

California Labor Code

§4628. Responsibilities of physician signing medical-legal report..

(a) Except as provided in subdivision (c), no person, other than the physician who signs the medical-legal report, except a nurse performing those functions routinely performed by a nurse, such as taking blood pressure, shall examine the injured employee or participate in the nonclerical preparation of the report, including all of the following:

- (1) Taking a complete history.
- (2) Reviewing and summarizing prior medical records.
- (3) Composing and drafting the conclusions of the report.

(b) The report shall disclose the date when and location where the evaluation was performed; that the physician or physicians signing the report actually performed the evaluation; whether the evaluation performed and the time spent performing the evaluation was in compliance with the guidelines established by the Industrial Medical Council or the administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2 or Section 5307.6 and shall disclose the name of qualifications of each person who performed any services in connection with the report, including diagnostic studies, other than its clerical preparation. If the report discloses that the evaluation performed or the time spent performing such evaluation was not in compliance with the guidelines established by the Industrial Medical Council or the administrative director, the report shall explain, in detail, any variance and the reason or reasons therefor.

(c) If the initial outline of a patient's history or excerpting of prior medical records is not done by the physician, the physician shall review the excerpts and the entire outline and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant medical issues.

(d) No amount may be charged in excess of the direct charges for the physician's professional services and the reasonable costs of laboratory examinations, diagnostic studies, and other medical tests, and reasonable costs of clerical expense necessary to producing the report. Direct charges for the physician's professional services shall include reasonable overhead expense.

(e) Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

(f) Knowing failure to comply with the requirements of this section shall subject the physician to a civil penalty of up to one thousand dollars (\$1,000) for each violation to be assessed by a workers' compensation judge or the appeals board. All civil penalties collected

under this section shall be deposited in the Workers' Compensation Administration Revolving Fund.

(g) A physician who is assessed a civil penalty under this section may be terminated, suspended, or placed on probation as a qualified medical evaluator pursuant to subdivisions (k) and (l) of Section 139.2.

(h) Knowing failure to comply with the requirements of this section shall subject the physician to contempt pursuant to the judicial powers vested in the appeals board.

(i) Any person billing for medical-legal evaluations, diagnostic procedures, or diagnostic services performed by persons other than those employed by the reporting physician or physicians, or a medical corporation owned by the reporting physician or physicians shall specify the amount paid or to be paid to those persons for the evaluations, procedures, or services. This subdivision shall not apply to any procedure or service defined or valued pursuant to Section 5307.1

(j) The report shall contain a declaration by the physician signing the report, under penalty of perjury, stating:

“I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and except as noted herein, that I believe it to be true.”

The foregoing declaration shall be dated and signed by the reporting physician and shall indicate the county wherein it was signed.

(k) The physician shall provide a curriculum vitae upon request by a party and include a statement concerning the percent of the physician's total practice time that is annually devoted to medical treatment.

Title 8, California Code of Regulations (WCAB Rules of Practice & Procedure)

§10606. Physicians' Reports as Evidence.

The Workers' Compensation Appeals Board favors the production of medical evidence in the form of written reports. Direct examination of a medical witness will not be received at a hearing except upon a showing of good cause and written notice to the parties filed and served at least 10 days before the hearing. A continuance may be granted for rebuttal testimony subject to Labor Code Section 5502.5.

These reports should include where applicable:

- (a) the date of the examination;
- (b) the history of the injury;
- (c) the patient's complaints;
- (d) a listing of all information received from the parties reviewed in preparation of the report or relied upon for the formulation of the physician's opinion;
- (e) the patient's medical history, including injuries and conditions, and residuals thereof, if any:
- (f) findings on examination;
- (g) a diagnosis;
- (h) opinion as to the nature, extent, and duration of disability and work limitations, if any;
- (i) cause of the disability;
- (j) treatment indicated;
- (k) opinion as to whether or not permanent disability has resulted from the injury and whether or not it is stationary. If stationary, a description of the disability with a complete evaluation;
- (l) apportionment of disability, if any;
- (m) a determination of the percent of the total causation resulting from actual events of employment, if the injury is alleged to be a psychiatric injury;
- (n) the reasons for the opinion, and
- (o) the signature of the physician.

Failure to comply with (a) through (o) will be considered in weighing such evidence.

In death cases, the reports of non-examining physicians may be admitted into evidence in lieu of oral testimony.

All medical-legal reports shall comply with the provisions of Labor Code Section 4628. Except as otherwise provided by the Labor Code, including Labor Code Sections 4628 and 5703 and the rules of practice and procedure of the Appeals Board, failure to comply with the requirements of this section will not make the report inadmissible but will be considered in weighing such evidence.