

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

Article 8. Hearings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 13. Lien Claims

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

(a) Format of Lien Claims:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the Workers' Compensation Appeals Board;

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

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

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

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

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

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

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

§ 10770.1. Lien Conferences and Lien Trials.

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

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

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

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

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

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

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

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

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

(1) set a lien trial;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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