

Recent Trends in Workers' Compensation Defense

By Nasir F. Adil, Esq.

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by John Kamin



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**STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD
COMPROMISE AND RELEASE**

Case Number 1 _____ Case Number 4 _____
Case Number 2 _____ Case Number 5 _____
Case Number 3 _____ 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 Document Cover Sheet)

Employee (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 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 (c) (Rev. 5/2020) (Page 1 of 9)

Goal: Avoid Order Suspending Action

PRACTICE TIP: TAKE YOUR TIME AND BE ACCURATE TO SAVE TIME AND EXPENSES DOWN THE ROAD

BE SURE TO LIST ALL ADJ NUMBERS. IF THERE ARE MULTIPLE DOI'S, THEN LIST THEM ON PAGES 1, 4, AND ADDENDA (if applicable).

IF YOU NEED THE BOARD TO CREATE AN ADJ NUMBER, THEN DO SO AT TIME OF E-FILING TO ENSURE:

- 1) THE C&R HAS ADJ NUMBERS FOR ALL DOI'S THAT ARE BEING RESOLVED
- 2) THE OACR LISTS ALL ADJ NUMBERS RELATED TO DOI'S



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IF NOT, YOU WILL HAVE TO REQUEST AN AMENDED OACR, POSSIBLE FILE FOR REMOVAL, ETC.

RE SSN'S, IS OFTEN OBJECTED TO BY AA'S.

PRACTICE TIP: LIST LAST FOUR DIGITS OF SSN'S, IF AA OBJECTS TO THE ENTIRE NUMBER BEING LISTED

ENSURE THE PROPER NAME AND ADDRESS OF THE INJURED WORKER IS MEMORIALIZED.

WHY? BECAUSE LITERALLY NO ONE WINS WHEN THE C&R PAYMENT IS SENT TO THE WRONG ADDRESS.



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Applicant's Attorney or Authorized Representative:
 Law Firm/Attorney Non Attorney Representative

First Name _____

Last Name _____

Law Firm Number _____

Law Firm Name _____

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

City _____ State Zip Code _____

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

First Name _____

Last Name _____

Law Firm Number _____

Law Firm Name _____

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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SIMILAR TO APPLICANT’S ADDRESS, BE SURE TO ACCURATELY LIST AA’S ADDRESS ON PAGE TWO.

THIS PREVENTS PAYMENTS TO WRONG ADDRESS ALONG WITH THE ABSOLUTELY DREADED ADDITIONAL COSTS ASSOCIATED WITH PENALTIES, INTEREST, ETC., IF THERE IS A NON TIMELY PAYMENT TO AA.



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 _____

IT IS CLAIMED THAT:

1. The injured employee, born _____ (DATE OF BIRTH: MM/DD/YYYY), alleges that while employed as a(n) _____, sustained injury _____ (OCCUPATION AT THE TIME OF INJURY) arising out of and in the course of employment at the locations and during the dates listed below:
(State with specificity the date(s) of injury(ies) and what part(s) of body, conditions or systems are being settled.)

Specific Injury

Case Number 1 _____ Cumulative Injury _____ (Start Date: MM/DD/YYYY) _____ (End Date: MM/DD/YYYY)
(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: _____

The injury occurred at _____ (Street Address/PO Box - Please leave blank spaces between numbers, names or words) _____

City _____ State _____ Zip Code _____

Body parts, conditions and systems may not be incorporated by reference to medical reports.

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PRACTICE TIP: DO NOT SKIP THE BASICS

I.E., DO IT RIGHT: FILL IN DOB, OCCUPATION, ETC.
IF YOU DO NOT, YOU WILL GET AN ORDER SUSPENDING.
SURE, YOU CAN REMEDY THIS POST ORDER, BUT IT WILL PREVENT CLOSURE OF THE FILE AND SETTLEMENT PAYMENTS.

BODY PARTS: BE 1) COMPLETE, 2) COMPLETE AND 3) COMPLETE
PRACTICE TIP: THIS IS NOT A TYPO.

- ✓ LIST ALL PLED BODY PARTS/CHECK EAMS/APPLICATION FOR ADJUDICATION (“C” GRADE)
- ✓ ALSO, LIST ALL BODY PARTS WITH IMPAIRMENT/PD (“B” GRADE)
- ✓ FURTHER, LIST ALL DIAGNOSED BODY PARTS (“A” GRADE)



LIST WHERE THE INJURY TOOK PLACE

PRACTICE TIP: IF ADDRESS IS UNKNOWN, LIST: JOBSITE, SUBJECT TO PROOF , THEN ADD THE CITY, STATE, ZIP.



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Specific Injury

Case Number 2 Cumulative Injury (Start Date: MM/DD/YYYY) (End Date: MM/DD/YYYY)
(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:

The injury occurred at _____
(Street Address/PO Box - Please leave blank spaces between numbers, names or words)

City _____ State _____ Zip Code _____
Body parts, conditions and systems may not be incorporated by reference to medical reports.

Specific Injury

Case Number 3 Cumulative Injury (Start Date: MM/DD/YYYY) (End Date: MM/DD/YYYY)
(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:

The injury occurred at _____
(Street Address/PO Box - Please leave blank spaces between numbers, names or words)

City _____ State _____ Zip Code _____
Body parts, conditions and systems may not be incorporated by reference to medical reports.

Specific Injury

Case Number 4 Cumulative Injury (Start Date: MM/DD/YYYY) (End Date: MM/DD/YYYY)
(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:

The injury occurred at _____
(Street Address/PO Box - Please leave blank spaces between numbers, names or words)

City _____ State _____ Zip Code _____
Body parts, conditions and systems may not be incorporated by reference to medical reports.

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IF NO ADDITIONAL DOI'S "SLASH" AND GO TO PAGE FIVE



BUT, IF THERE ARE ADDITIONAL DOI'S, BE SURE TO LIST THEM.

PRACTICE TIP: LIST THE ADJ NUMBER FOR THE CORRESPONDING ADDITIONAL DOI'S. THIS OFTEN ARISES WHEN SPECIFIC DOI'S AND CT'S ARE CONCURRENTLY PLED.

PRACTICE TIP: IF YOU GET A NEW ADJ NUMBER ASSIGNED AT TIME OF E-FILING, BE SURE TO LIST THE NEW ADJ NUMBER ON PAGE 1 AND PAGE 4.

PRACTICE TIP: IF THERE ARE MULTIPLE DEFENDANTS ASSOCIATED WITH A CT, OR MULTIPLE CT'S, YOU MAY NEED PAGE FOUR TO INDICATE SO.



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Specific Injury

Case Number 5 Cumulative Injury (Start Date: MM/DD/YYYY) (End Date: MM/DD/YYYY)
(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:

The injury occurred at _____
(Street Address/PO Box - Please leave blank spaces between numbers, names or words)

City _____ State _____ Zip Code _____

Body parts, conditions and systems may not be incorporated by reference to medical reports.

2. Upon approval of this compromise agreement by the Workers' Compensation Appeals Board or a workers' compensation administrative law judge and payment in accordance with the provisions hereof, the employee releases and forever discharges the above-named employer(s) and insurance carrier(s) from all claims and causes of action, whether now known or ascertained or which may hereafter arise or develop as a result of the above-referenced injury(ies), including any and all liability of the employer(s) and the insurance carrier(s) and each of them to the dependents, heirs, executors, representatives, administrators or assigns of the employee. Execution of this form has no effect on claims that are not within the scope of the workers' compensation law or claims that are not subject to the exclusivity provisions of the workers' compensation law, unless otherwise expressly stated.

3. This agreement is limited to settlement of the body parts, conditions, or systems and for the dates of injury set forth in Paragraph No. 1 and further explained in Paragraph No. 9 despite any language to the contrary elsewhere in this document or any addendum.

4. Unless otherwise expressly stated, approval of this agreement RELEASES ANY AND ALL CLAIMS OF APPLICANT'S DEPENDENTS TO DEATH BENEFITS RELATING TO THE INJURY OR INJURIES COVERED BY THIS COMPROMISE AGREEMENT. The parties have considered the release of these benefits in arriving at the sum in Paragraph 7. Any addendum duplicating this language pursuant to Sumner v WCAB (1983) 48 CCC 369 is unnecessary and shall not be attached.

5. Unless otherwise expressly ordered by the Workers' Compensation Appeals Board or a workers' compensation administrative law judge, approval of this agreement does not release any claim applicant may have for vocational rehabilitation benefits or supplemental job displacement benefits.

6. The parties represent that the following facts are true: (If facts are disputed, state what each party contends under Paragraph No. 9.)

EARNINGS AT TIME OF INJURY \$ _____

TEMPORARY DISABILITY INDEMNITY PAID _____ Weekly Rate \$ _____

Period(s) Paid _____
(Start Date: MM/DD/YYYY) (End Date: MM/DD/YYYY)

PERMANENT DISABILITY INDEMNITY PAID _____ Weekly Rate \$ _____

Period(s) Paid _____ End date _____
(Start Date: MM/DD/YYYY) (End Date: MM/DD/YYYY)

TOTAL MEDICAL BILLS PAID \$ _____ Total Unpaid Medical Expense to be Paid By: _____

Unless otherwise specified herein, the employer will pay no medical expenses incurred after approval of this agreement.

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MEMORIALIZE:

PAYMENTS MADE ARE SUBJECT TO PROOF, WITH JURISDICTION RESERVED



- WHY? BECAUSE IT ALLOWS THE WCAB TO MAINTAIN JURISDICTION IF THERE ARE ANY DISPUTES AS TO INDEMNITY/BENEFITS PAID.
- WHY? BECAUSE THE APPLICANT/AA DOES NOT ALWAYS HAVE AN UPDATED BENEFITS PRINTOUT CONFIRMING ALL BENEFITS, SO THIS IS A WAY TO PRESERVE RIGHTS.

EARNINGS AT TIME OF INJURY = AWW



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TD: LIST TOTAL PAID, RATES & DATES

PRACTICE TIP: DO IT RIGHT AND YOU WILL NOT HAVE TO DO IT AGAIN.



PRACTICE TIP: COMMUNICATION BETWEEN CLAIMS AND COUNSEL GOES A LONG WAY.

PRACTICE TIP: GET A COPY OF THE BENEFITS PRINTOUT. THIS KEEPS CLAIMS, DEFENSE COUNSEL AND APPLICANT'S COUNSEL ALL ON THE SAME PAGE.



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PD: LIST TOTAL PAID, RATES & DATES

PRACTICE TIP: DO IT RIGHT AND YOU WILL NOT HAVE TO DO IT AGAIN.

PRACTICE TIP: IF BENEFITS ARE ONGOING, BE SURE TO LIST THEY ARE ONGOING ON PAGES FIVE AND SIX OF C&R.

THIS KEEPS OPPOSING COUNSEL AWARE THAT PDA'S ISSUED BETWEEN TIME OF EXECUTION AND OACR WILL BE DEDUCTED FROM THE SETTLEMENT AMOUNT LISTED ON PAGE SIX.

REGARDING UNPAID MEDICAL EXPENSES, YOU CAN INDICATE THESE WILL BE PAID BY DEFENDANT THROUGH DATE OF OACR.



7. The parties agree to settle the above claim(s) on account of the injury(ies) by the payment of the SUM OF

\$ _____

Settlement Amount

The following amounts are to be deducted from the settlement amount:

\$ _____ for permanent disability advances through _____

\$ _____ for temporary disability indemnity overpayment, if any.

\$ _____ payable to _____

\$ _____ payable to _____

\$ _____ payable to _____

\$ _____ payable to _____

\$ _____ requested as applicant's attorney's fee.

LEAVING A BALANCE OF \$ _____, after deducting the amounts set forth above and less further permanent disability advances made after the date set forth above. Interest under Labor Code section 5800 is included if the sums set forth herein are paid within 30 days after the date of approval of this agreement.

8. Liens not mentioned in Paragraph No. 7 are to be disposed of as follows (Attach an addendum if necessary):

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LIST THE PROPER AMOUNT OF PERMANENT DISABILITY PAID, BEING SURE THAT THE AMOUNT LISTED ON PAGE FIVE MATCHES WHAT IS ON PAGE SIX.

LIST THE DATE PD HAS BEEN PAID THROUGH.

AGAIN, IF PD IS ONGOING, BE SURE TO STATE THAT IN THE C&R.

- LIST SUBJECT TO PROOF, WITH JURISDICTION RESERVED.

IF YOU ARE SEEKING A TD OVERPAYMENT, LIST THE ENTIRE AMOUNT TO BE DEDUCTED



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PRACTICE TIP: NEGOTIATE THIS WITH THE OPPOSING SIDE **BEFORE** YOU SUBMIT TO THE JUDGE. OTHERWISE, THERE IS NO MEETING OF THE MINDS.

PRACTICE TIP: LIST THE DATES OF THE TD OVER PAYMENT CREDIT SOUGHT, INCLUDING IF THERE IS A **MAPLES** TYPE OF CREDIT SOUGHT.

Tips!

THIS COMMUNICATES TO THE JUDGE AT TIME OF SUBMISSION AND REDUCES THE LIKELIHOOD OF AN ORDER SUSPENDING OR A JUDGE DENYING THE C&R ALL TOGETHER.



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MAKE SURE TO DO THE MATH AND THAT THE FINAL BALANCE AMOUNT BEING PAID TO THE APPLICANT IS ACCURATE.

REGARDING LIENS:

PRACTICE TIP: INDICATE THESE WILL BE NEGOTIATED OR LITIGATED BY DEFENDANT.

PRACTICE TIP: IF A LIEN IS ON THE ADDRESS RECORD, BUT IS RESOLVED, INDICATE THAT ON PAGE SIX.

THAT WILL HELP AVOID A LIEN CONFERENCE BEING FILED ON THE BOARD'S MOTION



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EDD

PRACTICE TIP: IF EDD HAS PAID BENEFITS, RESOLVE THEIR LIEN BEFORE SUBMITTING OACR.

PRACTICE TIP: CONTACT EDD AND GET CONFIRMATION THAT THEY HAVE NOT PAID BENEFITS EVEN IF YOU HAVE NO REASON TO BELIEVE THEY HAVE PAID BENEFITS.

PRACTICE TIP: DO NOT RELY ON THE ADDRESS RECORD.

PRACTICE TIP: BY DOING SO YOU AVOID DUPLICATE RECOVERY SCENARIOS (I.E. TD AND SDI) AND AVOID THE NIGHTMARE SCENARIO OF PAYING APPLICANT C&R MONIES WITHOUT BEING ABLE TO TAKE CREDIT FOR DUPLICATION.



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9. The parties wish to settle these matters to avoid the costs, hazards and delays of further litigation, and agree that a serious dispute exists as to the following issues (initial only those that apply). ONLY ISSUES INITIALED BY THE APPLICANT OR HIS/HER REPRESENTATIVE AND DEFENDANTS OR THEIR REPRESENTATIVES ARE INCLUDED WITHIN THIS SETTLEMENT.

Applicant	Defendant	
_____	_____	earnings
_____	_____	temporary disability
_____	_____	jurisdiction
_____	_____	apportionment
_____	_____	employment
_____	_____	injury AOE/COE
_____	_____	serious and willful misconduct
_____	_____	discrimination (Labor Code §132a)
_____	_____	statute of limitations
_____	_____	future medical treatment
_____	_____	other _____
_____	_____	permanent disability _____
_____	_____	self-procured medical treatment, except as provided in Paragraph 7
_____	_____	vocational rehabilitation benefits/supplemental job displacement benefits

COMMENTS:

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

10. It is agreed by all parties hereto that the filing of this document is the filing of an application, and that the workers' compensation administrative law judge may in its discretion set the matter for hearing as a regular application, reserving to the parties the right to put in issue any of the facts admitted herein and that if hearing is held with this document used as an application, the defendants shall have available to them all defenses that were available as of the date of filing of this document, and that the workers' compensation administrative law judge may thereafter either approve this Compromise and Release or disapprove it and issue Findings and Award after hearing has been held and the matter regularly submitted for decision.

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INITIAL

EXCEPT VOUCHER/SJDB (UNLESS IT IS FOR AN OLDER DOI*)

FOR DENIED CASES, ADD IN **BELTRAN** AND **THOMAS** LANGUAGE TO RESERVE DEFENSES AGAINST VOUCHER ISSUANCE.

IN THE COMMENTS SECTION, EXPLAIN HOW THE SETTLEMENT WAS REACHED.

PRACTICE TIP: LIST THE PD REPORTING RELIED UPON.
(I.E. PTP OR MEDICAL LEGAL)

PRACTICE TIP: LIST THE DATE OF THE PD REPORTING.

PRACTICE TIP: LIST THE PD RATING.



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11. WARNING TO EMPLOYEE: SETTLEMENT OF YOUR WORKERS' COMPENSATION CLAIM BY COMPROMISE AND RELEASE MAY AFFECT OTHER BENEFITS YOU ARE RECEIVING TO WHICH YOU BECOME ENTITLED TO RECEIVE IN THE FUTURE FROM SOURCES OTHER THAN WORKERS' COMPENSATION, INCLUDING BUT NOT LIMITED TO SOCIAL SECURITY, MEDICARE AND LONG-TERM DISABILITY BENEFITS.

THE APPLICANT'S (EMPLOYEE'S) SIGNATURE MUST BE ATTESTED TO BY TWO DISINTERESTED PERSONS OR ACKNOWLEDGED BEFORE A NOTARY PUBLIC

By signing this agreement, applicant (employee) acknowledges that he/she has read and understands this agreement and has had any questions he/she may have had about this agreement answered to his/her satisfaction.

Witness the signature hereof this _____ day of _____, _____ at _____

_____ Witness 1 _____ (Date)	_____ Applicant (Employee) _____ (Date)
_____ Witness 2 _____ (Date)	_____ Attorney for Applicant _____ (Date)
_____ Interpreter _____ (Date)	_____ Attorney for Defendant _____ (Date)
	_____ Attorney for Defendant _____ (Date)
	_____ Attorney for Defendant _____ (Date)
	_____ Attorney for Defendant _____ (Date)



YOU HAVE GOTTEN THIS FAR, REMEMBER TO KEEP IT SIMPLE AND STICK TO THE SCRIPT:

IN THE DESIGNATED AREA:

1. SIGN
2. DATE



NO ONE WANTS AN ORDER SUSPENDING BECAUSE YOU SIGNED/DATED IN THE WRONG SECTION



ACKNOWLEDGMENT

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

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COMPROMISE & RELEASE – ADDENDUM “A”

RE:

SSN:

WCAB NO:

Paragraph 9: REASONS FOR COMPROMISE AND RELEASE AND SPECIAL PROVISIONS

- 1) This settlement includes all interest which accrues thirty (30) days after the issuance of the Order Approving Compromise & Release Agreement.
- 2) Applicant represents that he/she has sustained no other injuries while in the employ of the employer and this settlement is intended to include any and all injuries sustained by applicant. This settles all injuries, specific or cumulative, pled or not, concerning applicant’s employment with this employer.
- 3) Applicant acknowledges and agrees he/she is currently not receiving Social Security benefits, has not been declared disabled by the Social Security Administration, and is currently not receiving, nor eligible for Medicare. In the event the applicant is eligible for, or receiving, Medicare, or Social Security disability benefits, a Medicare Set-Aside will need to be prepared before final execution of this document is valid.
- 4) Resolution by this Compromise & Release resolves all outstanding issues. All matters including, but not limited to retroactive total temporary disability payments, permanent disability payments, mileage, out-of-pocket expenses, and any and all penalties & interest are hereby resolved within the terms of this document.
- 5) The settlement amount described in paragraph seven on page six is a compromise amount agreed to by the parties, to resolve all issues potentially impacting permanent disability owed including issues of the nature of the physical injury or disfigurement, occupation, diminished future earning capacity, apportionment and the potential 15% increase or decrease described in Labor Code Section 4658, and the applicability of Almaraz/Guzman II.
- 6) **THIS SETTLEMENT CONTEMPLATES THE RELEASE OF ANY AND ALL CLAIMS OF APPLICANT’S DEPENDENTS TO DEATH BENEFITS RELATING TO THE INJURY OR INJURIES COVERED BY THIS COMPROMISE AGREEMENT.**

Applicant/ _____ Attorney for Applicant/ _____

Attorney for Defendant/ _____

LIST ALL ADJ NUMBERS BEING RESOLVED



PRACTICE TIP: ENSURE ALL ADJ NUMBERS ARE LISTED ON PAGES 1, 4 AND ATOP ALL APPLICABLE ADDENDA

PRACTICE TIP: IF SO, THE OACR SHOULD REFLECT THE SAME

PARAGRAPH TWO: "KNOWN INJURIES"

PRACTICE TIP: KNOW YOUR WCAB

PRACTICE TIP: KNOW IF YOU NEED, OR DO NOT NEED, AN MSA

PRACTICE TIP: COMMUNICATION BETWEEN CLAIMS AND COUNSEL

PRACTICE TIP: IF YOU NEED AN MSA, INCORPORATE THE PROPER ADDENDA

PRACTICE TIP: IF YOU NEED AN MSA AND CMS APPROVAL, INCORPORATE THE PROPER ADDENDA AND EVEN ATTACH THE CMS APPROVAL AS AN ADDENDA

PRACTICE TIP: THIS KEEPS EVERYONE ON THE SAME PAGE AS TO ADEQUACY AND SETTLEMENT DISTRIBUTION



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Panel Trends



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10/22/24, 4:47 PM QME Form Application

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Division of Workers' Compensation (DWC)

Qualified Medical Examiner Online Form

Panel Request Information **▶** Employee Information Applicant Attorney Information Employer & Claims Administrator Information Defense Attorney Information Declaration Confirmation Upload Document Review & Submit

PANEL REQUEST INFORMATION Step 1 of 8

*Claim Number ? *Date of Injury ?

*Requesting Party

*First Name of Primary Treating Physician *Last Name of Primary Treating Physician ?

*Specialty of Treating Physician

*QME Specialty Requested

*Opposing Party's QME Specialty Preferred

*Labor Code Section *Dispute Type Date of report being objected to

[Continue ▶](#)

* indicates a required field

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WITH PANELS, THE DEVIL IS IN THE DETAILS

BE VERY CAREFUL TO LIST THE PROPER CLAIM NUMBER.

PRACTICE TIP: IF NOT, SEPARATE PANELS WILL ISSUE AND THE PANEL WHICH LISTS THE WRONG CLAIM NUMBER WILL LIKELY BE DEFECTIVE.

DO NOT HURRY, LIST THE PROPER DOI, ESPECIALLY IF THERE IS A CT.

DO NOT HURRY, LIST THE PTP'S NAME, ESPECIALLY/INCLUDING IF THE PTP IS UNKNOWN.

REGARDING LABOR CODE SECTIONS, 4060, 4061 AND 4062 HAVE SEPARATE REQUIREMENTS RELATING TO TRIGGERING THE OBJECTION PROCESS AND PANEL ISSUANCE.



FOCUSING ON LC 4060...

APPLIES FOR DISPUTES RELATED TO COMPENSABILITY.

THIS RELATES TO 1) DELAYED AND 2) DENIED CASES.

UPDATED TREND: AA'S TO START LC 4060 PROCESS, RATHER THAN ALLOW ISSUANCE OF THE DELAY OR DENIAL TO TRIGGER THE COMMENCEMENT:

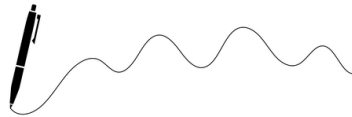


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Sample:



Dear Claims Examiner:

We note that compensability is at issue, and the parties are in need of a QME to address the same.

This office will request the Administrative Director to assign a panel of Qualified Medical Evaluators to conduct a comprehensive medical evaluation pursuant to the provision of Labor Code section 4060.

Practice Tip: a letter by either party notifying the opposing party that a panel QME under LC 4060 will be requested is sufficient.

Thus, an applicant's letter to defendant requesting a comprehensive medical-legal evaluation to determine compensability of the claim for industrial injury can be sufficient to trigger the QME panel selection process.

- Under the facts above, an applicant/AA would only have to wait 10 days plus five for mailing of the letter to requesting a QME panel.
 - Board has opined that the injured worker does not have to wait for a defendants delay or denial letter before requesting a panel to address compensability, as this would create unnecessary delay and undercut stated purpose of CB 863...



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Aggravation v. Exacerbation



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- The rule of law is that an employer takes the employee as he finds him or her at the time of employment.
- So, when a subsequent industrial injury lights up, aggravates or accelerates a previously existing disease or condition resulting in disability, the injury is compensable.
- The employer is liable even though the injury would not have affected the employee if the employee had a stronger and healthier constitution and even though another person would not have been affected by the same circumstances.



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1. That has been borne out in numerous cases. A low back injury that aggravated a pre-existing arthritic condition was compensable
2. As was a left knee injury that aggravated a dormant fungal disease.
3. A heart attack was compensable when the employment aggravated or accelerated pre-existing, nonindustrial heart disease
4. And a lung disability was compensable when it was aggravated by repeated exposure to harmful substances in the applicant's work, even though he had pre-existing problems due to smoking.
5. In one case in which an injury accelerated an employee's death due to nonindustrial cancer, the death was found to be compensable. (Court of Appeal opinion unpublished in official reports) (aggravation of nonindustrial diabetes resulted in industrial injury)



- That is classically known in law as the "eggshell plaintiff rule." Even if someone is as delicate as an eggshell, if he or she gets hurt at work, he or she is entitled to benefits, even if another person of normal constitution would not have been hurt.
- Compare that with a situation in which an industrial injury merely calls attention to a pre-existing, nonindustrial condition but does not aggravate it — in that case, the employer is not liable for treatment or benefits for the nonindustrial condition.
- But the employer is obligated to treat a nonindustrial condition when it is necessary to do so in order to treat the industrial problem.



AGGRAVATION VS. APPORTIONMENT

- Apportionment is a concept that applies to the permanent disability benefit.
- The idea, basically, is that the employer is responsible only for the portion of permanent disability that results from the industrial injury. Apportionment does not apply to other benefits, such as medical treatment and temporary disability (TD).
- Following the enactment of Senate Bill 899 in 2004, the rule that an industrial injury that exacerbates a nonindustrial disease or condition is compensable has not changed. But the Legislature made a diametric change in the law with respect to apportionment to an employee's pre-existing injury.
- The new version of LC 4663 requires apportionment to any and all conditions that cause the permanent disability. This includes nonindustrial pathology, if it can be demonstrated by substantial medical evidence that the nonindustrial pathology has caused permanent disability. That is so even if the pre-existing pathology was asymptomatic and not labor-disabling. ***KEY CASE LAW***
- For example, the Court of Appeal held that an employee's disability was apportionable to pre-existing chronic degenerative disk disease, despite the absence of significant pre-injury medical treatment or disability—the independent medical examiner's (IME) medical opinion constituted substantial evidence on the issue of apportionment.



- Additionally, the appeals board allowed apportionment for an applicant's industrial injury that "lit up" a degenerative process in the applicant's right knee, and the fact that the underlying pathology might not have become symptomatic absent the industrial injury was irrelevant.
- In any case, when the employment is found to have aggravated a pre-existing, nonindustrial condition, the employer is fully liable for temporary disability benefits and medical care, and all benefits aside from permanent disability, without apportionment.
- So, an employee who suffers from a pre-existing condition and later is disabled by an industrial injury is entitled to compensation and medical care, even though a healthy person would not have been injured by the event.
- Once it has been established that an industrial injury makes any contribution at all to an employee's need for medical care, the employer is mandated by LC 4600 to provide the care, and may not avoid liability by arguing that the natural progression of a pre-existing disease would have resulted in a need for the same level of care, even if there had been no industrial injury. Any causal link at all between the care and the injury is sufficient.
- In addition, the employer is liable for treating any nonindustrial medical condition that must be treated in order to cure or relieve the effects of the industrial injury.



PERMANENT VS. TEMPORARY AGGRAVATION

- There is a difference between a permanent aggravation and a temporary aggravation. If the applicant suffers an injury that becomes interwoven with a nonindustrial condition, but then the industrial aggravation abates, the employer might not be liable anymore for the nonindustrial component (employer not liable for medical treatment when industrial injury caused symptoms for only two months, applicant had recovered from any ill effects of injury and additional medical treatment was required as of result of applicant's pre-existing habitual postural deviation).
- Sometimes the issue is addressed as a distinction between an aggravation and an exacerbation. The appeals board has explained that an aggravation is an increase in the severity of a pre-existing condition in which the underlying pathology is permanently moved to a higher level. An exacerbation is a temporary increase in the symptoms of a pre-existing condition that returns to its previous level within a reasonable period of time.
- Nevertheless, an aggravation of a previous condition constitutes an injury when the aggravation causes the need for treatment or a period of temporary disability.
- So, an employer can avoid liability only if there is no connection at all between the needed benefit and the industrial injury.



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In one case, an applicant had suffered from asthma since he was 12. He worked as welder and then as a shop foreman, and was exposed to chemical irritants. The agreed medical examiner (AME) reported that it was medically probable that the applicant would suffer his pulmonary disease regardless of his employment. At deposition, the AME testified that the irritants "aggravated" the applicant's underlying condition, but also that his exposure would affect his pulmonary functions on a short-term basis and, maybe, on a long-term basis. The WCJ found that the applicant did not sustain a cumulative injury to his lungs because the irritants did not constitute an industrial aggravation of his respiratory condition. The WCJ explained that although the exposure at work temporarily "aggravated" the underlying pulmonary disease, it was the underlying condition that required a work limitation. The WCJ also was not convinced that the exposure substantially contributed to the underlying disease. This decision was adopted by the appeals board.



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In another case, a nurse contracted occupational pneumonia in 2004 that affected her pre-existing and dormant common variable immune deficiency (CVID), triggering the need for lifetime medical care in the form of immunoglobulin deficiency replacement injections. The treating immunologist opined that although the pneumonia clearly aggravated or worsened the clinical condition, there was no objective evidence of permanent lung damage from the pneumonia. The AME testified that the pneumonia did not aggravate the CVID and that the doctors were continuing with the immunoglobulin therapy to treat the underlying nonindustrial CVID. The AME added that when the applicant was treated for pneumonia in 2004, the gamma globulin was not to treat the pneumonia, but the underlying nonindustrial CVID. Based on that evidence, the WCAB granted reconsideration of a WCJ's award of lifetime medical care.

The WCAB found that the applicant "sustained injury arising out of and occurring in the course of employment resulting in the form of occupational pneumonia, and not, as a compensable consequence thereof, her pre-existing and dormant common variable immunodeficiency (CVID), which triggered a temporary need for immunoglobulin deficiency replacement treatments." The WCAB noted that "if it is established that the medical treatment or medication in question is required separate and apart, or independent of, an industrial injury or condition, then the employer may avoid liability." It concluded that the preponderance of the evidence established that when the applicant had a bout of industrial pneumonia in 2004, for about two months she suffered a temporary aggravation or lighting up of her pre-existing nonindustrial CVID. Consequently, there was no legal basis for a permanent award of medical treatment for the CVID condition.



Also, in one case, the panel majority held that an applicant who suffered an industrial brain seizure was not entitled to medical treatment or permanent disability when his condition returned to baseline level soon after the seizure event. The applicant's seizure was caused by industrial sleep deprivation and a nonindustrial cavernous angioma (hemangioma). The QME reported that the industrial seizure incident did not aggravate the applicant's hemangioma, nor did it make him more prone to future seizures. The board concluded that once the applicant returned to baseline with no change in either his propensity to have seizures or change in the nonindustrial pathology that was causing them, his need for medical treatment to cure or relieve the effects of industrial injury had ceased, and that any treatment, including surgery to treat the hemangioma, was needed on an entirely nonindustrial basis.



But it can be very tough indeed for the employer to avoid a causal link. That is because the causal link must be broken in its entirety, and that can be a difficult certainty to achieve. Moreover, doctors and judges may be loath to find it. Whether the employment accelerates, aggravates or lights up a nonindustrial disease or condition is a question of fact for the appeals board that necessarily depends on the reasoned opinion of medical experts.

In at least one case, an employer failed in such an argument, despite an AME opinion in support of its position.



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Aggravation: condition/injury causes EE to sustain:

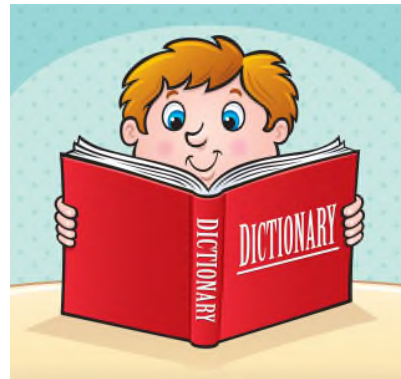
1. TD, or
2. PD (or more PD), or
3. causes a new need for med tx or change in current tx plan

EX: EE has industrial DDD

- > makes him more prone to spinal injuries
- > herniates disc lifting at work

=
aggravation

vs



Exacerbation: mere temporary of flair-up of symptoms (not a new injury)

EX: EE has painful herniated disc
increase pain due to lifting at work
resolves within days w/out TD or med intervention



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DISCUSSION:

After reviewing the additional requested medical records, more likely than not, [REDACTED] has reached maximum medical improvement and is permanent and stationary. In the

August 7, 2017 QME report, Dr. [REDACTED] opines that right carpal tunnel syndrome, right de Quervain's tenosynovitis, right lateral epicondylitis, and cervical sprain/ strain all are related to the work injury dated October 11, 2017. Future medical care was recommended in this report.

Additional records by Dr. [REDACTED] as well as the Qualified Medical Evaluation report, Dr. [REDACTED] were reviewed. Prior Qualified Medical Evaluation report dated November 7, 2020, supplemental report dated March 30, 2021, and supplemental report dated February 16, 2021 were reviewed.

After review of all provided records, more likely than not, any new musculoskeletal complaints between October 11, 2017 and November 27, 2018 are unrelated to work activity. Documented musculoskeletal complaints between the dates of October 11, 2017 and the motor vehicle collision dated November 27, 2018 which were found in the provided records are: 09/18/18- Complained of pain involving the tip of the left elbow and the dorsum of the left wrist. 10/23/18- complained of chronic left arm pain for 5 months. These records describe no other extremity or spine complaints, and these records do not associate the documented complaints with work activity. Specifically, there is no provided record associating the complaints at the time of the November 7, 2020 QME: i.e., right shoulder, back and neck, with work-related activity.

CAUSATION:

Right carpal tunnel syndrome, right de Quervain's tenosynovitis, right lateral epicondylitis, and cervical sprain/strain more likely than not, are causally related to the work-related injury dated 11/07/13, which is also described in Dr. [REDACTED] Qualified Medical Evaluation report dated August 7, 2017,

More likely than not, musculoskeletal complaints following October 11, 2017, are not causally related to work activities.

MAXIMUM MEDICAL IMPROVEMENT AND PERMANENT AND STATIONARY STATUS:

More likely than not, Ms. [REDACTED] has reached maximum medical improvement with authorized treatment and is considered permanent and stationary.

WORK RESTRICTIONS:

Recommend abiding by the work restrictions as outlined by Dr. [REDACTED] and as continued by Dr. [REDACTED]. These include 10-minute break every 15 minutes for stretching; no forceful grip, grasp or pinch; no prolonged overhead activity.

FUTURE MEDICAL TREATMENT:

Ms. [REDACTED] has been receiving future medical care for the agreed upon work-related injury dated 11/07/13, and as outlined by Dr. [REDACTED] in the Qualified Medical Evaluation report dated August 7, 2017. Recommend continue future medical treatments under the care of Dr. [REDACTED] as outlined by Dr. [REDACTED] in the Qualified Medical Evaluation report dated August 7, 2017.



QUESTIONS ANSWERS



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