

PUBLICATION UPDATE

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HIGHLIGHTS

Key Developments in the Law

- 2019–2020 Legislation
- WCAB rules of procedure and other rule changes through Register 2020 No. 33 (8/14/2020)
- Case law developments, including the *Justice* and *Gund* decisions

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2019–2020 LEGISLATION:

Worker Classification as Employee vs. Independent Contractor.

In urgency legislation effective September 4, 2020, the legislature has repealed Labor Code section 2750.3. The new law provides that effective for work performed on or after January 1, 2020, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that (1) the person is free from the control and direction of the hiring entity in performance of the work, both under the contract for hire and in fact, (2) the person performs work that is outside

the usual course of the hiring entity's business, and (3) the person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. Many exceptions exist. **Warning:** Proposition 22 passed on election day. Changes required by Proposition 22 will be addressed in a future update of this treatise. [See Ch. 2, § 2.06[1].]

COVID-19 Presumptions. In urgency legislation effective September 17, 2020, the legislature has decreed in pertinent part that a positive COVID-19 test is presumed to be a compensable work-related injury under specified conditions, although the presumption of compensability may be disputed and controverted by contrary evidence. [See Ch. 10, § 10.07[5][l].]

“Employee” to Include State Hospital Patients. The Legislature has amended Labor Code section 3351 to include in the definition of “employee” a person committed to a state hospital facility under the State Department of State hospitals, as defined in Welfare and Institutions Code Section 4100, while engaged in assigned work in a vocational rehabilitation program, including a sheltered workshop. [See Ch. 2, § 2.04[9].]

State Department of State Hospitals Facility Patient. The legislature has added Labor Code section 3370.1 to set forth the conditions that must be met for a patient in a state hospital facility to be eligible to receive work-

ers' compensation benefits, and to provide that workers' compensation under this section is the exclusive remedy against the state for injuries occurring while a patient is engaged in a vocational rehabilitation work assignment. [See Ch. 2, § 2.04[9]; Ch. 5, § 5.07; Ch. 14, § 14.20A.]

Threshold of Compensability for Psychiatric Injury (State Hospital Patients). The legislature has amended Labor Code section 3208.3 to provide that an employee who is a patient in a state hospital facility and engaged in assigned work in a vocational rehabilitation program (see above entries) is not entitled to compensation for a psychiatric injury except as provided in Labor Code Section 3370.1(d). [See Ch. 10, § 10.06[3][a].]

Post-Traumatic Stress Disorder Suffered By Firefighters and Peace Officers Are Presumed Compensable. The legislature has added Labor Code section 3212.15 to provide that injuries to specified firefighters and peace officers include post-traumatic stress disorder and are rebuttably presumed to be industrial. The section applies to injuries incurred on or after January 1, 2020 and remains in effect until January 1, 2025. [See Ch. 10, § 10.07[5][k].]

Medical Treatment; Requests for Payment From Employer. The legislature has amended Labor Code section 4603.2 to provide that the request for payment with an itemization of services provided and the charge for each service must be submitted to the employer with the na-

tional provider identifier (NPI) number for the physician or provider who provided the service, and that failure to include the NPI will result in the request for payment being barred until such time as it is submitted. [See Ch. 4, § 4.21.]

Regulation of Medical Provider Networks. The legislature has amended Labor Code section 4616 to provide that beginning July 1, 2021, a Medical Provider Network must include on its website a roster of all participating providers, including physicians and ancillary service providers (defined in Lab. Code, § 4616.5), and must list the provider's name and contact information. [See Ch. 4, § 4.12[4].]

Ancillary Service Provider Defined. The legislature has amended Labor Code section 4616.5 to define an "ancillary service provider" as an entity that provides medical services by a nonphysician, including, but not limited to, interpreter services, physical therapy and pharmaceutical services. [See Ch. 4, § 4.12[4].]

Reimbursement Below Official Medical Fee Schedule; Written Disclosure. The legislature has added Labor Code section 5307.12, operative July 1, 2021, to provide that if a health care provider or health care facility and an entity that provides physician network or ancillary network services contract for a reimbursement rate that is more than 20 percent below the Official Medical Fee Schedule, excluding goods and pharmaceuticals, the service provider must provide the payer with written

disclosure of the reimbursement amount paid to the provider. [See Ch. 4, § 4.20[2].]

Restricted Access to Individually Identifiable Information. The legislature has amended Labor Code section 138.7, to provide that the Administrative Director must use individually identifiable information for purposes of creating provider medical utilization data. [See Ch. 1, § 1.06[4].]

Utilization Data for Physicians Who Treated Ten or More Injured Workers. The legislature has added Labor Code section 138.8, to provide that, on or before January 1, 2024, and annually thereafter, the Administrative Director must publish on its website specified utilization data for physicians who treated 10 or more injured workers during the 12 months before July 1 of the previous year, and to provide that the Administrative Director may withhold the specified data if necessary to protect patient privacy. [See Ch. 1, § 1.06[4].]

Notice of Insurance Policy Nonrenewal. The legislature has amended Insurance Code section 678 to provide that for a policy that expires on or after July 1, 2020, the insurer must give notice 75 days prior to the policy's expiration, and if the insurer fails to do so, the policy remains in effect for 75 days from the date that the notice of nonrenewal was delivered or mailed. [See Ch. 3, § 3.24[1].]

Study by Commission on Health and Safety and Workers' Compensation. The legislature has added La-

bor Code section 77.7, directing the Commission, in partnership with Los Angeles County and other labor organizations to submit, on or before January 1, 2021, a study to the Legislature, the Occupational Safety and Health Standards Board, and the Los Angeles County Board of Supervisors on the risk of exposure to carcinogenic materials and incidence of occupational cancer in mechanics who repair and clean firefighting vehicles. The section is repealed January 1, 2024. [See Ch. 1, § 1.19.]

REGULATIONS: Noteworthy rule changes include:

Cal. Code Regs., tit. 8, § 9792.24.5 [§ 4.01[3]] (medical treatment utilization schedule)

Cal. Code Regs., tit. 8, § 10301 [§ 1.09[1]] (definitions)

Cal. Code Regs., tit. 8, § 10302 [§ 1.06[1]] (rule-making notices)

Cal. Code Regs., tit. 8, § 10305 [§ 1.09[1]] (definitions)

Cal. Code Regs., tit. 8, § 10320 [§ 13.15[3], [4]] (WCAB decisions/orders)

Cal. Code Regs., tit. 8, § 10322 [§ 13.15[2]] (inspection of WCAB records)

Cal. Code Regs., tit. 8, § 10325 [§§ 1.07[3], 20.09[2]] (WCAB en bancs)

Cal. Code Regs., tit. 8, § 10330 [§§ 1.07[2], 15.45[2]] (authority of WCJ)

Cal. Code Regs., tit. 8, § 10338 [§ 13.15[3], [6]] (authority of WCAB commissioners)

Cal. Code Regs., tit. 8, § 10340 [§ 13.15[3], [4]] (WCAB decisions/orders)

Cal. Code Regs., tit. 8, § 10341 [§§ 1.07[3], 20.09[2]] (WCAB en bancs)

Cal. Code Regs., tit. 8, § 10342 [§ 13.15[3], [6]] (authority of WCAB commissioners)

Cal. Code Regs., tit. 8, § 10346 [§§ 16.04[2], 16.12] (authority of PWCJ to transfer/assign cases)

Cal. Code Regs., tit. 8, § 10348 [§§ 1.07[2], 13.15[2], [9], 15.45[2]] (authority of WCJ)

Cal. Code Regs., tit. 8, § 10440 [§ 13.15[2], [9]] (contempt)

Cal. Code Regs., tit. 8, § 10350–10352 [§§ 1.09[2], 13.15[3]] (appointment/authority of pro tem WCJs)

Cal. Code Regs., tit. 8, § 10353 [§ 15.35] (mandatory settlement conferences)

Cal. Code Regs., tit. 8, § 10355 [§§ 1.09[2], 13.15[3]] (appointment/authority of pro tem WCJs)

Cal. Code Regs., tit. 8, § 10360 [§ 1.09[4]] (testimony of judicial/quasi-judicial officers)

Cal. Code Regs., tit. 8, § 10382 [§ 16.15] (joinder of parties)

Cal. Code Regs., tit. 8, § 10400 [§§ 14.02[2], 14.14] (applications for adjudication)

Cal. Code Regs., tit. 8, § 10401 [§§ 10.06[1][b], 14.02[2], 14.14] (applications for adjudication)

Cal. Code Regs., tit. 8, § 10402 [§§ 10.06[1][b], 13.15[3], [4], 14.02[2], 14.14] (applications for adjudication) (substitution/dismissal of attorneys)

Cal. Code Regs., tit. 8, § 10404 [§ 13.15[3]] (change of venue)

Cal. Code Regs., tit. 8, § 10409 [§ 11.11[7][b][ii]] (venue)

Cal. Code Regs., tit. 8, § 10421 [§§ 13.15[4], [9], 16.35[2], 17.11, 17.113] (sanctions)

Cal. Code Regs., tit. 8, § 10440 [§§ 14.12[1], 16.18] (S&W misconduct)

Cal. Code Regs., tit. 8, § 10445 [§§ 13.15[4], 16.18]] (S&W misconduct) (disbarred attorneys)

Cal. Code Regs., tit. 8, § 10447 [§ 11.27[1], [5]] (LC 132a)

Cal. Code Regs., tit. 8, § 10450 [§ 4.11[4]] (petitions/answers)

Cal. Code Regs., tit. 8, § 10451.1 [§ 4.20[1]] (med-legal expenses)

Cal. Code Regs., tit. 8, § 10452 [§§ 1.09[2], 13.15[3]] (disqualification of WCJ)

Cal. Code Regs., tit. 8, § 10453 [§§ 1.09[2], 13.15[3]] (reassignment of WCJ)

Cal. Code Regs., tit. 8, § 10455 [§§ 10.06[1][b], 13.15[3], 14.02[2], 14.06[1], [2], 14.14] (applications for adjudication)/ (petitions to reopen)

Cal. Code Regs., tit. 8, § 10458 [§ 14.06[2]] (new and further disability)

Cal. Code Regs., tit. 8, § 10462

[§§ 6.11[2], 6.19[1], 8.01[4], [5], 8.08, 14.09, 15.24] (petition to terminate liability) (SIBTF applications)

Cal. Code Regs., tit. 8, § 10464 [§§ 6.19[1], 15.24] (petition to terminate liability)

Cal. Code Regs., tit. 8, § 10465 [§ 14.16] (Answers)

Cal. Code Regs., tit. 8, § 10466 [§§ 14.09, 15.24] (petition to terminate liability)

Cal. Code Regs., tit. 8, § 10480 [§§ 11.11[7][b][2], 14.16] (venue) (answers)

Cal. Code Regs., tit. 8, § 10484 [§§ 14.16] (answers-procedural requirements)

Cal. Code Regs., tit. 8, § 10490 [§ 13.15[3]] (change of venue)

Cal. Code Regs., tit. 8, § 10497 [§ 16.45[2]] (stipulations)

Cal. Code Regs., tit. 8, § 10507 [§ 13.15[4]] (time to act)

Cal. Code Regs., tit. 8, § 10510 [§§ 4.11[4], 8.01[5]] (petitions/answers) (service)

Cal. Code Regs., tit. 8, § 10525 [§§ 11.19, 14.12[1], 16.18] (S&W misconduct)

Cal. Code Regs., tit. 8, § 10528 [§ 11.27[1], [5]] (LC 132a)

Cal. Code Regs., tit. 8, § 10530 [§ 13.15[2]] (subpoenas)

Cal. Code Regs., tit. 8, § 10534 [§ 14.06[1], [2]] (petitions to reopen)

Cal. Code Regs., tit. 8, § 10540 [§§ 6.11[2], 6.19[1], 14.09, 15.24]

(petition to terminate liability)

Cal. Code Regs., tit. 8, § 10560
[§ 16.12] (trials)

Cal. Code Regs., tit. 8, § 10561
[§§ 13.15[4], [9], 16.35[2], 17.11,
17.113] (sanctions)

Cal. Code Regs., tit. 8, § 10562
[§§ 13.15[9], 16.07[2][b], 16.35[2]]
(failure to appear)

Cal. Code Regs., tit. 8, § 10564
[§ 13.15[3]] (interpreters)

Cal. Code Regs., tit. 8, § 10565
[§ 21.02] (petitions appealing denial
of return to work supplement)

Cal. Code Regs., tit. 8, § 10580
[§ 13.15[3]] (evidence taken without
notice)

Cal. Code Regs., tit. 8, § 10590
[§ 11.11[8][b][viii], [ix]] (penalty as-
sessment appeal)

Cal. Code Regs., tit. 8, § 10602
[§ 7.33.[1], [2]] (formal PD ratings)

Cal. Code Regs., tit. 8, § 10605
[§ 13.15[4]] (time to act)

Cal. Code Regs., tit. 8, § 10606
[§§ 4.09[1], [4], 9.02[2], 13.15[9]]
(physician's reports)

Cal. Code Regs., tit. 8, § 10607
[§ 6.19[1]] (service of benefit print-
outs)

Cal. Code Regs., tit. 8, § 10608
[§§ 6.19[1], 8.01[5], 13.15[9]] (ser-
vice of documents)

Cal. Code Regs., tit. 8, § 10615
[§§ 6.19[1], 8.01[5], 13.15[9]] (ser-
vice of documents)

Cal. Code Regs., tit. 8,
§ 10610–10637 [§ 4.09[4]] (filing

and service of docs)

Cal. Code Regs., tit. 8, § 10622
[§ 11.26] (failure to comply)

Cal. Code Regs., tit. 8, § 10625
[§ 8.01[5]] (service)

Cal. Code Regs., tit. 8, § 10629
[§ 4.09[4]] (filing of exhibits)

Cal. Code Regs., tit. 8, § 10632
[§ 8.01[4], [5]] (service of SIBTF
applications)

Cal. Code Regs., tit. 8, § 10635
[§§ 6.19[1], 8.01[5], 13.15[9]] (ser-
vice of documents)

Cal. Code Regs., tit. 8, § 10637
[§§ 6.19[1], 8.01[5], 13.15[9]] (ser-
vice of documents)

Cal. Code Regs., tit. 8,
§ 10640–10660 [§ 13.15[2]] (sub-
poenas)

Cal. Code Regs., tit. 8, § 10670
[§ 11.26] (documentary evidence)

Cal. Code Regs., tit. 8, § 10672
[§ 13.15[3]] (evidence taken without
notice)

Cal. Code Regs., tit. 8, § 10675
[§ 7.33.[1], [2]] (formal PD ratings)

Cal. Code Regs., tit. 8,
§ 10700–10705 [§ 12.04[2]] (ap-
proval of C&R)

Cal. Code Regs., tit. 8, § 10759
[§ 4.09[4]] (MSCs)

Cal. Code Regs., tit. 8, § 10682
[§§ 4.09[1], [4], 9.02[2], 13.15[9]]
(physician's reports)

Cal. Code Regs., tit. 8, § 10750
[§ 11.11[8][b][ix]] (record of pro-
ceedings)

Cal. Code Regs., tit. 8, § 10755

[§§ 13.15[9], 16.07[2][b], 16.35[2]] (failure to appear)

Cal. Code Regs., tit. 8, § 10759 [§ 15.35] (mandatory settlement conferences)

Cal. Code Regs., tit. 8, § 10774 [§ 13.15[4]] (substitution/dismissal of attorneys)

Cal. Code Regs., tit. 8, § 10775–10778 [§§ 7.34, 13.15[4]] (attorney’s fees)

Cal. Code Regs., tit. 8, § 10779 [§ 13.15[4]] (disbarred attorneys)

Cal. Code Regs., tit. 8, § 10786 [§ 4.20[1]] (med-legal expenses)

Cal. Code Regs., tit. 8, § 10787 [§ 16.12] (trials)

Cal. Code Regs., tit. 8, § 10788 [§§ 1.09[2], 13.15[3]] (reassignment of WCJ)

Cal. Code Regs., tit. 8, § 10790 [§ 13.15[3]] (interpreters)

Cal. Code Regs., tit. 8, § 10803 [§ 11.11[8][b][ix]] (record of proceedings)

Cal. Code Regs., tit. 8, § 10835 [§ 16.45[2]] (stipulations)

Cal. Code Regs., tit. 8, § 10840–10844 [§§ 7.34, 13.15[4]] (attorney’s fees)

Cal. Code Regs., tit. 8, § 10856 [§ 14.08[4]] (newly discovered evidence)

Cal. Code Regs., tit. 8, § 10870 [§ 12.04[2]] (approval of C&R)

Cal. Code Regs., tit. 8, § 10940–10946 [§§ 8.01[4], [5], 8.08] (SIBTF applications)

Cal. Code Regs., tit. 8, § 10953 [§ 11.11[8][b][viii], [ix]] (penalty assessment appeal)

Cal. Code Regs., tit. 8, § 10960 [§§ 1.09[2], 13.15[3]] (disqualification of WCJ)

Cal. Code Regs., tit. 8, § 10974 [§ 14.08[4]] (newly discovered evidence)

CASE LAW DEVELOPMENTS:

Supreme Court Opinion:

Exclusive Remedy Rule; Employment Status. The California Supreme Court in *Gund v. County of Trinity*, 2020 Cal. LEXIS 5542, affirmed the Court of Appeal’s judgment in upholding the grant of summary judgment in favor of defendants, and held that plaintiffs, who were private citizens, were engaged in “active law enforcement” pursuant to Labor Code § 3366 when they were brutally attacked by a murderer while checking on the welfare of a neighbor at the request of the county deputy, and were, therefore, barred by the workers’ compensation exclusive remedy rule from pursuing a civil action against the county and deputy. [See Ch. 2, § 2.04[2].]

Court of Appeal Published Opinions:

Injury AOE/COE; Permanent Disability; Apportionment. The court of appeal in *County of Santa Clara v. Workers’ Comp. Appeals Bd. (Justice)* (2020) 49 Cal. App. 5th 605, 262 Cal. Rptr. 3d 876, 85 Cal. Comp. Cases 467, annulling the Appeals Board’s decision, held that the un rebutted substantial medical evi-

dence demonstrated that applicant's permanent disability was caused, in part, by an extensive preexisting knee pathology, so that apportionment was required, and that the present case was distinguishable from *Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal. App. 5th 1249, 219 Cal. Rptr. 3d 654, 82 Cal. Comp. Cases 679. [See Ch. 7, § 7.45[2].]

Injury AOE/COE; Independent Contractors; Hirers' Duties; Negligence. The court of appeal in *Johnson v. The Raytheon Co., Inc.* (2019) 33 Cal. App. 5th 617, held that plaintiff failed to raise a triable issue of fact that any retained control by the hirer/defendant affirmatively contributed to plaintiff's injuries, and further held that an independent contractor hired by the hirer/defendant owed no duty to plaintiff. [See Ch. 12, § 12.06[9].]

Workers' Compensation Insurance; Arbitration. The court of appeal in *Jackpot Harvesting, Inc. v. Applied Underwriters, Inc.* (2019) 33 Cal. App. 5th 719, held that an arbitration agreement contained in a "Request to Bind" was unenforceable based on the insurer's failure to submit the agreement to the Insurance Commissioner for approval pursuant to Insurance Code section 11658. [See Ch. 3, § 3.25.]

Home Health Care; Stipulations; House Cleaning; Utilization Review. The court of appeal in *Allied Signal Aerospace v. Workers' Comp. Appeals Bd. (Wiggs)* (2019) 35 Cal. App. 5th 1077, held that a registered nurse's report recommending house-

keeping services, which was obtained pursuant to a stipulation between the employer and employee for a one-time home assessment, did not invalidate the employer's subsequent utilization review determination denying such services. [See Ch. 4, § 4.05[3].]

Jurisdiction to Determine Jurisdiction; Superior Court; Workers' Compensation Appeals Board. The court of appeal in *Hollingsworth v. Superior Court* (2019) 37 Cal. App. 5th 927, held that, as between the superior court and the Appeals Board, when a civil action and a workers' compensation proceeding are concurrently pending, the tribunal first assuming jurisdiction should determine exclusive jurisdiction. [See Ch. 13, § 13.09[1].]

Disability Retirement Benefits; Industrial Causation; Statute of Limitations. The court of appeal in *Rodriguez v. Workers' Comp. Appeals Bd.* (2019) 39 Cal. App. 5th 195, held that an employee's claim of industrial causation of his disability retirement was timely when filed within two years after the employee's "effective date of . . . retirement," which was the date when defendant began to pay the employee's disability retirement benefits, although more than five years from the date of industrial injury had elapsed. [See Ch. 22, § 22.04[6].]

Temporary Disability Indemnity; Applicant's Return to Work; Medical Appointments. The court of appeal in *Skelton v. Workers' Comp. Appeals Bd.* (2019) 39 Cal. App. 5th 1098, held that an employee

was not entitled to receive temporary disability indemnity for time lost from work to attend medical treatment appointments following her post-injuries return to work although she had not been declared permanent and stationary, but was entitled to compensation for wage loss for attending medical-legal evaluations. [See Ch. 6, § 6.01[1].]

California Insurance Guarantee Association; Other Insurance; Unsigned Endorsements to Contracts. The court of appeal in *Travelers Property Casualty Co. of America v. Workers' Comp. Appeals Bd.* (2019) 40 Cal. App. 5th 728, held that a solvent insurer's policy issued to the special employer was not "other insurance," and CIGA, on behalf of the general employer, was liable to provide coverage for an employee's injury claim, when the general employer's insurer received an unsigned written endorsement from the special employer limiting the insurer's liability to leased special employees and excluding the special employer's other, non-leased employees. [See Ch. 3, § 3.33[3].]

Jurisdiction; Reinsurance; California Insurance Guarantee Association. The court of appeal in *California Ins. Guarantee Assn. v. San Diego County Schools Risk Management Joint Powers Authority* (2019) 41 Cal. App. 5th 640, held that the superior court had jurisdiction over a dispute between an employer and CIGA (in place of the employer's insolvent excess insurer) to determine an employee's date of injury

even if its decision was contrary to that of the Appeals Board. [See Ch. 3, § 3.33[3]; Ch. 13, § 13.08[1].]

California Public Employees' Retirement System; Disability Retirement. The court of appeal in *McCormick v. Public Employees' Retirement System* (2019) 41 Cal. App. 5th 428, held that employees are eligible for CalPERS disability retirement under Government Code section 21156 when, due to disability, they can no longer perform their usual duties at the only location where the employer will allow them to work, even if they might be able to perform those duties at some theoretical different location. [See Ch. 22, § 22.04[5].]

Lien Claims; Procedure; Interpreter Services. The court of appeal in *Meadowbrook Insurance Co. v. Workers' Comp. Appeals Bd. (Velazquez)* (2019) 42 Cal. App. 5th 432, held that a lien claimant's liens for interpreting services were barred by its failure to request a second bill review, as required by regulation, making those liens deemed satisfied. [See Ch. 4, § 4.05[4].]

Going and Coming Rule. The court of appeal in *Bingener v. City of Los Angeles* (2019) 44 Cal. App. 5th 134, held that where an employee hit and killed a pedestrian during his normal commute to work, and the employee's work did not require use of his personal vehicle nor was the employee on a special errand or mission for his employer at the time of the accident, plaintiff's tort action against the employer was precluded

by the “going and coming” rule. [See Ch. 12, § 12.16[3].]

Fair Employment and Housing Act; Statute of Limitations; Tolling by Workers’ Compensation Action. The court of appeal in *Brome v. Cal. Highway Patrol* (2020) 44 Cal. App. 5th 786, 258 Cal. Rptr. 3d 83, held that the record did not preclude, as a matter of law, the conclusion that plaintiff’s claims for discrimination and harassment based on sexual orientation were timely, because a reasonable jury could find that the statute of limitations was tolled or that the employer’s conduct constituted a continuing violation. [See Ch. 12, § 12.03[2].]

Emotional Injury or Distress Claims; Exclusive Remedy Rule; Inapplicability. The court of appeal in *Reynaud v. Technicolor Creative Services* (2020) 46 Cal. App. 5th 1007, held that the employer’s negligence was a substantial factor in preventing plaintiffs from obtaining “green cards,” and further held that plaintiffs’ claim for damages, including emotional distress, suffered as a result of the employer’s actions was not barred by the workers’ compensation exclusive remedy rule. [See Ch. 12, § 12.09[1].]

Federal Cases:

California Insurance Guarantee Association; Medicare Reimbursement. The U.S. Court of Appeals, Ninth Circuit, in *California Insurance Guarantee Association v. Azar*, 940 F.3d 1061 (9th Cir. 2019) held that Medicare, as a secondary payer, was not entitled to reimbursement

from CIGA, an insolvency insurer of last resort and not a “workmen’s compensation law or plan” from which Medicare is entitled to reimbursement. [See Ch. 3, § 3.33[3].]

Third-Party Action; Subrogation; Removal to Federal Court. The U.S. District Court, Northern District of California, in *Gutierrez v. McNeilus Truck & Manufacturing, Inc.*, 84 Cal. Comp. Cases 985 (N.D. Calif. 2019), held that a cause of action was not nonremovable pursuant to 28 U.S.C.S. § 1445(c) based on the employer’s right of subrogation to recover amounts it paid in workers’ compensation benefits, when neither the employer nor its workers’ compensation insurer was a party to the employee’s civil case and, therefore, the action did not arise under California workers’ compensation law. [See Ch. 12, § 12.02[1][a].]

WCAB en banc opinions:

Psychiatric Injury; Catastrophic Injury; Increased Impairment Rating. The Appeals Board en banc in *Wilson v. State of CA Cal. Fire* (2019) 84 Cal. Comp. Cases 620 (Appeals Board en banc opinion) upheld its previous en banc decision in this case that determination of whether an injury is catastrophic under Labor Code section 4660.1(c)(2)(B) focuses on the nature of the injury, rather than the mechanism of the injury, and is a fact-driven inquiry. [See Ch. 7, §§ 7.05[3][b][ii], 7.06[6].]

Lien Claims; Medical-Legal Liens; Burden of Proof. The Appeals Board en banc in *Colamonico*

v. Secure Transportation (2019) 84 Cal. Comp. Cases 1059 (Appeals Board en banc opinion) set forth a medical-legal provider's initial burden of proof for its lien claim, and held that the defendant does not waive its objection to the reasonableness of the provider's billing by failing to raise the objection in an Explanation of Review. [See Ch. 7, §§ 17.70[c], 17.72[1][b].]

Exclusive Jurisdiction of Appeals Board; Validity of Administrative Rule; Supplemental Job Displacement Benefit Vouchers. The Appeals Board en banc in *Dennis v. State of California* (2020) 85 Cal. Comp. Cases 389 (Appeals Board en banc opinion) held that (1) 8 Cal. Code Reg. section 10133.54 is invalid because it exceeds the statutory authority granted to Administrative Director under Labor Code sections 4658.5(c) and 4658.7(h) and restricts the exclusive adjudicatory power of WCAB to adjudicate compensation claims, including disputes over supplemental job displacement benefits, and (2) an employer must show that it made a bona fide offer of regular, modified, or alternative work in order to avoid liability for the supplemental job displacement benefit voucher. [See Ch. 1, § 1.07[2], [16], Ch. 2, § 2.04[6], Ch. 13, § 13.08[1], Ch. 21, §§ 21.02, 21.06.]

COVID-19 Emergency Orders. The WCAB's emergency orders regarding procedures before the Board are covered in Ch. 19, § 19.01.

WCAB significant panel decisions:

Medical Liens; Stayed Liens;

“Controlled” Entities. The Appeals Board in *Villanueva v. Teva Foods* (2019) 84 Cal. Comp. Cases 198 (Appeals Board Significant Panel Decision) clarified the definition of entity “controlled” in Labor Code § 139.21(a)(3) by “an individual if the individual is an officer or a director of the entity, or a shareholder with a 10 percent or greater interest in the entity.” [See Ch. 1, § 1.13[4]]

Utilization Review Denials; Timeliness. The Appeals Board in *Pa'u v. Department of Forestry/Cal Fire* (2019) 84 Cal. Comp. Cases 815 (Appeals Board significant panel decision) held that utilization review denials were timely, since the phrase “working days” in Labor Code section 4610 does not include Saturdays, based on standard modern usage, as reflected in dictionary definitions, statutory and regulatory enactments, and judicial decisions. [See Ch. 4, § 4.10[4].]

WCAB noteworthy panel decisions:

CAUTION: *The following entries are “noteworthy panel decisions” and not binding precedent. Practitioners should proceed with caution when citing to these cases and should also verify the subsequent history of these cases.*

Medical-Legal Procedure; Assignment and Selection of Panel Qualified Medical Evaluators; Specialty Designation. The Appeals Board in *Ramirez v. Jaguar Farm Labor Contracting, Inc.* (2018) 84 Cal. Comp. Cases 56 (Appeals Board noteworthy panel decision), held that

chiropractors are qualified to act as panel qualified medical evaluators even in situations involving potential surgery and/or the use of prescription medications. [See Ch. 16, § 16.54[4].]

Medical; Legal Procedure; Assignment and Selection of Panel Qualified Medical Evaluators; Specialty Designation. The Appeals Board in *Porcello v. State of California Department of Corrections &*

Rehabilitation (2020) 85 Cal. Comp. Cases 327, held that nothing precludes a party from submitting a panel specialty dispute to the WCJ prior to or instead of submitting the dispute to the Medical Director. [See Ch. 16, § 16.54[4].]

TABLES. New table of cases and table of statutes are included.

INDEX. A completely revised index is included.

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