



# Practical Tips for Drafting Stipulations



By Gregory P. Fletcher  
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PD Rating – “The Schedule”  
with Timothy Mussack

{ 2 }





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3

## Stipulation = Agreement

Types of SETTLEMENTS:

Stipulation & Order – (or Award)

Settles single issue

To Settle the “Case in Chief”  
(PD, TD, Medical Care), there are two options

1. Compromise & Release (C&R)
2. Stipulations with Request for Award (Stips)



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4

## C&R =

Traditionally a lump sum to settle  
MULTIPLE (hopefully ALL) issues

- The ONLY way to settle future medical care is by Compromise & Release
- BUT typically this is ONLY done when the carrier is no longer on the risk:
  1. IW no longer work for ER
  - OR
  2. Carrier no longer insures ER

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5



## Why?

To avoid duplicate payment to IW

If the medical award is resolved, and the IW has a subsequent injury to the same body part, the carrier may be required to pay again for the same medical treatment.

This is because medical treatment cannot be apportioned!

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6



## Advantages of C&R:

- Resolves all issues (generally)
- No right to reopen
- Issues [such as penalties] resolved without admission of fault or liability



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7

## WHEN NOT TO SETTLE BY COMPROMISE AND RELEASE:

1. Still on risk (C&R may duplicate settlement of future claims);
2. When a party is unwilling to settle future medical care (e.g., applicant concerned about ability to pay future medical, or defendant does not wish to fund MSA);
3. Other party objects (co-def; Death without Dependents Unit).



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8

## Stipulated Award

Parties STIPULATE (agree) on the FACTS:

Ask the WCAB to issue AWARD consistent with agree-upon facts.

NO NEED TO TRY TO FACTUAL ISSUES  
BECAUSE NO DISPUTE



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9

## WHEN SHOULD YOU FIRST THINK ABOUT SETTLEMENT OF A CLAIM?

When injured worker is P&S or MMI?  
For all body parts?

Not necessarily...

When claim is denied? (“Nuisance  
value?”)

1. Consider SETTLEMENT AT EVERY STAGE IN CLAIMS HANDLING. If you don’t, you may miss settlement opportunities.
2. HURDLES to SETTLEMENT:
  - Injured worker/applicant’s attorney;
  - WCAB (judge, I&A officer)



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10

ALL SETTLEMENT MUST BE  
APPROVED BY A WORKERS'  
COMPENSATION  
ADMINISTRATIVE LAW  
JUDGE. LC 5001

- Board Rules direct the Appeals Board to “inquire into adequacy” of settlements. See also WCAB Policy & Procedure Manual Section 1.90.



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{ 11 }



Q: Does this mean the injured worker gets every benefit possible under the record developed by the parties?

A: NO! The settlement must only be within the range of potential outcomes.

See Board Rule 10870:

“agreements which provide for the payment of less than the full amount of compensation due or to become due, and which undertake to release the employer from all future liability will be approved only where it appears that a reasonable doubt exists as to the rights of the parties, or that approval is in the best interests of the parties.”



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{ 12 }

**TOOLS USED BY WORKERS'  
COMPENSATION  
ADMINISTRATIVE LAW JUDGE  
TO ASSESS ADEQUACY:**

1. DEU (Disability Evaluation Unit);
2. I&A (Information and Assistance Officer)



13

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**CLAIMS EXAMINER'S BEST  
TOOLS TO ESTABLISH  
ADEQUACY OF  
SETTLEMENT:**

- Superior skill in drafting C&R;
- Providing supporting documents;
- Explaining basis of settlement.



14

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## UPON SUBMISSION OF SETTLEMENT JUDGE

### CAN:

1. Approve it;
2. Suspend and make inquiries re basis of settlement or missing documents;
3. Set hearing on adequacy; or
4. Disapprove settlement


The Judge CANNOT make unilateral changes to settlement documents.

*Burbank Studios v. WCAB (Yount)*, (1982) 47 CCC 832; *Hodgeman v WCAB*, (2007) 72 CCC 1202.



15

## CHARACTERISTICS OF STIP WITH REQUEST FOR AWARD

1. Admitting injury; 
2. Medical care typically left open;
3. All payment periods and rates specified;
4. Can be reopened w/in 5 yrs from the date of injury for “new and further disability.”



16



## Stipulations Need to be Very Carefully Drafted

Unlike a C&R, in many cases ongoing administration of the claim may be based on the terms of the Stipulations:

- Possible ongoing payment of PD
- Possible LIFE PENSION
- Application of COLA
- Commutation
- Administration of Medical Award

A C&R (hopefully) is “one and done” but you may have to live with a Stipulated Award for some time.

{ 17 }



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## The Parties are BOUND by their Stipulations:

*City of Sacramento v. WCAB (Weatherall)*  
(2000) 65 CCC 1

If you Stipulate to injury, NO BACKSIES!



{ 18 }



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Stipulation to an injured body part cannot be contested in litigation regarding PETITION TO REOPEN.

*Cesares v. WCAB* (1990) 55 CCC 189  
(unpublished 5<sup>th</sup> District Court of Appeal case)

BUT

Stipulation to SOME but not ALL body parts leaves the remaining injuries UNRESOLVED, and still subject to WCAB jurisdiction.

*Santa Fe Energy v. WCAB* (Matney) (1999) 64 CCC 1428

19



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## STIP WITH REQUEST FOR AWARD: THE FORM

- OCR form is similar to C&R form.

Page one requests venue information, (important when Stipulations act as Application)

Party info (injured worker, employer, carrier and TPA) is essentially the same as in C&R.

Case info is also similar.

**PAY SPECIAL ATTENTION TO  
DESCRIPTION OF INJURED  
BODY PARTS!**

20



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- Provides for MULTIPLE EMPLOYERS and CARRIERS (think CT claims)
- ACCURATELY IDENTIFY PARTIES, especially carriers and self-insured employers

OR YOU CAN BE SANCTIONED

*Colderon v. Compuware* (2002)  
67CCC289 see also Regulation 10390

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21



Reset Form    Print Form

**STATE OF CALIFORNIA**  
**DIVISION OF WORKERS' COMPENSATION**  
**WORKERS' COMPENSATION APPEALS BOARD**  
**STIPULATIONS WITH REQUEST FOR AWARD**

Case No. \_\_\_\_\_ Date of Injury \_\_\_\_\_ MMDDYYYY

SSN (Numbers Only) \_\_\_\_\_

**Venue Choice is based upon: (Completion of this section is required)**

County of residence of employee (Labor Code section 5501.5(a)(1) or (d) )

County where injury occurred (Labor Code section 5501.5(a)(2) or (d) )

County of principal place of business of employee's attorney (Labor Code section 5501.5(a)(3) or (d) )

Select 3 Letter Office Code For Place/Venue of Hearing (From the Document Cover Sheet)

\_\_\_\_\_

**Applicant (Completion of this section is required)**

First Name \_\_\_\_\_ MI \_\_\_\_\_

Last Name \_\_\_\_\_

Address/PO Box (Please leave blank spaces between numbers, names or words)

\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Employer #1 Information (Completion of this section is required)**

Insured     Self-Insured     Legally Uninsured     Uninsured

Employer Name (Please leave blank spaces between numbers, names or words)

\_\_\_\_\_

Employer Street Address/PO Box (Please leave blank spaces between numbers, names or words)

\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

DWC-CA form 10214 (a) Page 1 (Rev 11/2008)

**Insurance Carrier Information (if known and if applicable - include even if carrier is adjusted by claims administrator)**

Insurance Carrier Name (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

Insurance Carrier Street Address/PO Box (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Claims Administrator Information (if known and if applicable)**

Name (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

Street Address/PO Box (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Employer #2 Information (Completion of this section is required)**

Insured     Self-Insured     Legally Uninsured     Uninsured

Employer Name (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

Employer Street Address/PO Box (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Insurance Carrier Information (if known and if applicable - include even if carrier is adjusted by claims administrator)**

Insurance Carrier Name (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

Insurance Carrier Street Address/PO Box (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

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**Claims Administrator Information (if known and if applicable)**

Name (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

Street Address/PO Box (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Employer #3 Information (Completion of this section is required)**

Insured     Self-Insured     Legally Uninsured     Uninsured

Employer Name (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

Employer Street Address/PO Box (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Insurance Carrier Information (if known and if applicable - include even if carrier is adjusted by claims administrator)**

Insurance Carrier Name (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

Insurance Carrier Street Address/PO Box (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Claims Administrator Information (if known and if applicable)**

Name (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

Street Address/PO Box (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

DWC-CA form 10214 (a) Page 3 (Rev 11/2008)

**Employer #4 Information (Completion of this section is required)**

Insured     Self-Insured     Legally Uninsured     Uninsured

Employer Name (Please leave blank spaces between numbers, names or words)

Employer Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Insurance Carrier Information (If known and if applicable - include even if carrier is adjusted by claims administrator)**

Insurance Carrier Name (Please leave blank spaces between numbers, names or words)

Insurance Carrier Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Claims Administrator Information (if known and if applicable)**

Name (Please leave blank spaces between numbers, names or words)

Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

The parties hereto stipulate to the issuance of an Award and/or Order, based upon the following facts, and waive the requirements of Labor Code section 5313.

1. Employees First Name \_\_\_\_\_

Employees Last Name \_\_\_\_\_

birth date \_\_\_\_\_ MMDDYYYY

while employed at \_\_\_\_\_ State \_\_\_\_\_

as a(n) \_\_\_\_\_ Occupation \_\_\_\_\_ Group \_\_\_\_\_ in \_\_\_\_\_

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More than 4 Companion Cases

Specific Injury

Case Number 1  Cumulative Injury (Start Date: MMDDYYYY) (End Date: MMDDYYYY)  
(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: \_\_\_\_\_ Body Part 2: \_\_\_\_\_ Body Part 3: \_\_\_\_\_

Body Part 4: \_\_\_\_\_ Other Body Parts: \_\_\_\_\_

Specific Injury

Case Number 2  Cumulative Injury (Start Date: MMDDYYYY) (End Date: MMDDYYYY)  
(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: \_\_\_\_\_ Body Part 2: \_\_\_\_\_ Body Part 3: \_\_\_\_\_

Body Part 4: \_\_\_\_\_ Other Body Parts: \_\_\_\_\_

Specific Injury

Case Number 3  Cumulative Injury (Start Date: MMDDYYYY) (End Date: MMDDYYYY)  
(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: \_\_\_\_\_ Body Part 2: \_\_\_\_\_ Body Part 3: \_\_\_\_\_

Body Part 4: \_\_\_\_\_ Other Body Parts: \_\_\_\_\_

Specific Injury

Case Number 4  Cumulative Injury (Start Date: MMDDYYYY) (End Date: MMDDYYYY)  
(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: \_\_\_\_\_ Body Part 2: \_\_\_\_\_ Body Part 3: \_\_\_\_\_

Body Part 4: \_\_\_\_\_ Other Body Parts: \_\_\_\_\_

by the employer(s) and their insurer(s) listed above and who sustained injury(ies) arising out of and in the course of employment to

(Please list all body parts injured)

DWC-CA form 10214 (a) Page 5 (Rev 11/2008)

## REMEMBER:



### **IN STIPULATED AWARDS MEDICAL CARE REMAINS OPEN FOR ALL INJURED BODY PARTS.**

Stipulations will be construed against defense. Be as narrow in your description as possible.

Example: “foot” instead of “lower extremity”, “low back” instead of “back” or “spine.”

{ 27 }



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## REAL EXAMPLE:



- Stipulation to “internal injuries” was construed to include fibromyalgia.
- Language in box at bottom of page 5 will control, not body part codes listed in case info.

{ 28 }



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## Another Example:

**INJURY TO THE HEART**  
 was considered broad enough to include  
 aortic valve disease the AME found non-  
 industrial

Miller v. WCAB 218 Cal.App.3rd 350  
 (1990)

**BUT IF THE INJURY CAUSES A  
 "COMPENSABLE CONSEQUENCE" OF  
 THE INITIAL INJURY**, medical treatment  
 for the compensation consequence injury  
 will be allowed.

See *Shaw v. Automobile Club of Southern  
 California* (2023) 89 CCC 166



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29

2. The injury (ies) caused temporary disability for the period \_\_\_\_\_ through \_\_\_\_\_  
 \_\_\_\_\_ for which indemnity has been paid at \$ \_\_\_\_\_ Indemnity Paid \_\_\_\_\_ per week. +

2(a) The injury(ies) caused additional temporary disability for the period \_\_\_\_\_  
 through \_\_\_\_\_ at the rate of \$ \_\_\_\_\_ Rate \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ Indemnity Paid \_\_\_\_\_

3. The injury(ies) caused permanent disability of \_\_\_\_\_ % for which indemnity is payable at \$ \_\_\_\_\_ Indemnity Rate  
 per week beginning \_\_\_\_\_ in the sum of \$ \_\_\_\_\_, less credit for such payments  
 previously made.  And a life pension of \$ \_\_\_\_\_ Life Pension \_\_\_\_\_ per week thereafter.  
 Labor Code §4958(d) adjustment:  
 Increase rate to \$ \_\_\_\_\_ as of \_\_\_\_\_ MMDDYYYY  
 Decrease rate to \$ \_\_\_\_\_ as of \_\_\_\_\_ MMDDYYYY  
 Not Applicable +

An informal rating  has /  has not (Select one) been previously issued in case no(s) \_\_\_\_\_

4. There  is  is Not a need for medical treatment to cure or relieve from the effects of said injury (ies).

5. Medical-legal expenses and/or liens are payable by defendant as follows:  
 \_\_\_\_\_

6. Applicant's attorney requests a fee of \$ \_\_\_\_\_  
 Fees to be commuted as follows:  
 \_\_\_\_\_

7. Liens Against compensation are payable as follows:  
 \_\_\_\_\_

DWC-CA form 10214 (a) Page 6 (Rev 11/2005) +

2. The injury (ies) caused temporary disability for the period \_\_\_\_\_ through \_\_\_\_\_  
MMDDYYYY for which indemnity has been paid at \$ \_\_\_\_\_ per week.  
MMDDYYYY Indemnity Paid

2(a) The injury(ies) caused additional temporary disability for the period \_\_\_\_\_  
MMDDYYYY through \_\_\_\_\_ at the rate of \$ \_\_\_\_\_ in the amount of \$ \_\_\_\_\_  
MMDDYYYY Rate Indemnity Paid

3. The injury(ies) caused permanent disability of \_\_\_\_\_ % for which indemnity is payable at \$ \_\_\_\_\_  
per week beginning \_\_\_\_\_ in the sum of \$ \_\_\_\_\_, less credit for such payments  
MMDDYYYY previously made.  And a life pension of \$ \_\_\_\_\_ per week thereafter.  
Life Pension

An informal rating  has /  has not (Select one) been previously issued in case no(s) \_\_\_\_\_.

4. There  is  is Not a need for medical treatment to cure or relieve from the effects of said injury (ies).

5. Medical-legal expenses and/or liens are payable by defendant as follows:

6. Applicant's attorney requests a fee of \$ \_\_\_\_\_  
 Fees to be commuted as follows:

7. Liens Against compensation are payable as follows:

DWC-WCAS form 10214 (a) -1 Page 6 (Rev 4/2014)

## NOTE: 2 DIFFERENT FORMS FOR INJURIES BEFORE & AFTER JAN 1, 2013

Reason: 15% increase or decrease in PD rate for failure to offer mod work no longer applies to DOI o/a 1/1/13.

Pre – 1/1/13:

1. Determine if employer has 50 or more employees;
2. Check for offer of modified work w/in 60 days of P&S;
3. Increase remaining PD payment by 15%

NOTE: WATCH FOR PDA's! Most money charts assume no PDA's prior to P&S date.





## NOTE:

- Stipulations form provides for 2 periods of TD payments (more flexible than C&R form).

### NOTE:

- Provision for LIFE PENSION in PD section of Stipulations form.

Q: Is there need for medical treatment (paragraph 4)?

- In 99.99999% of cases the answer will be yes, and box should be checked indicating there is need for medical care.
- Even if QME finds no need for medical care, WCAB will not approve Stips indicating no need for medical care if treatment records contain any possibility of future treatment.



## Question...

Can you limit Future Medical Care to treatment recommended by AME or QME?  
No, in Northern California. Maybe, in Southern California.

BUT

BE CAREFUL WHAT YOU WISH FOR:

*Bertrand v. City of Orange* (2014), ADJ3135829, Board Panel Decision held that 2004 Stipulations with Request for Award in which medical treatment “disputes” were to be decided by AME as a WAIVER of the IMR process.



# LIENS:

- Form distinguishes between Medical-Legal liens and liens against compensation.

## MED-LEGAL:

“All paid or will be paid per the medical-legal fee schedule.”

## LIENS AGAINST COMPENSATION:

- Medical treatment: use same “pay, adjust or litigate language” as C&R.

## True liens against compensation:

- Living expenses
- Child support
- (possibly EDD)




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35


8. Any accrued claims for Labor Code section 5814 penalties are included in this settlement unless expressly excluded.

9 Other stipulations:



 Dated

---

**Applicant's Attorney or Authorized Representative:**

Law Firm/Attorney       Non Attorney Representative      

First Name   
 Last Name   
 Firm Number   
 Law Firm name   
 Address/PO Box (Please leave blank spaces between numbers, names or words)   
 City  State  Zip Code   
 Dated

DWC-CA form 10214 (a) Page 7 (Rev 11/2005) 

**Defendant's Attorney or Authorized Representative:**  
 Law Firm/Attorney     Non Attorney Representative

First Name \_\_\_\_\_

Last Name \_\_\_\_\_

Firm Number \_\_\_\_\_

Law Firm Name \_\_\_\_\_

Address/PO Box (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Dated \_\_\_\_\_ MM/DD/YYYY \_\_\_\_\_ Defense Attorney Signature \_\_\_\_\_

---

**Defendant's Attorney or Authorized Representative:**  
 Law Firm/Attorney     Non Attorney Representative

First Name \_\_\_\_\_

Last Name \_\_\_\_\_

Firm Number \_\_\_\_\_

Law Firm Name \_\_\_\_\_

Address/PO Box (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Dated \_\_\_\_\_ MM/DD/YYYY \_\_\_\_\_ Defense Attorney Signature \_\_\_\_\_

DWC-CA form 10214 (a) Page 8 (Rev 11/2008)

**Defendant's Attorney or Authorized Representative:**  
 Law Firm/Attorney     Non Attorney Representative

First Name \_\_\_\_\_

Last Name \_\_\_\_\_

Firm Number \_\_\_\_\_

Law Firm Name \_\_\_\_\_

Address/PO Box (Please leave blank spaces between numbers, names or words) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Dated \_\_\_\_\_ MM/DD/YYYY \_\_\_\_\_ Defense Attorney Signature \_\_\_\_\_

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**Interpreter Licence Number:**

Interpreter Name \_\_\_\_\_ Interpreter License Number \_\_\_\_\_

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## “OTHER STIPULATIONS”

P. 7

Similar comments section of C&R

This is your opportunity to explain the basis for the settlement, and especially all issues which have been compromised.

What is the range of possible outcomes?

How is your compromise adequate?



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39

## Provide RATING STRING IN STIPULATED SETTLEMENT?

### YES!

- 1) It shows the basis of settlement of PD
- 2) LC 4664 – Conclusive presumption of PD in Stipulation for purposes of future apportionment.

RATING DEMONSTRATES OVERLAP

OTHER POSSIBLE EXPLANATIONS:

- Compromise regarding earnings
- Disputed TD periods
- Disputed BODY Parts – Include DISMISSAL of allegation of injury to disputed body parts



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40

## OTHER STIPULATIONS

- Use to explain basis of settlement.  
Focus on PD: medical report(s);  
provide rating and dollar value.

### INTEREST:

- Include the following in ALL Stipulations requiring payment:
- “Interest is waived if payment is made within 30 days of the service of the Award pursuant to these Stipulations.”

### SIGNATURES:

- No need for applicant to sign in front of witnesses or notary public.

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41



## Labor Code Section 5814(c)

“Upon the approval of a compromise and release, findings and award, or stipulations and orders by the appeals board, it shall be conclusively presumed that any accrued claims for penalty have been resolved, regardless of whether a petition for penalty has been filed, unless the claim for penalty is expressly excluded by the terms of the order or award.”

If the potential claim for penalty for unreasonable delay in any benefits being settled, the penalty issue must be expressly deferred or it will be deemed resolved.

“All other issues are deferred” will probably not be good enough to preserve claim of penalty!

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42



## What to Submit with Stipulations?

DRAFT AWARD  
Supporting Documents

- Medical-Legal Reports (AME, QME)
- Medical treatment reports (narrative, diagnostic studies)
- Earnings Information (wage statement)
- Printout of Benefits
- Benefit Notices

SUBMIT DOCUMENTS WHICH SUPPORT A FINDING OF ADEQUACY OF THE SETTLEMENT.

CONSIDER A LETTER EXPLAINING THE BASIS FOR THE SETTLEMENT.

43



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## What to do when you get an Order Suspending Action on Stips?



**DON'T PANIC!!**

It is not disapproving the Settlement

Read it carefully and RESPOND:

- Answer Judge's questions;
- Provide requested documents

44



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45

