

support an award, assuming that the defendant offers no medical evidence in rebuttal. After all, the lien claimant is supposed to be providing the applicant with evidence in exchange for payment on a lien basis. If the physician has produced a document that is worthless as evidence, there is no basis for finding that the applicant incurred a cost when he didn't get the benefit of his bargain. Further, since costs of evaluations, diagnostic testing and interpreters' services are only incidental to the production of a medical report, liens for these services do not meet the legal definition of medical-legal expenses if the resulting report is not capable of proving the claim. [*Hunt v. WCAB (Carrillo)* (1994) 59 CCC 940, writ denied (WCJ properly denied recovery for costs of preparation of reports as either treatment or medical-legal reports when reports were not timely prepared, were not incurred by or on behalf of applicant, and substantial evidence supported finding that reports were prepared for purpose of generating fees and creating appearance of statutory compliance).]

[§§3:121-3:129 Reserved]

## ***B. WCAB Rules of Practice and Procedure §10606***

### ***§3:130 Topics to be Addressed in Medical-Legal Reports***

Medical legal reports should include where applicable:

- The date of the examination;
- The history of the injury;
- The patient's complaints;
- 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;

The patient's medical history, including injuries and conditions, and residuals thereof, if any:

- Findings on examination;

- Treatment indicated;
- 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;
- Apportionment of disability, if any;
- 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;
- The reasons for the opinion; and
- The signature of the physician.

[Title 8, California Code of Regulations (WCAB Rules of Practice and Procedure) §10606.]

### ***§3:131 Substance Over Form***

In determining whether a given report is capable of proving the contested claim, the WCJ must consider the substance as well as the form of the report, as required by applicable statutes and regulations [Labor Code §4620(c); Title 8, California Code of Regulations (Rules of the Administrative Director) §9793(g)(3).] particularly referring to Title 8, California Code of Regulations (WCAB Rules of Practice and Procedure) §10606, which lists the topics that must be addressed in a medical-legal report, provided that a given item is applicable to the case in question. Mere mention of a listed item in a paragraph heading with boilerplate language inserted below, does not meet the statutory requirement of substance in addition to form. Thus, liens based on reports that are essentially generated by way of a word processing program, with a few blanks filled in with information particular to the employee who is being evaluated, do not qualify as medical-legal costs, nor do the liens of any associated diagnostic testing or interpreting services.

On the other hand, failure to comply with the requirements of this section does not automatically mean that the report is inadmissible or that the lien claimant will be denied payment. Any defects will be taken into consideration in weighing the evidence and otherwise, each case will have to be judged on its own merit or lack thereof.

worker may have had additional injuries or may have been treated by other physicians. If the report was written a month after the evaluation, and in the interim a new injury was sustained, it will be crucial to know whether the applicant was before or after the new injury. If there have been multiple contacts with the patient, the reader will need to know the reference point for the doctor's findings and conclusions.

### ***§3:133 History of the Injury***

#### ***Requirement***

A medical-legal report must contain a substantially adequate, complete, and accurate history. The history section of a medical-legal report is supposed to enable the reader to understand what the applicant is claiming happened and why he or she is entitled to workers' compensation benefits as a result. A medical-legal history should read substantially the same as the applicant's trial testimony on direct examination. If the history is such that the reader jumps to the conclusion that the claim is probably without merit, it can hardly be said that the doctor has provided the applicant with an evidentiary benefit. [*Jordan v. WCAB* (1972) 37 CCC 670, writ denied (in awarding an attorney less than the billed amount of a medical-legal charge, the referee found that the history and resulting opinion were "preposterous.")]

#### ***Inadequate Histories***

Boilerplate language and generic histories with little or no information specific to the claim in question, do not meet the requirements of "applicable statutes and regulations" in terms of substance as opposed to form. Cumulative trauma claims, in particular, require a careful, detailed history describing the industrial exposure in terms of type, duration, frequency, and intensity. [*Abrego v. WCAB* (1997) 62 CCC 1122, writ denied. (AME concluded that an applicant sustained cumulative injury, but the report did not adequately explain which job duties or work history could have caused applicant's injury; *Tribble v. WCAB* (1997) 62 CCC 1327, writ denied (QME's report did not constitute substantial evidence to support applicant's cumulative trauma claim, when report misstated applicant's job requirements by indicating that applicant's work required standing for eight to ten hours a day and the evidence revealed that applicant sat at least 50 percent of the time to perform his duties, and only had to bend and stoop occasionally).] Otherwise, the resulting report will not be capable of prov-