2026 Legislative & Case Law Update

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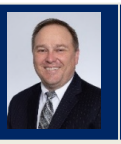

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What we will cover today

- Biggest issues in 2026 that could lead into 2027
- Bills signed into law in 2026
- Stalled bills we may see in future sessions
- Case law updates



Two 2025 themes that dictated 2026

- WCIRB: Warning of high costs across the board for two years now!!!
- Subsequent Injuries Benefit Trust Fund (SIBTF), aka the state's Second Injury Fund, required change due to skyrocketing costs, per Gov. Newsom

At risk of sounding like a broken record…

- WCIRB has been warning that carriers are paying at loss ratios not seen since the early-mid 2000s
- Simply put: Carriers and employers are paying more than ever before
- Loss ratios:
  - Less than 100% = profitable
  - 100% = breaking even
  - 2024: 124%
  - 2025: 127%

What's causing it?

- More CT claims = more costs
  - CTs were 25% of all claims in 2024
  - Estimated to be 30% of all claims in 2025 (WCIRB still processing that data)
- Medical costs are up:
  - More QMEs per claim. CHSWC annual report noted: "The average number of medical-legal evaluations per 100 all claims increased by 21 percent from SY 2021 to ST 2024 …"
- Medical costs also increased by approx. $600 million from '23-'24, per CHSWC

Why are those happening?

- Fired for cause? File a post-term CT. The post-termination defense has so many loopholes it's a joke.
- CTs are too easy for AAs to file. AAs can be more vague about their allegations, just throw things at the wall and see what sticks
- No evidence? No problem! *Navarro* panel decision allows judges to make every case a multi-specialty panel case. No consequences for asking for panels based on flimsy grounds.
- Rising fee schedules too

How do high costs affect the industry?

We saw this play out 20 years ago:

- Carriers go insolvent
- Self-insured employers struggle
- Premiums go higher
- More employers struggle
- CIGA caseload goes up, SCIF's market share jumps
- As you'll see later on, SIBTF costs go way up too



Reform is needed

While some lobbyists are talking up reform, I'm a little skeptical if we'll see it in 2027 because:

- New governor Xavier Becerra. He used to be Sec of HHS so that means he knows something about fee schedules, but I'm skeptical if there's the desire to propose/negotiate major reforms.
- Remains to be seen if Becerra will have the political goodwill to whip up votes. Newsom was popular in the party and still there was some internal conflict there on work comp issues.

Reform is needed

An omnibus reform bill is much-needed to address:

- Rising costs due to CT claims
  - Could create: statute of limitations for ortho and psyche
- Panel QME restrictions
  - Why is every case a cancer case? It shouldn't be.
- Niche industries, such as cost petitioners. Need some kind of safeguard to prevent copy services from subpoenaing the same location 3x in a year
- PD rate does deserve a bump up, max PD rate has been at $290 for more than a decade



Reform is needed

Last big reform bills were:

- SB 863 (2013)
- SB 899 (2005)



SIBTF, say what?

- Subsequent Injuries Benefits Trust Fund headlined the 2026 legislative session, as well as the 2025 legislative session
- Why? In 2025: Newsom began ringing the warning bell about the fund's rising liabilities during the 2025 session, warning that without reform, employer assessments would rise from $372 million in FY 2021-22 to $1.5 billion in FY 2029-30.
- Fund was created to compensate WWII vets returning to work
- Applicants can obtain SIBTF benefits by proving that a combination of a preexisting disability and a second injury have brought them to **70% PD or more**

SIBTF, meet SB 171

SB 171: Changes how SIBTF applicants "get there" (to 70% PD) to get SIBTF benefits. This bill requires applicants to:

- Prove that their PD has caused earnings loss
- Use a med-legal report that constitutes substantial evidence (Escobedo reference), and cite evidence from the prior injury



SIBTF, meet SB 171 (cont'd)

SB 171: Changes how SIBTF applicants "get there" (to 70% PD) to get SIBTF benefits. This bill requires applicants to:

- Use the PD rating that existed on the date of the subsequent injury
- Use the CVC chart (prior rulings required SIBTF to add, not combine ratings)
- Voc rehab reports used in the prior case can't be used in the SIBTF case



So what will SB 171 ultimately do?

To put it simply, these requirements will make SIBTF claims more like regular workers' compensation claims.

- No free Kite/Vigil giveaways
- Fewer flimsy medical reports
- Have to show some earnings loss



So what will SB 171 ultimately do?

Help make it for who it's for, and hopefully less for grifters.

Examples:

- Who it's for: Military veteran who injured his back while serving. Later, when out of the military, has a bad car accident, and then has 1-2 accepted work comp claims. Honest to all of his doctors, honest at the depositions.
- Who it's not for: The part-time substitute teacher who has had two work comp claims with about 10% PD apiece, that does not want to work. When deposed, lies almost every single time, because when you ask a follow-up, she contradicts herself.

What wasn't passed in 2026? A SIBTF bill that would have …

Barred the use of the following body parts to reach the 70% threshold, such as:

- Acid reflux, including gastroesophageal reflux disease (GERD)
- Allergies
- Arthritis
- Asthma
- Diabetes
- Headaches
- Hypertension
- Sexual dysfunction
- Sleep apnea



What wasn't passed in 2026? A SIBTF bill that would have …

- Created a specialty of QMEs solely to handle SIBTF cases
- Why is this important? We could see the previously mentioned "banned body parts" list, and SIBTF QMEs in 2027.



What else was a big deal in 2026?

- Artificial intelligence (AI)! (audible groans follow)
- While we're all tiring of hearing about AI, so are our judiciary and lawmakers!
- Example: The past 3 years, we've seen WCAB and Superior Court and federal court cases plagued with AI hallucinations in the form of fake case citations. *(Ditka v. Hurricane, 1985 Ill.Wrk. Comp. PD, 72) (Uecker v. Jack Daniels, 1989 Wisc.Wrk.Comp. PD, Lexis 778) (Albert Belle v. Louisville Slugger, 1994 Ohio.Wrk.Comp.PD, 86)*

Signed into law: AI Bill, SB 574



- Regardless of the venue, attorneys are getting sanctioned thousands of dollars and their reputations are being damaged. Some sanctions go beyond paying monetary sanctions.
- Despite this, AI hallucinations keep on appearing in legal pleadings. lawmakers passed SB 574, which Gov. Newsom signed into law.
- This bill takes some steps toward stopping the use of AI in pleadings.

Signed into law: AI Bill, SB 574



This bill says:

- Citations in legal pleadings must be personally-verified by the attorney submitting the legal pleading.
- Arbitrators cannot delegate their decision-making process to AI. Also may not rely on information generated by AI outside the record.
- California's Judicial Council must publicly revisit its standards to determine if there are any updates re: AI, and likewise consider any changes to procedures for ADR programs.
- The State Bar must adopt procedures for the investigation and resolution of any misuse of AI. The investigation itself is confidential, but State Bar can later disclose records that do not reveal privileged or confidential communications.

Don't fall into the AI trap!



To avoid the trap, you can:

- Personally verify/read the cases you're citing
- Don't let it do all your writing for you — **it has certain tells**. Can you see them here? **Maybe — maybe not**. Humans can often tell when it's not your writing. (Note: Last time I checked, all judges are human.)
- Just remember, if you're outsourcing your job to a robot, you can also be outsourced to be a robot.

Signed into law: SB 1209, audits

SB 1209

- Applies to audited TPAs, carriers, payers
- If a statutory or regulator violation is ID'd in the audit, must take corrective actions to fix those
- Failure to take corrective actions = more civil penalties



Signed into law: SB 1209, audits

SB 1209

- Penalty of up to $20k for each failure to take corrective action within agreed-upon timeframe between Insurance Commissioner and TPA
- Commish could also set a "show cause" hearing to explain lack of corrective actions



Signed into law: SB 1209, audits

SB 1209

- Says that an admin law judge may conduct the hearing. The judge knows they are reporting directly to the commissioner
- This may sound boring at first – but imagine having to go to a hearing to explain to the state's insurance commissioner why your company failed to take any corrective action on X, Y and Z. Yikes!
- If the judge conducting the hearing wants to conduct additional discovery, that could be painful too. Ex: Blame Dave in IT, throw him under the bus. Judge says, "Great! I want to talk to Dave and ask him some questions." Do you think Dave will be happy to now have to testify?

Signed into law: SB 1209, audits

SB 1209

- Thankfully, the TPAs/carriers I've talked to have gone to great lengths to ensure audit compliance
- It's a source of pride to do things the best possible way
- For others, it's at the direction of VPs who are ultimately beholden to shareholders. It's not a good look to have to discuss this in quarterly reports.



Signed into law: SB 1209, audits

SB 1209

- Reading between the lines, a lot of the text in this bill appears to be creating the type of evidentiary record that could be used as a basis to suspend or revoke licensure in California



If you need help with audits…



We offer assistance with state audits:

- Sherri Dozier heads the Bradford & Barthel Audit Team
- She has helped multiple carriers through audits, which
- can be unfair sometimes
- To read more on that:
- https://bradfordbarthel.com/2023/11/27/audit-concerns-dial-up-bbs-audit-team/
- 2025 Webinar on the elements of an audit:
- https://bradfordbarthel.com/event/the-elements-of-an-audit/

Signed into law: AB 1683, debit cards

AB 1683

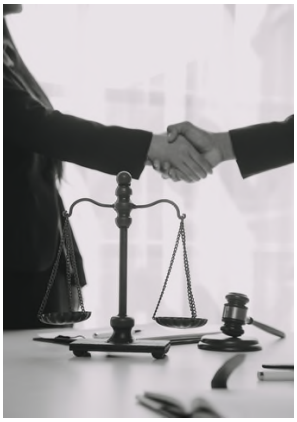
- Allows defendant carriers to indefinitely use prepaid debit cards to pay for workers' compensation benefits, ie PD or TD
- Would recommend: do not use to pay LC 5710 fees, as AAs cannot deposit a debit card into their firm accounts



Signed into law: AB 2039, capping

AB 2039

- Creates a $25k civil penalty for each violation of capping statutes.
- Also requires the State Bar to enact **disbarment** procedures for any licensee who has a felony conviction of various capping schemes.
- Because capping schemes often contain multiple violations, anyone convicted of a felony capping scheme could be facing a daunting amount of civil penalties well into the six-figures, if not more.



Signed into law: SB 1444, airport firefighters

SB 1444

- Easier for firefighters to get presumptions
- Before this bill, commercial airport firefighters had to maintain a specific Fire Marshal certification known as Fire Control 5 in order to be entitled to rebuttable presumptions of compensability for cancer and PTSD.
- This bill changed the law so commercial airport firefighters no longer need that certification in order to be able to use the presumptions.



Signed into law: SB 1227, DIR apprenticeship

SB 1227

- Creates a apprenticeship program to help the DIR address its staffing challenges
- If you've worked with DIR, depending on the time and department, they are sometimes really understaffed
- It's not an easy place to work – many roles require you to "speak the language," but also be familiar with the internal workings of the department. I've known some very smart people who started out there, and left for somewhere else. Kind of like a successful team that loses its best coaches and players to other teams

Signed into law: AB 2227, farm labor contractors

AB 2227

- Requires farm labor contractors to put up increased bonds for Labor Law violations
- Existing law requires them to post large bonds to pay any wage order violations ordered by Labor Commissioner
- Payroll dictates the amount of the bond:
  - $0 - $500k payroll = used to pay $25k bond = this bill makes it $50k
  - $500k - $2m payroll = used to pay $50k bond = this bill makes it $100k

Signed into law: AB 2227, farm labor contractors

AB 2227

- These bonds are technically not work comp-related, but the unethical contractors create workers' comp problems for both applicants, farmers, and their carriers throughout the Central Valley
- If a contractor is committing wage violations, they also may not be ethical about 1) classification of the employee (who's the employer?) 2) injury reporting, 3) where the applicant was working where injured, 4) circumstances of the injury
- Some AA firms also do Labor Law work, ie wage and hour



Bills not signed into law…why?

Why discuss bills not signed into law? They can come up in future sessions. The fact that these bills that didn't make it this year, still shows that there's interest out there.

Why are some bills withheld?

- Some are held over by the authors for strategic reasons.
- Some are told by committee chairs and staff to "hold it until next year, we'll consider it then."
- Some are told "it has this problem. Save it for a future committee, or during next session draft something different that fixes the problem."

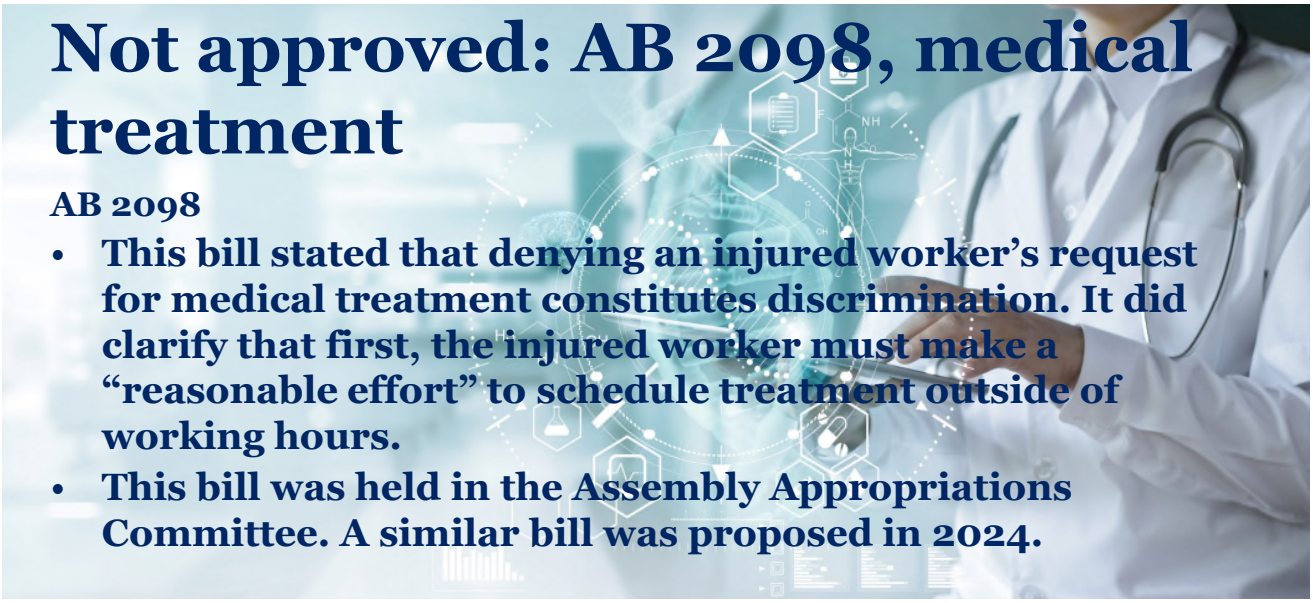
Bills not signed into law … why?

This year's bills that didn't make it were on:

- MPNs
- Efforts to try to force employers to regularly allow employees to get medical treatment during work hours, as opposed to after their usual shift
- Staffing agencies
- Slab fabrication (silicosis)
- PPO discounts
- Athlete claims
- EDD and carrier requirements



Not approved: AB 2098, medical treatment



AB 2098

- **This bill stated that denying an injured worker's request for medical treatment constitutes discrimination. It did clarify that first, the injured worker must make a "reasonable effort" to schedule treatment outside of working hours.**
- **This bill was held in the Assembly Appropriations Committee. A similar bill was proposed in 2024.**

Not approved: SB 1032, staffing agencies

SB 1032

- Would have required staffing agencies to provide proof of work comp coverage when registering with Labor Commissioner
- Also would have allowed registered staffing agencies to sue unregistered staffing agencies
- Held up in Assembly Appropriations Committee

Not approved: AB 2137, slab fabrication

AB 2137

- Would have required mandatory certification before a shop could start slab fabrication
- Aimed at decreasing risk of silicosis



Not approved: AB 1515, PEO regs

AB 1515

- Would have allowed the DIR to craft self-insurance obligations of professional employer organizations (PEOs)
- Declared inactive in August (ie at the last minute)
- Aimed at preventing PEOs from being under reserved, which sounds boring until one realizes it could lead to a bunch of claims going to CIGA, who will hunt for "other insurance"

Not approved: AB 1048, EOBs and contractual discounts

AB 1048

- Background: Payers issue explanations of benefits (EOBs) to explain why they paid what they paid
- Sometimes they take contractual discounts from various preferred provider (PPO) networks. Years ago, a Louisiana state court described these as a massive "web of contracts"
- This bill would have required payers to allow providers to request copies of underlying contractors for PPO discounts

Not approved: AB 1048, EOBs and contractual discounts

AB 1048

- This bill made it through a number of committees in both the Assembly and Senate in 2025 and 2026
- What does that tell us? A bunch of lawmakers are familiar with the arguments providers are making that they need to see the PPO discounts
- If this does resurface in the future, could lead to providers demanding adjusters/attorneys provide underlying PPO contracts, which could kind of daunting if you think about having to produce a large "web of contracts" that you didn't negotiate

Not approved: SB 795, athlete CT claims



SB 795

- The original version of this bill would have placed more limitations on professional athletes' ability to file cumulative trauma claims in California
- The NFLPA complained about it
- Bill was gutted and changed to an air quality bill. So while a version this bill was technically passed, it didn't have the work comp language anymore. The one that passed talks about ethanol and air quality

Not approved: AB 536, premium fraud and EDD

- AB 536
- In cases where insurers suspect premium fraud, would have required notification to EDD so they could investigate suspected fraud as well
- Made it through a number of committees before being held, so definitely could resurface



Case law updates

2026 was a lighter year with case law updates, but the big topic of discussion was orders setting aside (OSA) in:

- *Calvin Gaines v. ABM Aviation*, en banc decision (controlling authority), 6/24/26, 91 Cal.Comp.Case
- WCAB consolidated 24 petitions for removal from various orders suspending action, all from the same judge
- WCAB disqualified the judge from ruling on these cases, and rescinded the OSAs

Case Law Update: Gaines

Calvin Gaines v. ABM Aviation, en banc decision (citable authority), 6/24/26, 91 Cal.Comp.Case

- Disclaimer: I know and respect this judge. She often takes cases that she could have dodged, and goes through complicated trials. She helped us settle some really difficult cases that weren't getting resolved due to extreme complexity.
- Underlying this is that there's two schools of thought among judges, and room between these two schools for interpretation:
  - Some believe that almost all settlements should be approved, absent any significant error or problem
  - Some judges believe every settlement should meet specific criteria, such as having a medical report to support it

Case Law Update: Avoiding OSAs

While I don't have personal familiarity with these 24 OSAs, I can offer some help to avoid OSAs in general.



Often, the reasons for OSAs are as follows:

- No medicals to support the settlement
- Attorney fees of more than 15%
- Flaw, or vague language, or addendum language that the court didn't like

Case law update: Avoiding OSAs

How can we avoid those problems ahead of time?

- E-file any medicals with the C&R. I had a case with exactly one medical report, that was sufficient to avoid an OSA.
  - No medicals? Ask AA for where applicant goes for any treatment to avoid an OSA. Subpoena that location. E-file subpoenaed records with medicals. Smart AAs will be immediately helpful with providing this information, as they don't like OSAs either.
- If AA is claiming attorney fees of more than 15%, then have applicant sign an addendum explaining why. Some AAs are also doing addendums that explain the hours they put into a case to justify a higher percentage.
- Troublesome language – if you have addendum language that is frequently leading to OSAs, consider removing it.

If you do get an OSA …

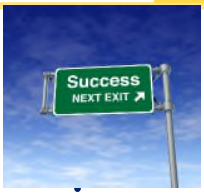
Don't freak out! Anger or worry doesn't help anything.

- Try to figure out the reason why the judge set it aside. It is often something that can be fixed accordingly
- Address it accordingly, resubmit with other party's consent (if changes, have them initial changes on docs)
- If you're still unclear on the reason after reading the order, then wait for the hearing and ask the judge at the hearing. Go into that hearing knowing your settlement documents well (ie don't send someone unfamiliar with the matter)

Case law update: The Rodriguez Case

- **The Rodriguez decision:** Argued by Bradford and Barthel's appellate specialist Louis Larres at the 2nd District Court of Appeal, yours truly was the trial attorney
- Published decision – at the time (see next few slides)
- 11/10/25
- Applies to cases with *Patterson* issues
- *Patterson* doctrine: an end-run around UR and IMR (undermines the 2004 Legislature's intent behind UR/IMR)

Rodriguez Decision: Appeals



- AA petitioned the CA Supreme Court for review
- CA Supreme Court granted review
- Anticipate oral arguments occurring in 2027
- Timeline for decision: 2027
- Originally thought earlier disposition, but lots of "friend of the court briefs"

Rodriguez Decision: Appeals



- 2nd DCA decision is still citable, just have to note pending review.
- Groups have filed amicus briefs on both sides of this case including:
  - Defense: CWCI, County of Los Angeles
  - App: CAAA, WCAB

Rodriguez Decision: Appeals



What does CA Supreme Court review mean?

- 2nd DCA's decision is technically citable and controls at this time, but must be noted that state Supreme Court is reviewing it
- State Supremes can
  1. agree with the 2nd DCA and affirm
  2. disagree and side with the WCAB and uphold the Patterson doctrine, or
  3. agree on some parts, disagree on others, and issue its own unique ruling.

The Patterson Doctrine



The *Patterson* problem: bars carriers from sending a RFA to UR when

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

The Patterson Doctrine

The *Patterson* problem: Proving a change in condition was nebulous

- ✓ Never defined "change in condition"
- ✓ PTPs have no incentive to stop recommending care
- ✓ Some judges said no QMEs citing *Sandhagen*, others

Rodriguez: Trial Level



- ➢ 2020 trial: AA files for an expedited hearing, arguing that client couldn't send a RFA for home care to utilization review
- ➢ AA argued the *Patterson* doctrine: there hasn't been a change in condition since then

Rodriguez: Trial Level



Def argued:

a) timely UR denial
b) there has been a change in condition, citing PTP reports saying applicant too reliant on home health aide. Also cites home health aide was recommended to prevent seizures, yet applicant's anti-seizure meds had worked for years, had no more seizures.

Judge ruled for AA, there isn't a change in condition and defendant barred from sending RFA to UR

Rodriguez: WCAB Level

- ✓ Def files petition for recon in 2020
- ✓ WCAB issues grant and study decision, ie "grants reconsideration" but needs more time to review
- ✓ In 2024, WCAB orders parties to mediation to try to settle the case
- ✓ Parties do not settle
- ✓ WCAB affirms in Jan 2025



Rodriguez: 2nd DCA

- ✓ 2nd DCA grants review after determining petition for reconsideration was timely
- ✓ Oral arguments in October 2025
- ✓ Holding: Medical treatment disputes must go through UR and IMR processes
- ✓ Holding: Cannot have "*extra-statutory proceedings*" at the WCAB over a *"change in condition"* because that's not mentioned by the statutes

Rodriguez: We Always Knew an Appeal Was Likely



- ✓ We anticipated AA would file a petition for review with the California Supreme Court
- ✓ When I see codefendants in court, they are often eager to see a victory on this matter

Rodriguez: If it stands



If the decision stands:

- ✓ Defs no longer "punished" for authorizing care, because they don't have to fear authorizing it forever
- ✓ Fewer expedited hearings at the WCAB on this issue
- ✓ Could lower costs, but that depends on UR
- ✓ UR still has doctors across the spectrum – I see plenty of PTPs writing URs

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