

Legislative Update 2024

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What we will cover today

- Biggest bills passed in 2024
- Vetoed bills that we may see in future sessions
- Preview of 2025
- Important case law update



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Approved bills: E-signature

- AB 2337 clarifies that “signature” includes e-signatures
- This means that you can use e-signatures to sign settlement documents
- One less reason for Orders Setting Aside your C&R (Yay!)
- Takes effect 1/1/25



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Approved bills: AB 1870

- AB 1870 changes the standard breakroom posters
- New change: Must now inform employees that they have the right to a licensed workers' compensation attorney
- Must be posted in breakrooms or common areas



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Approved bills: SB 1455

- SB 1455 builds on existing law requiring contractors to obtain workers' compensation coverage
- Prior deadline to get coverage: 1/1/26
- New deadline: 1/1/27



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Approved bills: SB 1455

- SB 1455 also mandates that the Contractors State License Board come up with an exception to the coverage requirement
- CSLB must do that no later than 1/1/27



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Friendly reminder about contractors

- While we're on the topic of contractors and workers' compensation coverage, this is a friendly reminder for your insureds to hire licensed contractors.
- Heck, it's a friendly reminder for you too.
- Why? LC 2750.5 provides for "up-the-ladder liability" if you hire a unlicensed contractor



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Licensed contractors? Why should I care?

- You should care because if you hire a unlicensed contractor and they get injured, they can sue you! (Or if your insured hires them, they can sue your insured!)
- Your remedy is to sue the unlicensed contractor for breach of contract



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Example of LC 2750.5 in action

- Homeowners hire gardener to trim trees
- Gardener hires a unlicensed worker to trim trees
- Unlicensed worker falls from trees, is severely injured
- Gardener did not have the license to trim trees
- CA's 3rd DCA ruled: Homeowner becomes the unlicensed worker's employer (Jones v. Sorenson, 8/2/18, Co84870, published decision)
- <https://caselaw.findlaw.com/court/ca-court-of-appeal/1899797.html>



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Example of LC 2750.5 in action

- A lot of people like to confuse this statute with general/special defenses
- But there it's not general/special, it's that someone hired an unlicensed contractor and LC 2750.5 comes into play



How you can use this knowledge

Oct 2024: Everyone in our neighborhood was using our friendly and awesome gardener to trim palm trees, I politely declined even though his team does a good job.

His feelings seemed a little hurt, but we explained it's because of insurance reasons. (Need a license and WC for 15+ feet above ground, unless you're a "nurseryman".)

Hired a licensed tree trimmer w/ WC coverage, and didn't have to worry about being sued in case the tree trimmers fell.



Approved bills: AB 1239

- AB 1239: Allows TPAs, employers, and carriers to use debit cards to pay for TD/PD benefits
- This is an extension of a temporary program that was set to expire 1/1/25
- New expiration date: 1/1/27
- CHSWC is studying the efficacy of this program



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Vetoed Bills

- SB 1299
- SB 636
- SB 1058
- AB 2872
- Why do we care? Vetoed bills are ones that the governor has said he is not interested in.
- In other words, waste of time to bring them back in 2025.



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Vetoed Bills: SB 1299

- SB 1299: would have presumed that heat injuries are compensable if an employer violated Cal-OSHA's heat injury prevention standards.
- What's a heat injury? Sunburn, sun stroke, heart attack, dehydration. In other words, nothing good.



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Vetoed Bills: SB 1299

- Examples of Cal-OSHA heat regs:
- ERs at outdoor workplaces provide access to potable water that is fresh, cool, and free. Must be located close to the worksite.
- When it's 95 Farenheit, outdoor employers must remind workers to drink water and take cool-down
- Shade must be present when temps are greater than 80 Farenheit
- SB 1299 would have presumed that injuries are compensable if an employer violated these standards.



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Vetoed Bills: SB 1299

- Examples of Cal-OSHA heat regs:
- Indoor ERs must provide that same water when the indoor temperature is 82 F or higher.
- When it's 82 F or higher, indoor workplaces must have a indoor cool-down area.
- SB 1299 would have presumed that injuries are compensable if an employer violated these standards.



Vetoed Bills: SB 636

- This bill would have required UR doctors to be licensed by the California State Medical Board.
- Pro tip: Look at the names of who is writing your UR decisions. I have seen many lien doctors and applicant-friendly doctors writing UR denials.
- Why do I care? Well if you can point out that Dr. CAAA is the one who authored the UR denial, it adds a lot more credibility to it.



Vetoed Bills: SB 1058

- SB 1058 would have allowed county and special district park rangers to collect LC 4850 benefits instead of temporary disability benefits
- LC 4850 = salary continuation benefits
- Would have been extended to special park rangers, but Gov. Newsom vetoed it



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Vetoed Bills: AB 2872

- AB 2872 would have given state Dept of Insurance investigators a pay raise
- Would have ensured that their salaries are equal to investigators for the state Justice Department
- We would have liked to see this one pass
- Pretty common to see former DOI investigators in SIU divisions, or other jobs b/c they can get paid more



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Bills that didn't make it in 2024

Why do we care? These bills could be revived in 2025.

These include:

- SB 1205
- AB 3106



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Bills that didn't make it: SB 1205

- SB 1205 had multiple versions
- Most recent version would have forced ERs to allow employees to go to medical appointments during their shifts
- If the ER refused to do so, then the EE could sue the ER for LC 132(a) violation



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Bills that didn't make it: SB 1205

- SB 1205 had multiple versions
- Earlier version: Would have allowed applicants to receive TD benefits, transportation, meals, and lodging for medical treatment appointments
- This was removed on June 27, 2024 for the stuff about appts during work hours



Bills that didn't make it: SB 1205

- In 2025, expect a bill that:
 - Tries to force employers to let employees leave work anytime they want
 - If ERs refuse, they are punished with severe financial consequences, such as LC 132(a)
- Why? CAAA cites PT as a main example.
- However, most PT clinics have evening and extended hours for this specific reason – to allow people to get PT after work.



Bills that didn't make it: AB 3106

- AB 3106 would have created greater protections for school employees who have Covid-19.
- Ex: Would have required school districts to continue to pay school employees while they are out on sick leave, and set forth specific requirements before a Covid-positive employee could return to work.
- Would not have applied to teachers who are receiving TD benefits via the workers' compensation claim



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Bills that didn't make it: AB 3106

- AB 3106 was held in committee, could be revived in 2025.
- In 2025, expect:
 - A bill allowing teachers to collect wage loss benefits while out on sick leave.
 - Looks like labor wants teachers to have greater protection against Covid, which is still around. (Personally knew of a bunch of cases in July 2024)



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Preview of 2025: Conflict, Comp Gets Kicked to the Side

- Guess what? Gov. Gavin Newsom and incoming President Trump do not get along!
- Expect lots of showboating from both
- The rumor has always been that Newsom has eyed the White House, so could be laying the groundwork for a bid in 2028
- Expect lots of legislative and gubernatorial action aimed at picking fights with the powers that be in Washington D.C.



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Preview of 2025: Conflict, Comp Gets Kicked to the Side

- Regardless of whether that rumor's true, Newsom is term-limited out as of 2026
- What that means for defendants:
 - The downside of Newsom leaving is that he vetoed a lot of the same applicant-friendly bills that his predecessor Gov. Brown had vetoed
 - Newsom and Brown have historically protected apportionment, UR, MPNs, and avoided presumptions
 - Who knows what the next governor will do?



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Things Others Would Like to See in 2025

- The industry would like to see a omnibus WC bill, as the last one was more than a decade ago
- Expect labor to argue for:
 - Higher PD rates
 - Creative ways around MPNs
 - More ways to sidestep UR and IMR
 - Attack apportionment



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Things We'd Like to See in 2025

We'd like to see legislation:

- Undermining the niche industries, such as the copy service “petition for non-IBR” gamesmanship
- Elimination of the Patterson doctrine, which is a end-run around UR and IMR (undermines the 2004 Legislature’s intent behind UR/IMR)
- Something to combat the Vigil/Kite doctrine, which is an end-run around the concept that only a tiny fraction of cases should rebut the PDRS
- A clear interpreter fee schedule, which was already promised in prior legislation



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Things We'd Like to See in 2025

Reform on Patterson case law:

Patterson case: bars carriers from sending a RFA to UR when

- a) they've already authorized that treatment in the past and
- b) here hasn't been a change in condition since then



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Things We'd Like to See in 2025

Reform on Patterson case law:

The problem: PTPs in work comp don't get more money to say someone is well. They do get more money by providing never ending treatment. Some providers will never, ever, find a change in condition. Why would they? It would literally cost them, and their AA friends, money.



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Things We'd Like to See in 2025

Reform on Patterson case law:

Some AAs argue Patterson, but then simultaneously object to any attempt to do discovery on a change in condition.



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Things We'd Like to See in 2025

Proposed solutions to the Patterson problem:

- Specifying that QMEs can comment on whether there has been a change in condition. This is not a comment on future medical care, it is a comment on medical status.
- Setting forth discovery rights for defendants to find changes in condition, such as:
 - Additional depositions,
 - Independent medical exams,
 - Mandatory consideration of MTUS guidelines
 - Consideration of ADLs



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Things We'd Like to See in 2025

We'd like to see legislation:

- Cumulative trauma and post-term CT reform
 - Ex: Place a SOL on a CT two years after an applicant was terminated. Could create exceptions for cancer and other diseases that take a long time to manifest.
 - CA: the only state in the nation where you can “create or invent” a DOI via the CT doctrine. If you told an employer or judge in another state that “you’re liable because we just created a CT against you” they’d give you a funny look.



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Things We'd Like to See in 2025

- We'd like to see legislation: Limiting additional QME panels
- There is a movement at the WCAB to award additional panels, in any specialty, in any case, for almost any reason.
- Additional panels reform needed when clearly unwarranted (ie no history of treating for that body part, making “every claim a oncology claim because anyone/everyone can plead cancer on every claim with no repercussions”)



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Things We'd Like to See in 2025

Reform on additional panels:

- Could be easily resolved by specifying factors on when an additional panel is warranted.
- Unfair to plead psyche when I take the applicant's deposition, ask him if he's got depression/anxiety, and he says "Naw man, I have a strong mental outlook on life." Why should we have to pay a QME \$5,000-\$10,000 for a psyche evaluation?
- Should deter the firm – who pleads "hostile work environment" on every single claim, regardless of the facts. Same firm plead hemorrhoids and hernia. There was no hernia and the applicant didn't want to get checked for hemorrhoids.



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Things We'd Like to See in 2025

Actual standards for collecting on DME:

- If a medical provider is going to bill for a DME, then they have to identify:
 - What materials it is made out of
 - What machines it used to be made
 - How long it took to make it
 - Who made it
 - How many other DMEs were made that day/month/year at the same facility
 - Under penalty of perjury



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Speaking of Vigil/Kite

- Before I became an attorney, my eyes would glaze over if I heard the words “rebut the PD Rating Schedule”
- AA’s ears perk up because “rebut the PD Rating Schedule” means cash, sweet cash, oh yes so much more sweet, sweet cash
- So let’s take a closer look at the Vigil/Kite doctrine ...



Vigil/Kite

- Vigil and Kite stand for the basic proposition that if the planets align, then an applicant should be allowed to add multiple PD ratings
- This is contrary to existing law that states that in the vast majority of cases, multiple PD ratings should be combined via the CVC chart



Vigil/Kite

- When does this come into play the most?
- In cases where there are a number of injured body parts
- Typically this means your standard “old dog” cases
- Expect AAs to seize upon Vigil/Kite doctrine to try and hit 100% PTD or above life pension



Vigil/Kite

- Quick solution: Try to settle old dog cases to avoid the risk of ruin
- Risk of ruin is game theory term that when applied to poker means, “you lose all your chips”
- So try not to lose all your chips. Settle earlier, not later.
- Like the seasoned claims manager says, “Most cases don’t get better with age.”



Vigil/Kite



- But sometimes there is no quick solution.
- In that case, you want to show that applicant's ADLs don't overlap
- What's a great way to find objective evidence of ADLs? We'll take your answer on the next page...



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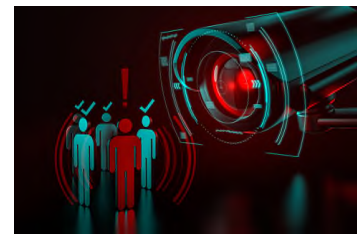
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Vigil/Kite

- What's a great way to find objective evidence of ADLs?

SUB ROSA VIDEO

- On these long-time cases, get it every 4-6 months. It disturbs the narrative and is inconvenient for AAs.



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One of the biggest trends at the WCAB in 2024

En Banc Decisions stemming from petitions for reconsideration at the LA WCAB



- Cases where an applicant's attorney and a hearing representative were sanctioned up to \$7,500 per violation
- Violation: Misuse of petitions for reconsideration to stall court proceedings
- Would file them to delay trials



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One of the biggest trends at the WCAB in 2024

So what can we learn from this?



- Do not misuse formal processes
- A petition for reconsideration was created as an appellate tool, not a calendar tool
- Using this and other pleadings to create delays is apparently very, very sanctionable. (\$5,000-\$7,500 sanctions per violation + **costs**)
- Why? Creates unnecessary work for judges and parties



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One of the biggest trends at the WCAB in 2024

- Warning: Could be applicable to other pleadings. If you see someone misusing pleadings, cite these cases!!!
- *Abel Hidalgo v. Roman Catholic Archbishop*
- *Guillermo Gonzalez v. The Bicycle Casino*
- *Alfredo Ledezma v. Kareem Cart Commissary and Mfg (SCIF)*
- Can find them all right here:
 - https://www.dir.ca.gov/wcab/wcab_enbanc.htm



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One of the biggest trends at the WCAB in 2024



Speaking of misusing pleadings: *Latrice Reed v. County of San Bernardino* – Significant Panel Decision

- Admonished an AA about petition for recon of an OTOC
- OTOC = not a final order
- Petition for removal = appropriate pleading to dispute an OTOC
- Petition for recon = totally inappropriate pleading to dispute an OTOC. Only use recon to dispute final orders



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One of the biggest trends at the WCAB in 2024

What this means: *Latrice Reed v. County of San Bernardino*
– Significant Panel Decision

- Be very careful about what you are petitioning against. Make sure it's a final order or a interlocutory (non-final) order
- Final order = Recon
- Interlocutory order = Removal
- If it's a close call = Plead one and mention that you are doing it alternatively as the other



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