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LEGEND

Reg. = California Code of Regulations, Title 8, Industrial Relations effective 2009
LC = Labor Code 2009 Update

DISPOSITION OPTIONS

Stipulations with Request for Award

In represented cases, the parties reach agreement as to the level of permanent disability described by the medical and medical/legal record. In unrepresented cases, the parties generally agree to the rating produced by DEU. In both cases, the agreement is formalized within the context of Stipulations. In the overwhelming majority of cases, some provision for future medical care at the expense of the employer is included. Applicant may Petition to Reopen for New and Further Disability, including TD, PD, within five years of date of injury. The Award of future medical treatment is a "lifetime" provision. Stipulations with Request for Award is typically the preferred disposition when the injured worker continues to be employed by defendant. The permanent disability is paid in weekly installments.

Compromise and Release

Often termed full and final settlement, the Compromise and Release compensates the injured worker for all accrued and future indemnity benefits and includes additional monies for applicant's future medical needs and rights to reopen. The injured worker cannot reopen the case after Compromise and Release in the event of new and further disability. The employer has no continuing liability to provide medical care. The interests of medicare must be considered. Depending on employee's medicare status, a medicare set aside may be requested. The C&R only settles issues within the jurisdiction of the WCAB unless otherwise stated. The proceeds of the Compromise and Release are paid in lump sum. This is the preferred disposition if the employee is no longer working for the employer.

The Open Medical Compromise and Release

This agreement compensates the injured worker for all accrued and future TD, and PD, benefits, and like a regular Compromise and Release the proceeds are paid in a lump sum. However, under this agreement, the employer remains liable for provision of future medical care.

Supplemental Job Displacement Vouchers

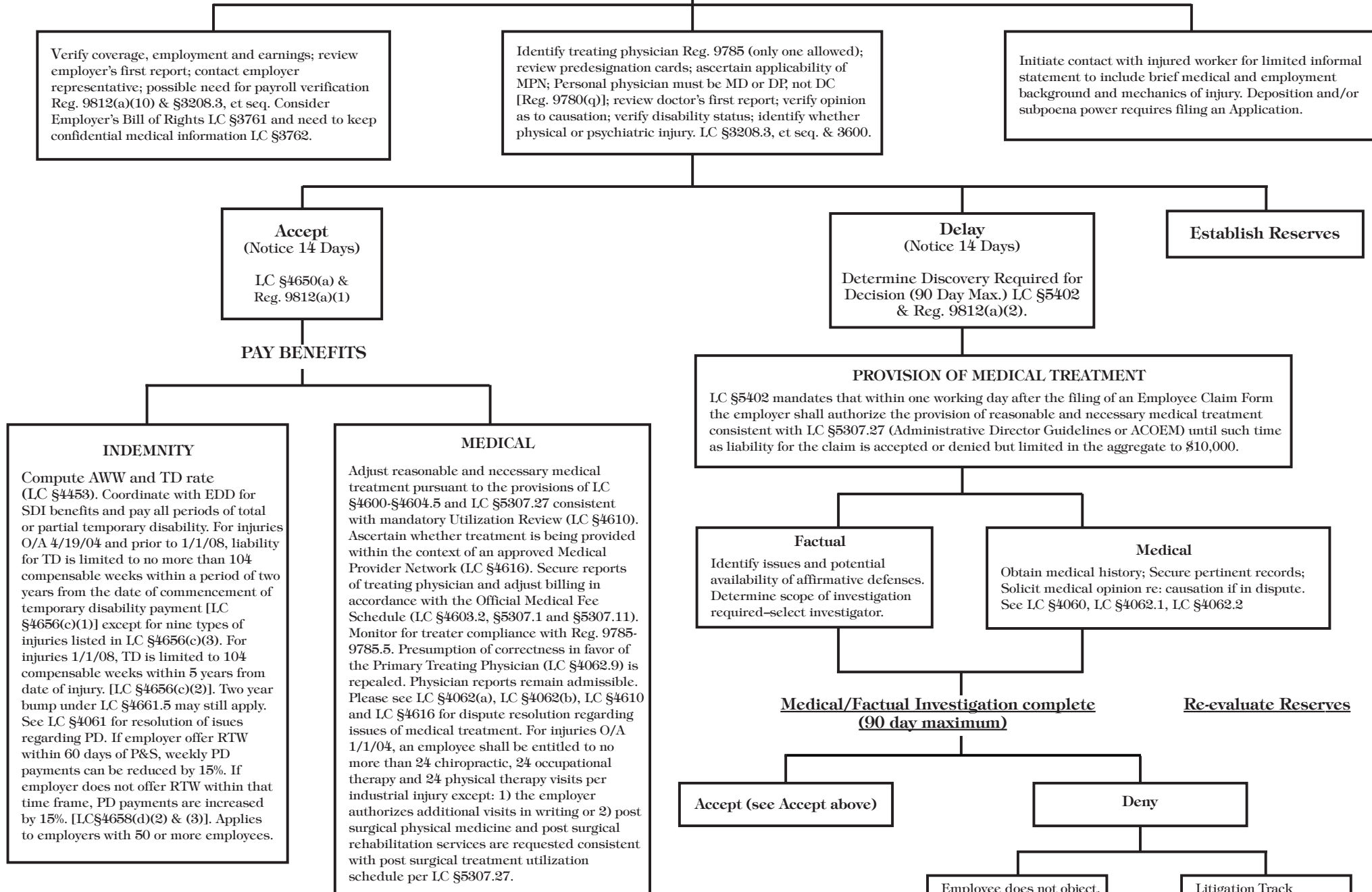
For injuries O/A 1/1/04 vocational rehabilitation has been reduced to potential eligibility for supplemental job displacement benefits in the form of a non-transferable voucher for education related retraining or skill enhancement. The eligibility for job displacement benefits requires permanent partial disability, the termination of TD, and an inability of the part of the employer to offer regular, modified or alternate work. The value of the job displacement vouchers are tied in to the level of permanent disability. No more than 10% of the value of the voucher may be used for vocational or return to work counseling. Within 10 days of the last payment of temporary disability, the employer shall provide notice to the employee of potential eligibility for supplemental job displacement benefits. If an appropriate offer of modified or alternative work by the employer is rejected, the employer shall not be liable for the benefit. LC §4658.5; §4658.6

Fraud References

LC §5401.7 requires warning language on Notice of Claim form. Insurance Codes §1871, et seq, defines basis for fraud and establishes penalties. Section 1871.8 permits warning on checks regarding fraudulent receipt of temporary disability. Section 1877, et seq, governs reporting, confidentiality, and immunity from civil liability.

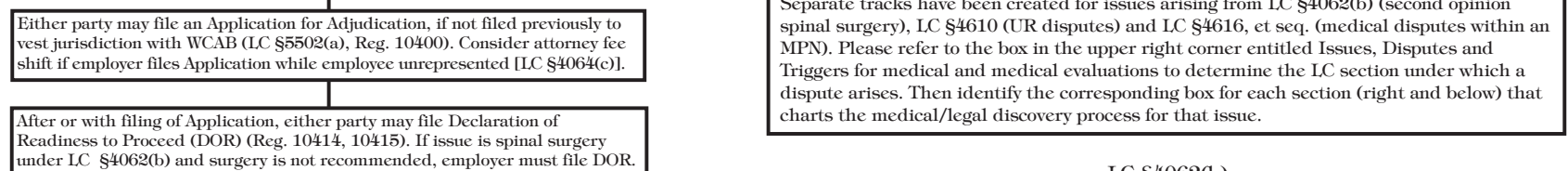
CLAIM FORM (O/A 1/1/05) Gives Notice But Does Not Invoke Jurisdiction of WCAB

Setup Skeletal File, Assign Number and Adjuster



LITIGATION TRACK

- A. Medical/legal report under LC §4060, LC §4061 or LC §4062(a) fails to resolve all issues in dispute.
- B. Medical/legal report under LC §4062(b) does not recommend surgery.
- C. AD determination under LC §4616.4(h) is final.



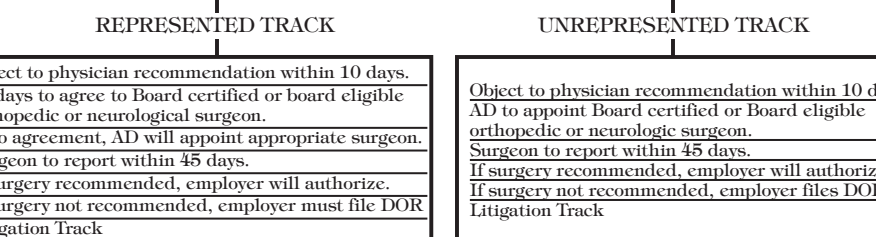
LC §4062(b), LC §4610, LC §4616

MEDICAL/LEGAL EVALUATIONS LC §4062(b), LC §4610, LC §4616

Separate tracks have been created for issues arising from LC §4062(b) (second opinion spinal surgery), LC §4610 (UR disputes) and LC §4616, et seq. (medical disputes within an MPN). Please refer to the box in the upper right corner entitled Issues, Disputes and Triggers for medical and medical/legal evaluations to determine the LC section under which a dispute arises. Then identify the corresponding box for each section (right and below) that charts the medical/legal discovery process for that issue.

LC §4062(b)

SECOND OPINION SPINAL SURGERY



LC §4610

UTILIZATION REVIEW

For medical treatment issues subject to LC §4610, Utilization Review is mandatory. For concurrent or prospective requests for authorization of medical treatment, UR has 5 working days to modify, deny or delay treatment recommendations and request reasonable, appropriate additional information required to reach a decision. If additional information is timely requested, UR has up to 14 days from the date of the treatment request to modify, deny or delay treatment. For retrospective review, the determination must be communicated to the injured worker or his/her attorney within 30 days from the receipt of information reasonably necessary to make the determination. If the UR Determination is untimely, the recommended treatment must be authorized. If the UR Determination certifies the treatment, the treatment must be authorized. If the UR Determination denies or modifies the treatment recommendation, the injured worker's remedy is dispute resolution through the AME/PQME process pursuant to LC §4062(a) or LC §4062(b).

MEDICAL DISPUTES WITHIN MEDICAL PROVIDER NETWORK (MPN) LC §4616, et seq.

Within approved MPN, upon notification of injury or filing of a Claim Form, the employer shall arrange initial evaluation. Employer notifies employee of right to select physician within MPN. Employee disputes diagnosis or treatment of second physician; employee may seek opinion of third physician within network. Employee disputes diagnosis or treatment of third physician; employee may request independent medical review in form entitled Independent Medical Review Application. AD or independent medical review organization assigns independent medical reviewer. Employer provides all medical records and pertinent materials. At employee's discretion, independent medical reviewer may conduct examination. IMR report to AD within 30 days. AD adopts the determination of the independent medical reviewer. Final order of AD is appealable but no additional examinations shall be ordered by Appeals Board and no other reports are admissible.

ISSUES, DISPUTES AND TRIGGERS FOR MEDICAL AND MEDICAL/LLEGAL EVALUATIONS

Labor Code Sections controlling as to procurement and admissibility of medical and medical/legal evaluations of injuries on or after 1/1/05.

LC §4060 (Causation)

This section applies to disputes over the compensability of any injury. This section shall not apply where injury to any part or parts of the body is accepted as compensable. Access to LC §4060 is by notice either that the employer requests a comprehensive medical evaluation to determine compensability or that the employer has not accepted liability and the employee may request a comprehensive medical evaluation to determine compensability. The evaluation shall be obtained pursuant to the procedure set forth in §4062.1 or LC §4062.2. If liability is not rejected within 90 days of filing of the claim form, injury shall be rebuttably presumed compensable (LC §5402).

LC §4061 (Permanent Disability)

LC §4061 applies to disputes regarding nature and extent of permanent disability. Together with the last payment of TD, the employer must issue a benefits notice regarding PD and whether there is a need for continuing medical care. Either party may request a comprehensive medical evaluation to determine permanent disability.

LC §4062(a) (P&S Status/RTW/Medical Issues not subject to UR)

LC §4062(8) encompasses any medical issue not covered by LC §4060 and LC §4061 or subject to LC §4610 (Utilization Review). Issues include industrial liability for medical treatment, in limited cases, P&S status and return to work. Access to medical/legal evaluation is triggered by objection to the medical determination of the treating physician (see LC §4062.1 and LC §4062.2 below). The objecting party shall notify the other party in writing within 20 days of the receipt of the medical report if the injured worker is represented by an attorney and within 30 days of receipt of the report if the employee is unrepresented. A comprehensive medical evaluation is obtained pursuant to LC §4062.1 or LC §4062.2 below. Issues subject to Utilization Review under LC §4610 shall also be resolved pursuant to LC §4062 if requested medical treatment is not provided in full, i.e. the Utilization Review Determination either denies or modifies the treatment recommendation (LC §4610(d)(9)(A)). In the event of Utilization Review denial or modification, LC §4062 is the injured worker's remedy. There is no process for an employer to dispute a UR determination. LC §4616, et seq. (MPN) also provides access to LC §4062 on the limited issue of transfer of care within an MPN and classification of patient's condition pursuant to LC §4600(d) (Reg 9767.8).

LC §4062(b) (Spinal Surgery)

This subsection is specific to recommendation for spinal surgery by the treating physician. The employer has 10 days from the receipt of the report to object. If the employee is represented by an attorney the parties have 10 days to agree to a California licensed and certified or Board eligible orthopedic surgeon or neurosurgeon to prepare a second opinion regarding spinal surgery. The physician need not be a QME. If no agreement is reached, or if the employee is unrepresented, a qualified physician will be randomly selected by the Administrative Director. The physician has 45 days from the date of surgical recommendation to serve the report. If UR is concurrently requested and the surgery is certified, the second opinion process ends and the surgery must be authorized. If the second opinion recommends surgery, the employer shall authorize. If the second opinion does not recommend surgery, the employer shall file a Declaration of Readiness to Proceed.

LC §4610 (Utilization Review)

Establishment of a Utilization Review process is mandatory. For concurrent or prospective requests for authorization, UR has five working days to modify, deny or delay treatment recommendations and request reasonable, appropriate information required to reach a decision. If additional information is timely requested, UR has up to 14 days from the date of the treatment request to modify, deny or delay treatment. For retrospective review, the determination must be communicated to the injured worker or his/her attorney within 30 days from the receipt of information reasonably necessary to make the determination. If the UR Determination certifies the recommended treatment, the treatment must be authorized. If the UR Determination denies or modifies the treatment recommendation, the injured worker's remedy is dispute resolution through the AME/PQME process pursuant to LC §4062(a) or LC §4062(b). If the UR Determination is untimely, the recommended treatment must be authorized. The Administrative Director has discretion to assess administrative penalties if UR is untimely.

LC §4616, et seq. (MPN)

On or after 1/1/05, this section allows employers and insurers to establish Medical Provider Networks (MPN) for provision of medical treatment to injured employees. Employees who predesignate a treating physician may be treated outside of the MPN (LC §4600(d), Reg. 9767.8). Treatment shall be provided in accordance with Administrative Director's guidelines (LC §5807.27). Upon filing of the claim, the employer shall arrange an initial medical evaluation within the MPN (LC 4616.3(a)). After the initial visit, the employee may designate a treating physician within the MPN (LC 4616.3(b)). If the employee disputes the diagnosis or treatment prescribed, the employee may seek the opinion of another physician within the MPN (LC 4616.3(c)). If the employee disputes the diagnosis or treatment of the second physician, the employee may seek a third opinion within the MPN (LC 4616.3). If the diagnosis or treatment remains disputed after the third opinion, the employee may request independent medical review (IMR) (LC 4616.4(b)). The request for IMR is triggered by the employee's filing a one page form with the Administrative Director entitled "Independent Medical Review Application" (LC §4616.4(c), Reg. 9768.1). The Administrative Director shall assign the independent medical reviewer. The employer shall provide the independent medical reviewer with all medical records and other pertinent information (LC §4616.4(d)). The employee at his/her discretion may be examined by the independent medical reviewer. The independent medical reviewer shall report to the Administrative Director within 30 days. The Administrative Director shall adopt the determination of the Independent Medical Reviewer and issue a written decision (LC 4616.4(h)). If the IMR determines that the disputed treatment or diagnostics is consistent with the Administrative Director's guidelines or ACOEM, the employee may seek the treatment either within or outside the MPN (LC 4616.4(i)). No additional examinations shall be ordered by the WCAB and no other reports shall be admissible to resolve any controversy (LC §4616.6) LC §4616, et seq., does not reference an employer's right to object, only that of the employee.

Apportionment

LC §4663 mandates that for a physician's report to be considered complete of the issue of permanent disability, it must include an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries (LC §4663). Note that LC §4663(c) precludes percentage apportionment to causation in cases involving presumed injuries to safety officers (LC §§ 3212 - 3213.2). LC §4664(f) mandates that if the applicant has received a prior Award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at a time of any subsequent industrial injury. This largely eliminates the reduction of apportionment from a prior award by the employee's claim of medical rehabilitation between injuries. LC §4664(c) acknowledges that the accumulation of all permanent disability Awards issued with respect to any one region of the body shall not exceed 100% over the course of the employee's lifetime unless the most recent injury or illness is conclusively presumed to be total in character pursuant to LC §4662.

Penalties

Sanctions: LC §5813, Reg. 10561 provides up to \$2,500 for tactics which are frivolous or solely intended to cause unnecessary delay.
Penalty: LC §4650(d) provides for a 10% self-imposed penalty on any late payment of temporary or permanent disability.

LC §5814(a) imposes a penalty of up to 25% or up to \$10,000, whichever is less, of the value of any payment of compensation unreasonably delayed or refused. Compensation as defined by LC §8907 includes every benefit or payment conferred by Division 4 including TD, PD, vocational rehabilitation, death benefits and medical treatment. If medical treatment has been timely authorized, and the only dispute concerns payment of a medical bill, the provisions of LC §5814(a) are not applicable though the employer may be subject to a 15% increase as to the late paid medical bill pursuant to LC §4668.2. (§5814(c).) The payment of any penalty pursuant to LC §5814(a) shall be reduced by any amount paid under LC §4650(d) for the same untimely disability payment (LC §5814(d)).

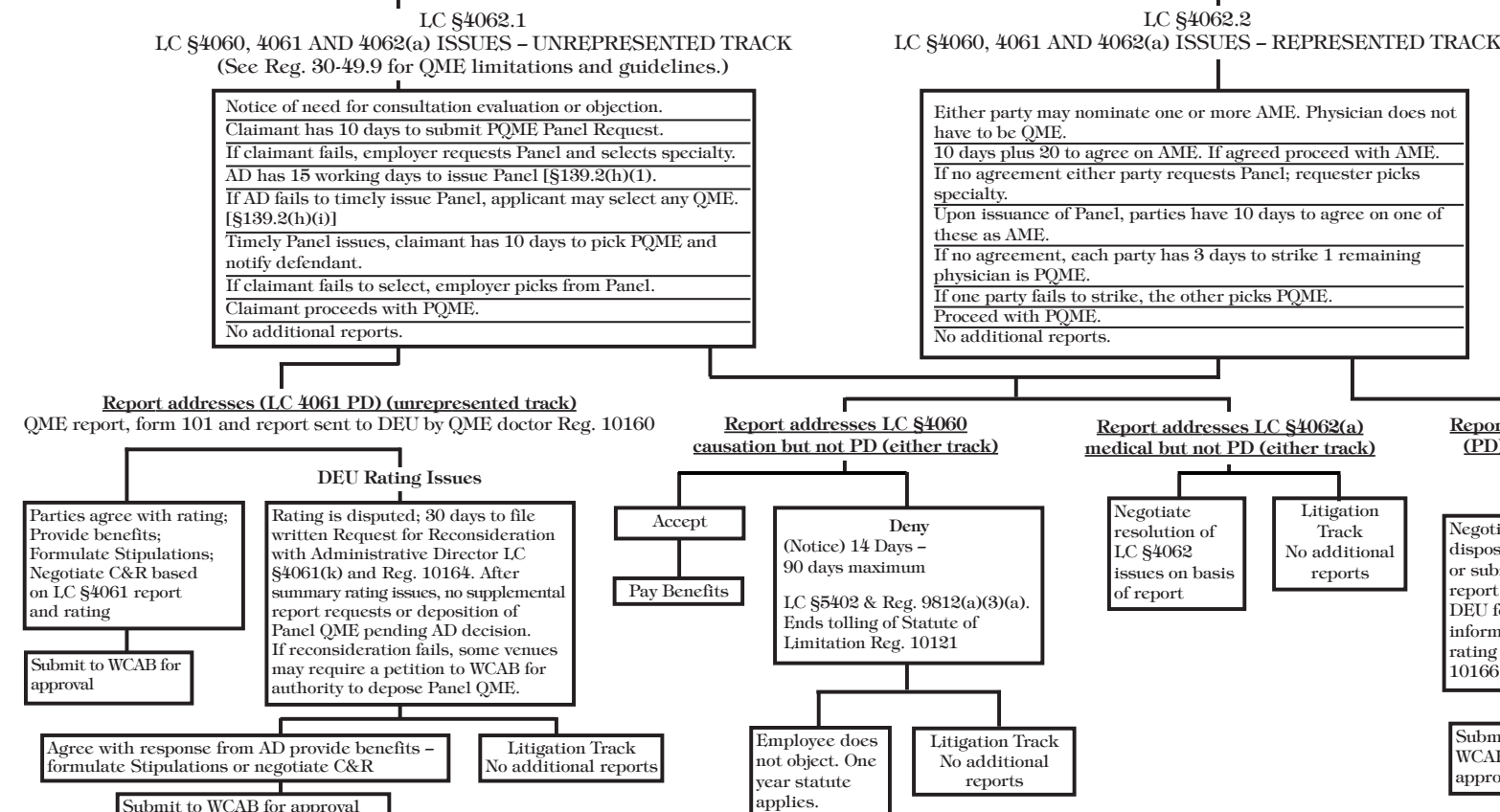
LC §5814(a) penalties refer to those raised or pled by the employee. If an employer first identifies a potential LC § 5814 violation, LC §5814(d) allows the employer, within 90 days of date of discovery, to pay a self-imposed penalty in the amount of 10% of the payment delayed in lieu of the 25% penalty in subdivision (a). This 10% self-imposed penalty in LC §5814(d) is not reduced by LC §4650(d) penalties and is in addition to LC §4650(d) penalties if the payment delayed is an indemnity benefit.

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 penalty has been resolved, unless the claim for penalty is expressly excluded under terms of the Order or Award (LC §5814(c)). No penalty can be claimed more than two years after the delayed compensation was due (LC §5814(g)).

MONITOR FOR ISSUES, DISPUTES AND TRIGGERS FOR MEDICAL AND MEDICAL /LEGAL EVALUATION LC §4060, LC §4061, LC §4062(a), SEE LC §4062.1 AND LC §4062.2 PROCEDURES BELOW

MEDICAL/LEGAL EVALUATIONS LC §4060, LC §4061, LC §4062(a)

SB 899 maintains a two track process for securing medical evaluations. With regard to issues set forth in LC §4060 (causation), LC §4061 (PD) and LC §4062(a) any medical issues not covered by LC §4060, LC §4061, LC §4062(b) (spinal surgery), LC §4610 (UR) and LC §4616, et seq. (disputes within an MPN), access to medical legal evaluation for unrepresented employees is controlled by LC §4062.1 (see box LC 4062.1 at left). For represented employees, the medical/legal process for addressing disputes under LC §4060, LC §4061 and LC §4062(a) is governed by LC §4062.2 where AME selection is possible (see box LC §4062.2 at right). A single report may resolve all issues arising from LC §4060, LC §4061 and LC §4062(a) LC §4062.3 mandates information provided to an AME/PQME as well as applicable timelines. Ex parte communication remains prohibited. If the AME/PQME evaluation resolves some but not all issues in dispute or if re-evaluation on the same or similar issues is required, the subsequent evaluation should be conducted by the same AME/PQME. The reports of treating physicians remain admissible but are no longer presumed correct (§4062.9 repealed).



POST TRIAL PROCEEDINGS

Petition for Reconsideration must be filed with WCAB within 20 days plus 5 days mailing from any final Order, Decision or Award by WCJ (LC §5003). After record filed, WCJ may within 15 days amend, modify or recon for further hearing. Reg. §4089
Petition for Writ of Review (Court of Appeal) must be filed within 45 days of filing of the Order, Decision or Award following Reconsideration (LC §5050).
Petition for Review (Supreme Court) must be filed within 10 days of finality of appellate disposition (California Rules of Court 24(b) and 28(a)).