

1 **WORKERS' COMPENSATION APPEALS BOARD**  
2 **STATE OF CALIFORNIA**

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4 **Case No. MISC. NO. 261**

5 **IN RE: COVID-19 STATE OF EMERGENCY**

6 **EN BANC – NO. 2**  
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9 Upon a unanimous vote of its members,<sup>1</sup> the Appeals Board issues this decision as a whole as an  
10 en banc decision.<sup>2</sup> (Lab. Code, § 115.)

11 On March 19, 2020, the State of California's Governor, Gavin Newsom, issued Executive Order  
12 N-33-20, requiring all Californians to stay home with certain limited exceptions.<sup>3</sup> In light of the continued  
13 state of emergency and to facilitate compliance with public health measures, we will order that certain  
14 documents may be emailed directly to the district offices or the Appeals Board as further outlined herein.  
15 We believe this measure is necessary to fulfill our constitutional mandate to "accomplish substantial justice  
16 in all cases expeditiously, inexpensively, and without incumbrance of any character" during this state of  
17 emergency. (Cal. Const., art. XIV, § 4.)

18 **I.**

19 WCAB Rule 10940(b) states in relevant part: "No documents sent directly to the Appeals Board  
20 by fax or **e-mail will be accepted for filing, unless otherwise ordered by the Appeals Board.**" (Cal.  
21 Code Regs., tit. 8, former § 10845(c), now § 10940(b) (eff. Jan. 1, 2020), emphasis added.) To the extent  
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23 <sup>1</sup> Commissioner Gaffney was unavailable and did not participate in this decision.

24 <sup>2</sup> En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs.,  
25 tit. 8, former § 10341, now § 10325 (eff. Jan. 1, 2020); *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126  
26 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424,  
fn. 6 [67 Cal.Comp.Cases 236].) This en banc decision is also adopted as a precedent decision pursuant to Government Code  
section 11425.60(b).

27 <sup>3</sup> Governor Newsom's Executive Order N-33-20 may be accessed here: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>. (See Evid. Code, § 452(c).)

1 that WCAB Rule 10940(b) prohibits sending documents directly to the Appeals Board by email, we order  
2 that documents may be emailed directly to the Appeals Board. Documents that may be emailed include,  
3 but are not limited to, correspondence relating to a petition for reconsideration that has been granted for  
4 further study by the Appeals Board.<sup>4</sup> Documents sent by email should include the information required  
5 for pleadings by WCAB Rule 10520 and an email address for the sending party. (Cal. Code Regs., tit. 8,  
6 former § 10498, now § 10520 (eff. Jan. 1, 2020).) Documents sent by email should otherwise comply with  
7 the WCAB's Rules.

8 Documents may be sent by email to WCABEmergencyBox@dir.ca.gov and will be responded to  
9 per the Appeals Board's normal operating procedures.

10 Petitions for reconsideration, removal, or disqualification and answers should still be filed in EAMS  
11 or with the district office having venue pursuant to WCAB Rule 10940(a). (See Cal. Code Regs., tit. 8,  
12 former § 10840(a), now § 10940(a) (eff. Jan. 1, 2020).)

## 13 II.

14 Administrative Director (AD) Rule 10205.7(c) provides as follows:

15 No document shall be sent by electronic mail or by fax directly to the district  
16 office or the appeals board. **If a document is sent by electronic mail or  
17 fax directly to the district office, it shall not be accepted for filing or  
18 deemed filed, shall not be acknowledged, and may be discarded unless  
19 otherwise ordered by the workers' compensation administrative law  
20 judge or the appeals board.**

(Cal. Code Regs., tit. 8, § 10205.7(c), emphasis added.)

21 Although ordinarily prohibited by the AD's Rules, the Appeals Board hereby orders that specific  
22 documents may be by sent by email directly to the district offices. The district offices may accept by email  
23 *solely documents subject to a statutory time limit* where the filing party could not otherwise e-file, JET file  
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25 <sup>4</sup> Injudicious use of the Appeals Board's emergency email box may subject a party, its representative or both, to sanctions. (See  
26 Lab. Code, § 5813; Cal. Code Regs., tit. 8, former § 10561, now § 10421 (eff. Jan. 1, 2020).) Parties remain obligated to comply  
27 with WCAB Rule 10964 regarding supplemental pleadings. (Cal. Code Regs., tit. 8, former § 10848, now § 10964 (eff. Jan. 1,  
2020).)

1 or file the document by mail.<sup>5</sup> Information regarding email addresses for filing documents by email with  
2 the district offices is available on the DWC's webpage: <https://www.dir.ca.gov/dwc/dir2.htm>.

3 All parties are reminded that ex parte communications are prohibited per WCAB Rule 10410 and  
4 any document sent to the district offices or the Appeals Board by email or any other method must also be  
5 served on all parties to the matter. (Cal. Code Regs., tit. 8, former § 10324, now § 10410 (eff. Jan. 1,  
6 2020).)

7 These orders will remain in effect until further notice.

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26 <sup>5</sup> Nothing in this decision precludes a workers' compensation administrative law judge from ordering that other documents may  
27 also be sent by email as provided in AD Rule 10205.7(c).

1 For the foregoing reasons,

2 **IT IS SO ORDERED** that documents may be sent by email directly to the Appeals Board pursuant  
3 to WCAB Rule 10940(b) and consistent with this decision.

4 **IT IS ORDERED** that documents subject to a statutory time limit may be sent by email directly to  
5 the district offices pursuant to AD Rule 10205.7(c) where the filing party could not otherwise e-file, JET  
6 file or file the document by mail.

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8 **WORKERS' COMPENSATION APPEALS BOARD (EN BANC)**

9  
10 /s/ Katherine A. Zalewski  
11 *KATHERINE A. ZALEWSKI, Chair*

12 /s/ Deidra E. Lowe  
13 *DEIDRA E. LOWE, Commissioner*

14 /s/ Marguerite Sweeney  
15 *MARGUERITE SWEENEY, Commissioner*

16 /s/ José H. Razo  
17 *JOSÉ H. RAZO, Commissioner*

18 /s/ Katherine Williams Dodd  
19 *KATHERINE WILLIAMS DODD, Commissioner*

20 /s/ Craig Snellings  
21 *CRAIG SNELLINGS, Commissioner*

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23 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

24 **04/06/2020**

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27 **abs**

**IN RE: COVID 19 STATE OF EMERGENCY – NO. 2**