch. 22, § 22.05[6][b].]

Statute of Limitations; Death Benefits. The Appeals Board in *State of California/Department of Corrections and Rehabilitation v. W.C.A.B. (Underwood)* (2006) 72 Cal. Comp. Cases 162 (writ denied) has held that, when a husband retired 6/1/90 and died from cardiac causes 5/21/95, and his widow met with a workers' compensation attorney 8/5/2003, which was her first knowledge that her husband's death was industrial and that she could apply for dependent's death benefits, 8/5/2003 was the date of injury, so that, when the widow's attorney sent a DWC-1 claim form to the employer on 11/9/2003, and filed an application for adjudication of claim on 12/10/2004, both within 240 weeks of the date of injury, they were timely filed under Labor Code Section 5406. [*See* Ch. 9, § 9.01[4]; Ch. 24, § 24.03[5].]

Public Employees; Salary in Lieu of Benefits; Police Officers. The Appeals Board in *City of Oakland v. W.C.A.B. (Aisthorpe)* (2007) 72 Cal. Comp. Cases 249 (writ denied), *City of Long Beach v. W.C.A.B. (Weber)* (2007) 72 Cal. Comp. Cases 837 (writ denied), and *County of Sacramento v. W.C.A.B. (Taylor)* (2007) 72 Cal. Comp. Cases 854 (writ denied) has held that salary continuation benefits paid under Labor Code Section 4850 are not subject to the two-year limitation period for payment of temporary disability indemnity set forth in Labor Code Section 4656, as amended by SB 899. [*See* Ch. 3, § 3.114[2]; Ch. 7, §§ 7.02[1], 7.04[2].]

California Insurance Guarantee Association; Change of Administrators. The Appeals Board in *Krause's Custom Crafted Furniture v. W.C.A.B. (Khodavandi)* (2007) 72 Cal. Comp. Cases 262 (writ denied) has granted CIGA's petition for a change of administrators, even though the petition was filed more than five years after the employee's date of injury, holding that a change of the administration of an award was a "ministerial function," which did not amount to altering, amending, or rescinding the award, so that Labor Code Section 5804 did not bar the request. [*See* Ch. 24, § 24.13[2].]

California Insurance Guarantee Association; Reimbursement; Other Insurance. The Appeals Board in *San Diego County Water Authority v. W.C.A.B. (Curtis)* (2007) 72 Cal. Comp. Cases 275 (writ denied) has held that a permissibly self-insured employer was precluded by Insurance Code Section 1063.1(c)(5) and (c)(9)(ii) from seeking reimbursement from CIGA for medical treatment/surgery expenses the employer had paid on behalf of an employee with 1991 and 1996 spine injuries, despite the fact that the expenses were related to the 1996 injury only and that CIGA had assumed liability for benefits stemming from that injury. [*See* Ch. 2, § 2.84[3][b].]

California Insurance Guarantee Association; Change of Administrators; Other Insurance. The Appeals Board in *Anadite, Inc. v. W.C.A.B. (Aceves)* (2007) 72 Cal. Comp. Cases 648 (writ denied) has held that a formal appointment of administrator was not a prerequisite to a change of administrators. [*See* Ch. 2, § 2.84[3][a].]

California Insurance Guarantee Association; Covered Claims; Employment Development Department Liens. The Appeals Board in *California Ins. Guarantee Assn. v. W.C.A.B. (Faris)* (2007) 72 Cal. Comp. Cases 1008 (writ denied) has held that CIGA was liable to an employee for temporary disability indemnity for the period 3/26/2000 through 4/16/2001, less credit to CIGA for $8,173.88 paid to EDD in settlement of its $25,000 lien for benefits paid to the employee during the period 4/2/2000 through 4/1/2001, when the Appeals Board found that CIGA was bound by its stipulation to the period of the employee's temporary disability that it entered into with knowledge of the prior settlement of the EDD lien. [*See* Ch. 2, § 2.84[3][d]; Ch. 7, § 7.04[9][a].]

Liens; Medical Treatment; Medi-Cal; Uninsured Employers Benefits Trust Fund. The Appeals Board in *Rancho Los Amigos County Medical Rehabilitation Center v. W.C.A.B. (Wilkerson)* (2007) 72 Cal. Comp. Cases 270 (writ denied) has held that the UEBTF was not liable for reimbursement of a lien filed by a county medical center for treatment rendered to an employee injured while working for an uninsured employer, when Medi-Cal paid for the treatment, the evidence indicated that the county did not fully reimburse Medi-Cal, and, pursuant to Labor Code Section 3716(c), the UEBTF was not liable for reimbursement of the county's medical treatment lien since Medi-Cal paid for the treatment. [*See* Ch. 27, § 27.10[6][b].]

Temporary Disability; Petition to Terminate Benefits. The Appeals Board in *The Brickman Group v. W.C.A.B. (Martinez)* (2007) 72 Cal. Comp. Cases 357 (writ denied) has held that Labor Code Section 3370, which prohibits payment of temporary disability benefits to an inmate of a *state* penal or correctional institution, was in applicable because the employee here was incarcerated in a *county* jail. [*See* Ch. 3, § 3.100[4]; Ch. 31, § 31.10[1][c].]

Temporary Total Disability. The Appeals Board in *McCray v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 493 (writ denied) has held that an employee was not entitled to temporary total disability from February 2006 and continuing, for a July 1995 admitted right knee and lumbar spine injury AOE/COE, when the employee needed a total knee replacement on an industrial basis, and the evidence indicated that the employee was unlikely ever to lose the necessary 125 to 150 pounds before undergoing this surgery. [*See* Ch. 5, § 5.03[3]; Ch. 7, § 7.02[3][b].]

Temporary Disability; Limitations on

Payments; Industrial Disability Leave. The Appeals Board in *Salmon v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 1042 (writ denied) has held that payments for industrial disability leave, defined by Government Code Section 19870(a) to mean temporary disability as defined in the workers' compensation law, were included in the time limitations for temporary disability payments in Labor Code Section 4656(c)(1). [*See* Ch. 7, §§ 7.02[1], 7.04[2].]

WCAB Jurisdiction; Petitions to Reopen; New and Further Disability; Temporary Disability. The Appeals Board in *Duran v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 488 (writ denied) has held that the Board has no jurisdiction to award temporary disability, when the new temporary disability period begins more than five years after the date of injury, regardless of whether the petition to reopen was timely filed. [*See* Ch. 7, § 7.03[5]; Ch 24, § 24.03[4]; Ch. 28, § 28.03[1][a]; Ch. 31, § 31.04[3].]

WCAB Jurisdiction; Extraterritorial Jurisdiction. The Appeals Board in *Koleaseco, Inc. v. W.C.A.B. (Morgan)* (2007) 72 Cal. Comp. Cases 1302 (writ denied) has held that California had jurisdiction pursuant to Labor Code Section 3600.5(a) over claims asserted by husband and wife truck drivers injured in a motor vehicle accident, notwithstanding that the accident occurred in Illinois while the couple were working for a Michigan-based trucking corporation and that their employment contracts were signed in Michigan. [*See* Ch. 3, § 3.22[2]; Ch. 21, § 21.07[5].]

WCAB's Continuing Jurisdiction; Change of Administrators. The Appeals Board in *Anadite, Inc. v. W.C.A.B. (Aceves)* (2007) 72 Cal. Comp. Cases 648 (writ denied) has held that a change of administrator of a medical award constituted enforcement, not alteration, of the award, so that the five-year statute of limitations in Labor Code Section 5804 did not bar the action. [*See* Ch. 24, § 24.13[2].]

Costs; Expert Witness Fees. The Appeals Board in *Rea v. W.C.A.B. (Dabanian)* (2007) 72 Cal. Comp. Cases 497 (writ denied) has awarded fees in the amount of $1,260 to a vocational expert, pursuant to Labor Code Section 5811, when the vocational expert made himself available to testify on an employee's behalf at a trial regarding the employee's entitlement to Subsequent Injury Benefits Trust Fund benefits. [*See* Ch. 27, § 27.01[8][a].]

Cumulative Trauma; Date of Injury. The Appeals Board in *San Diego Gas & Electric v. W.C.A.B. (Williams)* (2007) 72 Cal. Comp. Cases 501 (writ denied) has held that an employee, who suffered a cumulative back and neck injury from performing heavy work, had a date of injury under Labor Code Section 5412 of August 25, 2003, when he first suffered disability, even though he had not performed heavy work during the last several years of his employment prior to this date. [*See* Ch. 24, § 24.03[7][b].]

Third-Party Settlement Agreements; Binding Effect. The Appeals Board in *Rodriguez v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 715 (writ denied) has held that paragraphs in an employee's civil settlement agreement with third-party defendants indicating that the employee's employer was not a cause of his injuries and that the issue of employer negligence would not be raised in any subsequent proceeding were binding, even though the agreement was not reviewed or approved by the Board. [*See* Ch. 11, § 11.25[2].]

Serious and Willful Misconduct by Employer; Reconsideration; Time to

Raise Issues; Waiver. The Appeals Board in *Tillery v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 727 (writ denied) has held that an employer did not waive its right to raise issues of whether the employee's increased benefits awarded, pursuant to Labor Code Section 4553, for the employer's serious and willful misconduct were subject to limitation under *Ferguson v. W.C.A.B.* or whether the applicants, sons of the deceased employee, were dependents, personal representatives, or heirs and, therefore, qualified to receive the accrued serious and willful misconduct benefits. [*See* Ch. 9, § 9.01[2].]

Injury AOE/COE; Going and Coming Rule; Combined Personal and Business Activities. The Appeals Board in *Redgwick Construction v. W.C.A.B. (Thomas)* (2007) 72 Cal. Comp. Cases 711 (writ denied) has held that the employee/construction foreman's claim for injuries, sustained to his left shoulder and mouth when he was hit by a car on his way back to work after taking a 10-minute off-site break to get a haircut, was not barred by the "going and coming" rule, when the Board found that the employee's break was a minor deviation and benefitted the employer. [*See* Ch. 4, § 4.138[2][a].]

Injury AOE/COE; Post-Termination Claims. The Appeals Board in *United States Fire Insurance Co. v. W.C.A.B. (Urzua)* (2007) 72 Cal. Comp. Cases 869 (writ denied) has held that an employee's claims for injuries to his left shoulder, back, and neck filed after he left his employment were not barred under Labor Code Section 3600(a)(10), when the evidence indicated that the employee was not terminated but rather voluntarily left his job. [*See* Ch. 11, § 11.02[3][a]; Ch. 21, § 21.03[1][a].]

Injury AOE/COE; Injuries En Route To or From Medical Appointments. The Appeals Board in *Nubla v. W.C.A.B.* (2007) 72 Cal. Comp. Cases 1308 (writ denied) has held that it had no jurisdiction under Labor Code Section 5410 or 5804 to award indemnity benefits or to find a new and separate date of injury for a compensable consequence injury sustained by the employee while traveling home from an industrially-related medical appointment more than 32 years after her industrial back and psyche injuries. [*See* Ch. 4, § 4.67.]

Attorney's Fees. Pursuant to Labor Code Section 4064(c), the Appeals Board in *Monument Car Parts v. W.C.A.B. (Teach)* (2007) 72 Cal. Comp. Cases 1021 (writ denied) has ordered an employer to pay the employee's attorney's fees, when the parties filed a compromise and release while the employee was unrepresented, even though it contained a provision that the "filing of this document is the filing of an application on behalf of the employee." [*See* Ch. 20, § 20.02[2][b]; Ch. 22, § 22.06[6][b].]

Attorney's Fees; Commutation. The Appeals Board in *County of Orange v. W.C.A.B. (Ortega)* (2007) 72 Cal. Comp. Cases 1291 (writ denied) has held that the attorney's fee awarded when an employee/firefighter was 100-percent permanently disabled due to lung cancer sustained during his employment was correctly commuted, based on published life expectancy tables rather than on actual life expectancy, despite the terminal nature of the employee's condition. [*See* Ch. 10, § 10.42; Ch. 27, § 27.02[2].]

APPENDIX B: ADMINISTRATIVE DIRECTOR RULES. The regulations in Vol. 3 have been updated.

The Lawyer's Guide to the AMA *Guides* and California Workers' Compensation, by Robert G. Rassp.

New 2008 Edition. Updated and Expanded Coverage.

The only practical guide on calculating permanent disability ratings under SB 899 and the AMA *Guides* now includes a new chapter on Developing the Record to Establish Accurate Ratings Under the AMA *Guides.*

The author brings clarity to this complex area of law by providing updated and expanded chapter-by-chapter analysis of the AMA *Guides,* real life examples with detailed explanation on how to determine permanent disability ratings, practice aids for determining whether a medical report constitutes substantial evidence, and much more.

To order by phone, please call 1-800-533-1637.

ISBN 9781422419724 – Pub #01432 – List Price $59, plus shipping & handling (price effective through 12/31/2008).

Matthew Bender provides continuing customer support for all its products:

- **Editorial assistance—please consult the "Questions About This Publication" directory printed on the copyright page;**
- **Customer Service—missing pages, shipments, billing or other customer service matters (1-800-833-9844).**
- **Outside the United States and Canada, (518) 487-3000, or fax (518) 487-3584;**
- **Toll-free ordering (1-800-223-1940).**

www.lexis.com

Publication 00270, Release 67, April 2008

FILING INSTRUCTIONS

California Law of Employee Injuries and Workers' Compensation

Publication 270 Release 67 April 2008

Check As Done

☐ 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 66. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 66, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.

☐ 2. Separate this Release Number 67 package into the following groups of material:

- Blue Special Alert
- White Revision pages

☐ Arrange these groups of material next to each other so that you can take material from each group as required and proceed with the filing of this release.

☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

Check As Done	*Remove Old Pages Numbered*	*Insert New Pages Numbered*

For faster and easier filing, all references are to right-hand pages only.

VOLUME 1

Revision

☐	Title page thru xxix	Title page thru xxix

Special Alert

☐	No Material removed	Blue Special Alert pages SPA-1 thru SPA-3 (file before page 1–1)

Revision

☐	2-20.1 thru 2-21	2-21 thru 2-22.1
☐	2-39 thru 2-42.3	2-39 thru 2-42.3
☐	2-99 thru 2-100.1	2-99 thru 2-100.1
☐	2-111 thru 2-131	2-111 thru 2-129
☐	3-15	3-15 thru 3-16.1
☐	3-27 thru 3-34.5	3-27 thru 3-34.5
☐	3-71	3-71 thru 3-72.1
☐	3-83 thru 3-107	3-83 thru 3-107
☐	3-124.11	3-124.11
☐	4-15 thru 4-33	4-15 thru 4-33
☐	4-47	4-47 thru 4-48.1
☐	4-89	4-89
☐	4-99 thru 4-101	4-99 thru 4-101
☐	4-149	4-149 thru 4-150.1
☐	4-155 thru 4-156.1	4-155 thru 4-156.1
☐	4-169	4-169 thru 4-170.1
☐	4-190.3	4-190.3
☐	5-7 thru 5-14.3	5-7 thru 5-14.3
☐	5-21 thru 5-23	5-21 thru 5-24.1
☐	5-47	5-47 thru 5-48.1
☐	5-61	5-61
☐	5-66.3 thru 5-71	5-67 thru 5-72.1
☐	7-9 thru 7-13	7-9 thru 7-14.1
☐	7-29 thru 7-39	7-29 thru 7-39
☐	8-5 thru 8-36.7	8-5 thru 8-36.11
☐	8-54.7 thru 8-54.17	8-54.7 thru 8-54.17
☐	9-3 thru 9-7	9-3 thru 9-7
☐	10-11	10-11
☐	10-27	10-27 thru 10-28.1
☐	10-61 thru 10-69	10-61 thru 10-69
☐	10-80.9 thru 10-80.11	10-80.9 thru 10-80.11
☐	11-21 thru 11-22.1	11-21 thru 11-22.1

Check As Done	*Remove Old Pages Numbered*	*Insert New Pages Numbered*
☐	11-105	11-105 thru 11-106.1
☐	11-121	11-121 thru 11-122.1
☐	11-128.11 thru 11-128.15	11-128.11 thru 11-128.15

VOLUME 2

Revision

☐	Title page.	Title page
☐	20-15 thru 20-17	20-15 thru 20-18.1
☐	21-15 thru 21-17	21-15 thru 21-18.1
☐	21-59 thru 21-60.11	21-59 thru 21-60.11
☐	22-35 thru 22-44.5	22-35 thru 22-44.5
☐	22-56.3 thru 22-57	22-57 thru 22-58.7
☐	22-67 thru 22-77	22-67 thru 22-78.3
☐	22-103 thru 22-107	22-103 thru 22-107
☐	24-11.	24-11 thru 24-12.1
☐	24-25 thru 24-35	24-25 thru 24-35
☐	24-45 thru 24-49	24-45 thru 24-49
☐	25-29.	25-29 thru 25-30.1
☐	26-8.1 thru 26-9.	26-9 thru 26-10.1
☐	26-35 thru 26-37	26-35 thru 26-37
☐	27-11 thru 27-12.1	27-11 thru 27-12.1
☐	27-19 thru 27-20.1	27-19 thru 27-20.1
☐	27-39.	27-39 thru 27-40.1
☐	28-5 thru 28-9	28-5 thru 28-10.1
☐	28-21 thru 28-27	28-21 thru 28-28.1
☐	29-27.	29-27
☐	29-39.	29-39 thru 29-40.1
☐	30-18.27	30-18.27 thru 30-18.28(1)
☐	31-17 thru 31-27	31-17 thru 31-28.3
☐	31–49 thru 31-51	31-49 thru 31-53
☐	32-27.	32-27
☐	32-71 thru 32-72.15	32-71 thru 32-72.15
☐	35-163 thru 35-165	35-163 thru 35-165

VOLUME 3

Revision

☐	Title page.	Title page
☐	AppB-1 thru AppB-9	AppB-1 thru AppB-9
☐	AppB-17 thru AppB-22.20(11)	AppB-17 thru AppB-22.20(5)
☐	AppB-40.26(13) thru AppB-40.49	AppB-40.26(13) thru AppB-40.26(83)

Check As Done	*Remove Old Pages Numbered*	*Insert New Pages Numbered*
☐	AppD-45 thru AppD-47	AppD-45 thru AppD-47
☐	AppE-57	AppE-57 thru AppE-58.1
☐	AppE-85 thru AppE-95	AppE-85 thru AppE-97

Supplement Table of Cases

☐	Yellow TC Supplement Pamphlet.	Material not replaced

Revision

☐	TC-1 thru TC-103.	TC-1 thru TC-103
☐	TS-1 thru TS-59	TS-1 thru TS-57
☐	I-1 thru I-117	I-1 thru I-105

FILE IN THE FRONT OF THE FIRST VOLUME
OF YOUR SET

To order missing pages log on to our self service center, www.lexisnexis.com/printcdsc or call Customer Services at 1 (800) 833-9844 and have the following information ready:

(1) the publication title;
(2) specific volume, chapter and page numbers; and
(3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?
FIND THEM AT www.lexisnexis.com/printcdsc

Use the search tool provided to find and download missing filing instructions, or sign on to the Print & CD Service Center to order missing pages or replacement materials. Visit us soon to see what else the Print & CD Service Center can do for you!

www.lexis.com

Publication 270, Release 67, April 2008