

# CALIFORNIA BOARD OF LEGAL SPECIALIZATION OF THE STATE BAR OF CALIFORNIA



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## WORKERS' COMPENSATION LAW CERTIFICATION EXAM

<b>Date</b>	Sunday, August 9, 2009 9:00 a.m. – 4:30 p.m.
<b>Registration deadline</b>	Friday, June 26, 2009
<b>Exam sites</b>	Westin San Francisco Airport Marriott Los Angeles Downtown
<b>Fee</b>	\$300 writing (\$350 if using a laptop PC) <i>fee includes a box lunch</i>
<b>Exam format</b>	The exam is divided into two sessions – the three hour and 15 minute morning session includes 75 multiple-choice questions and two essay questions; the three hour afternoon session includes six essay questions. There are no optional questions; each examinee is expected to answer all questions on the exam.  The 75 multiple-choice questions are designed to be answered in approximately 135 minutes. Each essay question is designed to be answered in approximately 30 minutes.
<b>Scoring</b>	The maximum number of points available is 600. A passing score is 420 points, or 70%. Exams with scores between 65-70% are re-read by a Committee of Reappraisers. The decision of the Committee is final, pursuant to section 8.3 of the Rules Governing the State Bar of California Program for Certifying Legal Specialists. Results are mailed only after all reappraisals have been completed.
<b>Reference materials</b>	No reference materials are allowed during the exam.
<b>Testing accommodations</b>	Available at both sites. Contact <a href="mailto:ivonne.dossantosmorte@calbar.ca.gov">ivonne.dossantosmorte@calbar.ca.gov</a> or (415) 538-2145 for more information.
<b>Study resources</b>	See attached standards for certification, exam specifications, and sample exam questions.

**For more information, visit [www.californiaspecialist.org](http://www.californiaspecialist.org)**

The Standards must be read in conjunction with the Rules Governing the State Bar of California Program for Certifying Legal Specialists, which govern the Program requirements.

**THE STANDARDS FOR CERTIFICATION AND RECERTIFICATION  
IN WORKERS' COMPENSATION LAW**  
(amended effective 5/16/08)

**1.0 DEFINITION**

Workers' compensation law involves the representation of parties in connection with industrial injury and disease claims.

**2.0 TASK REQUIREMENT FOR CERTIFICATION**

2.1 An applicant must demonstrate that, within the five years immediately preceding submission of the written application, he or she has been substantially involved in the practice of workers' compensation law, which shall include handling matters in the following areas:

- 2.1.1 Pretrial practice and procedures;
- 2.1.2 Trial;
- 2.1.3 Appellate;
- 2.1.4 Medical;
- 2.1.5 Rating; and
- 2.1.6 Rehabilitation.

2.2 A prima facie showing of substantial involvement in the area of workers' compensation law is made by performance of the following activities:

- 2.2.1 One Hundred in combination of any of the following:
  - 2.2.1.1 Participation in depositions of witnesses other than physicians;
  - 2.2.1.2 Pretrial conferences;
  - 2.2.1.3 Petition for removal (Labor Code Section 5310).
- 2.2.2 Twenty trials to submission of workers' compensation cases, including expedited hearings;
- 2.2.3 Preparation of five of the following or any combination:
  - 2.2.3.1 Petitions for reconsideration, or answers thereto;
  - 2.2.3.2 Petitions for appellate proceedings, or answers thereto;
  - 2.2.3.3 Amicus briefs;
- 2.2.4 Ten examinations of physicians by trial or deposition;

**3.0 EDUCATIONAL REQUIREMENT FOR CERTIFICATION**

An applicant must show that, within the three years immediately preceding the application for certification, he or she has completed not less than 45 hours of educational activities specifically approved for workers' compensation law specialists. A minimum of 10 hours of the educational requirement for certification shall be satisfied by approved educational activities dealing with the mechanics of rating permanent disability. A maximum of 10 hours may be satisfied by approved medical educational activities.

**4.0 TASK REQUIREMENT FOR RECERTIFICATION**

An applicant for recertification must show that, during the current five-year certification period, he or she has had direct and substantial participation in the practice of workers' compensation law. Such showing shall be made by compliance with the requirements set forth in section 2.0 or, at the discretion of the Commission, by sworn statement that the applicant has engaged in the practice of workers' compensation law substantially to the same extent as described in the application for original certification.

**5.0 EDUCATIONAL REQUIREMENT FOR RECERTIFICATION**

An applicant for recertification must show that, during the current five-year certification period, he or she has completed not less than 60 hours of educational activities specifically approved for workers' compensation law specialists.

## **Specifications for State Bar of California Workers' Compensation Law Certification Examination**

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**Purpose of the Examination:** The Workers' Compensation Law Examination consists of a combination of essay and multiple-choice questions. It is designed to verify the applicant's knowledge of and proficiency in the usual legal procedures and core substantive workers' compensation law that should be common to specialists in the field as represented by the subject areas listed below. We recognize that these subject areas may overlap, which may require that you incorporate in your answers to exam questions more than one substantive or procedural area of workers' compensation law. Also, the order of the subject areas does not reflect their relative importance, nor does the sequence represent an implied order of their application in practice.

Your answers to the exam questions should reflect your ability to identify and resolve issues, apply the law to the facts given, and show knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. Of primary importance for the essay questions will be the quality of your analysis and explanation.

Knowledge of the following subject areas may be assessed:

### **Subject Area 1: Professional Responsibility**

- 1.1 Ethical duties to client, opposing counsel and the Court
- 1.2 Bases for sanctions
- 1.3 Fee agreements/Bases for fees
- 1.4 Prohibited referrals and inducements
- 1.5 Dual representation/conflicts of interest
- 1.6 California Rules of Professional Conduct

### **Subject Area 2: Claim Evaluation: Remedies & Defenses**

- 2.1 Specific injury(ies) and cumulative trauma
- 2.2 Relevant time limits
- 2.3 Effect of injury date on benefits
- 2.4 Types of benefits
- 2.5 Identification of relevant issues
- 2.6 Identification and evaluation of records and documents
- 2.7 Benefit notices
- 2.8 Defenses to compensability
- 2.9 Insurance coverage
- 2.10 Subsequent Injuries Benefits Trust Fund
- 2.11 Uninsured Employers Benefits Trust Fund
- 2.12 Death benefits/dependency
- 2.13 Related civil remedies
- 2.14 Serious and willful misconduct
- 2.15 Labor Code § 132a
- 2.16 Presumptions and Benefits for public safety personnel

### **Subject Area 3: Practice & Procedures (Trial & Appellate)**

- 3.1 Jurisdiction/venue
- 3.2 Discovery & investigation
- 3.3 Pre-trial & trial procedures
- 3.4 Expert and lay witnesses
- 3.5 Appropriate evidence/admissibility
- 3.6 Making of record for reconsideration
- 3.7 Post-trial remedies/Reconsideration
- 3.8 Petitions for Removal (Labor Code § 5310)
- 3.9 Writs
- 3.10 Technical defenses

- 3.11 Liens
- 3.12 Settlements
- 3.13 Arbitration and Mediation
- 3.14 Vocational Rehabilitation/Supplemental Job Displacement Benefit
- 3.15 Penalties, interest and increases to benefits
- 3.16 Petition to reopen

**Subject Area 4: Medical Knowledge & Issues**

- 4.1 Anatomy/physiology
- 4.2 Terminology
- 4.3 Industrial diseases
- 4.4 Treatment guidelines/ UR/MPN/ACOEM
- 4.5 Determination of medical issues (AME/QME)

**Subject Area 5: Disability Evaluation**

- 5.1 Permanent impairment/Description of disability
- 5.2 Psyche/Work function Impairments/Global Assessment of Function (GAF)
- 5.3 Causation of disability/Appportionment/Burden of proof
- 5.4 Rating instructions
- 5.5 Mechanics of rating disability

**STATE BAR OF CALIFORNIA  
WORKERS' COMPENSATION LAW CERTIFICATION EXAM**

**SAMPLE QUESTIONS**

**Sample Question #1**

Traveling to work in the morning, Roger, a farm laborer, was injured while riding as a passenger in a van. The van was owned by Thomas, a foreman for Lester, a farm labor contractor.

At the time of this incident, Thomas' crew, which included Roger, was working at three distinct parcels of land owned by ABC Farms.

Two months before the accident, Lester's labor contractor's license had lapsed due to nonpayment of fees.

**A. What remedies, if any, does Roger have against Lester? Discuss.**

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**Sample Question #2**

The injured sustained an injury at work to his low back on April 3, 1997. Shortly thereafter he retained an attorney who filed an application for adjudication of claim on October 3, 1997. The injured was examined by an Agreed Medical Examiner (AME) in orthopedics, who found his condition compensable.

The injured subsequently discharged his attorney after which he amended his claim to include injury to the neck with headaches. He filed an amended employee's claim for workers' compensation benefits (DWC1). The insurance company denied the neck/headaches injury.

Since the injured was not represented by an attorney, he selected a neurologist from a Qualified Medical Evaluator (QME) panel, who found the neck/headaches compensable. On March 4, 2001, a Stipulated Findings and Award was approved based upon the orthopedic AME and neurologic QME reports.

The pro per injured filed a timely Petition to Reopen alleging increased disability to the neck, low back, and a torn meniscus to the right knee as a result of a fall due to a weakened low back. The injured's treating orthopedist found increased disability in the low back and concluded the knee injury was a result of the weakened low back. The QME (neurologist) also found increased disability. Subsequently, a mandatory settlement conference was held at which time the judge issued an order that the injured be re-examined by the orthopedic AME. The AME refused to re-examine the injured because he was in pro per.

**A. Can the judge order the AME to re-examine the injured? Discuss.**

**B. Can the judge's order be appealed? Discuss.**

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**Sample Question #3**

John signed a contract with Beta Company ("Beta"), a licensed subcontracting framing company for Ace Construction ("Ace"). Ace was engaged in building a tract of homes. In the contract, John agreed to be an independent contractor and to frame the homes at \$.50 per linear board foot. Although John had previously been a licensed contractor, he was not licensed when he entered into contract. He is an experienced carpenter and has worked independently for both Ace and Beta on numerous occasions.

Beta agreed to furnish all lumber and materials, and supply a foreman, major equipment and tools. John agreed to follow the directions of the Beta foreman, and decided that he would use his own truck to transport equipment from site to site. He also brought his own tool belt and Skilsaw® to the job site on a daily basis.

Bill, an employee of Ace and not certified to drive a forklift, negligently backed a forklift into a scaffold which was improperly assembled by Beta in violation of Title 8 safety orders. John was knocked off the scaffold, sustaining serious injury.

1. **What are John's remedies, if any, against Beta? Discuss.**
  2. **What are John's remedies, if any, against Ace? Discuss.**
  3. **What defenses, if any, may Ace assert? Discuss.**
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#### **Sample Question #4**

Ken wanted to attend a rave concert. He did not have \$50 for a ticket, so, with the promoter's permission, he helped set up tables and chairs in exchange for admission.

During the set up, Robert, one of the musicians and an independent contractor, dropped a ten-foot speaker on Ken's head, knocking him unconscious. While on his way to the hospital in an ambulance, the ambulance crashed, fracturing Ken's leg.

- A. **What claims may Ken assert, if any, against Robert? Discuss.**
  - B. **What claims may Ken assert, if any, against the concert promoter? Discuss.**
  - C. **What claims may Ken assert, if any, against the ambulance company? Discuss.**
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#### **Sample Question #5**

Employee Deputy Sheriff suffered a heart attack and died 11/30/02 while pulling wounded partner (under fire) to safety during a gun battle with a bank robbery suspect. Employee's girlfriend of six years consulted with you to file a claim for death benefits. The girlfriend provided you with the following information:

- Girlfriend and employee lived in the same home, sharing all expenses for the past five years. The girlfriend is an exotic dancer earning \$100,000 per year.
- In January 1996, employee abandoned his wife and three children, then aged three, seven, and 14.
- Wife has an annual income of \$20,000.
- Employee had been paying 60% of his monthly income to his wife until the date of his death. He had been making monthly payments since leaving his wife.
- Employee and his wife were never legally separated or divorced and there are no legal orders regarding child support obligations.
- Wife has been living out of state since mid-1996.
- The child, age three in January 1996 has Down syndrome and the birth certificate does not show the identity of the father.
- Employee was not a member of PERS.

The girlfriend disclosed that the wife has asked her to contact you to represent both the wife and the girlfriend with respect to the death benefit claim.

- A. **Discuss all conflicts of interest between the girlfriend, the wife, and the children.**
- B. **Discuss all benefits each dependent may claim.**

**C. Discuss defenses that can be raised with respect to the various benefits claimed.**

**D. Discuss whether the wife should be appointed guardian ad litem for the children.**

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**Sample Question #6**

Patrick is a flight attendant with JumboJet Airlines. He was hired in St. Louis, Missouri in 1998, and flew out of St. Louis for six months until moving to Los Angeles with his family. After moving to Los Angeles, he continued to initiate his flights from St. Louis, and commuted free of charge from Los Angeles to St. Louis.

Over the Christmas holiday in 2001, he was assigned to work a flight from St. Louis to Maui, Hawaii, and decided to take his family, who were allowed to fly with him at a discounted fare. He had been advised that he would have a 48-hour layover in Maui before he was required to work the return flight to Los Angeles.

Upon arrival at their hotel in Maui, Patrick rented a car at his own expense and took his family on a snorkeling excursion at a beach located about an hour's drive from the hotel. During the drive back, his vehicle was rear-ended by a truck owned by the Maui Sugar Company. Patrick sustained serious injuries and filed his workers' compensation claim in Los Angeles, California.

**A. What are Patrick's remedies? Discuss.**

**B. What are JumboJet Airlines' defenses, if any? Discuss.**

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**Sample Question #7**

Annie was a flight attendant for Atlas Airways, a Missouri corporation with headquarters in St. Louis. She had applied on-line to an ad on the internet for employment with Atlas, and the contract of employment was mailed to her. She signed it in Los Angeles after a telephone interview. Two weeks later, Ms. Jones, Director of Personnel, informed her via telephone that, pending the passing of a physical exam by an Atlas company physician in St. Louis, she was hired. She was notified in St. Louis immediately following the physical exam that she would begin work on October 1, 2000.

Annie maintains a residence in Los Angeles, but after several months of employment she also shared rent on a condo with several other flight attendants in St. Louis, where she spent most of her time. Her flights originated in St. Louis, but Atlas provided her with free commute flights from Los Angeles and St. Louis when necessary, on a stand-by basis.

On December 2, 2003, during Annie's commute flight between Los Angeles and St. Louis, and while in her Atlas uniform, she attempted to assist a passenger in removing luggage from an overhead bin and injured her back. The injury occurred in flight over Nevada. Annie filed a workers' compensation claim in California, but Atlas denied the claim, alleging that the injury occurred outside the course and scope of employment, and that the California WCAB lacked jurisdiction.

She received treatment for her injury from her private HMO, where she was told that she had a herniated lumbar disk, and that after recuperation from surgery, she should avoid work as a flight attendant. Annie requested a Priority Conference before the California WCAB, and sent a letter to Atlas' attorney demanding that they produce the original contract of employment, and the names and addresses and written statements of all witnesses, including Ms. Jones, and any other personnel that Atlas intended to call to testify at trial.

**A. Does the California WCAB have jurisdiction? Discuss.**

**B. Is there an injury AOE/COE? Discuss.**

**C. Assuming a finding that there is California jurisdiction and an injury AOE/COE, what defenses does Atlas have in response to Annie's claim for Vocational Rehabilitation benefits? Discuss.**

**D. What rights, if any, does Annie have to obtain the documents and statements she requested? Discuss.**

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**Sample Question #8**

Jesse sustained an injury to his right shoulder while at work, when he tripped and fell. His physician took him off work and scheduled him for surgery. Jesse properly reported the injury, but after two weeks he still had not received benefits.

Jesse was referred to attorney Bob Smith. Bob practiced in probate law, but had recently employed a paralegal who had five years experience in working for a law firm that practiced in workers' compensation law. Bob decided to accept Jesse as a client. Bob requested and received a \$5,000 retainer fee in connection with Jesse's workers' compensation case.

Counsel for the employer's insurance carrier took Jesse's deposition, and he was represented at the deposition by the paralegal. His case went to a Mandatory Settlement Conference, where he was again represented by Bob's paralegal. The paralegal negotiated and executed a Compromise and Release on behalf of Jesse, which provided a 15% attorney's fee.

- A. Is Bob entitled to a Labor Code § 5710 fee? Discuss.**
  - B. Is Bob entitled to the 15% attorney's fee upon settlement as requested in the Compromise and Release? Discuss.**
  - C. Is Bob entitled to some, all, or none of the \$5,000 retainer fee? Discuss.**
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**Sample Question #9**

Doris was hired as an account manager for Accommodation Industries in 1980.

Her job required data input, writing and repetitive use of both hands, but no heavy activities. In March 1994 she was diagnosed as having bilateral carpal tunnel syndrome and underwent surgical correction bilaterally. Following the second surgery, she was released to return to work with no stated permanent disability. Her case was accepted and benefits were furnished by Carrier A. No documents were filed at the WCAB. She returned to work performing a job requiring less keyboarding as she had been promoted. However, her workload increased from time to time, requiring increased keyboarding and repetitive activities. She experienced more symptoms, and required medical treatment which was provided by Carrier A, until this coverage ended in 1999.

In the year 2000, Accommodation downsized and Doris was again required to perform the same job duties she had in 1993 and 1994. Her claim was reported to the workers' compensation Carrier C having coverage on July 1, 2000, the day her temporary disability commenced and some benefits were furnished. She never returned to work for Accommodation, as they went out of business on December 1, 2001, while she was temporarily totally disabled.

During her final 12 months worked, there were two separate Carriers, B and C. Carrier C subsequently went into liquidation; its liability was assumed by the C.I.G.A.

Doris, represented by counsel, filed an Application alleging injury from 1980 to December 2001. Carriers B and C were joined and went to the Agreed Medical Evaluator who opined that all of her disability and need for medical treatment were a direct result of cumulative activities and that no period from 1980 to December 2001 was more causative than any other. As a result of her bilateral carpal tunnel syndrome, she is precluded from repetitive fine manipulation, repetitive use of her hands and wrists, prolonged keyboarding, and heavy lifting.

- A. What are Doris' remedies vis-à-vis all three Carriers? Discuss.**
- B. What are the respective rights and liability of Carriers A, B and C? Discuss.**

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### **Sample Question #10**

Angel worked as a police officer for Golden City. In 1995 he sustained a back injury and that same year stipulated to an Award of 15% permanent disability and future medical treatment. In 1996 he was diagnosed with borderline hypertension that was controlled by diet only.

In 2004, Angel re-injured his back in the course and scope of employment. As part of his therapy, he was prescribed various back strengthening exercises at Silver's Gym. While doing these exercises, Angel suffered a heart attack, necessitating bypass surgery.

- A. What rights and remedies, if any, does Angel have, and against whom? Discuss.**
- B. Discuss the issue of apportionment.**

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### **Sample Question #11**

Karen worked as an associate attorney for a highly reputable law firm. The partners at the firm strongly encouraged Karen to take as many continuing education classes as possible. They also encouraged her to recruit new clients. To meet both goals, she registered for a five-day trip to Mexico with a local attorney association during the Memorial Day weekend. The trip offered legal seminars as well as several social events. The firm did not pay for the trip but allowed her to take time off work to attend the trip.

During the trip, on May 30, 2005, Karen and a few members of the seminar group obtained a taxi to go into town for dinner. While on the way to town, the taxi struck another vehicle causing Karen to injure her neck and shoulders. She was immediately taken to an emergency room for minor treatment. She was released from the emergency room. She later received a few sessions of physical therapy prior to leaving Mexico. Karen was required to pay for the medical treatment while in Mexico.

On June 5, 2005, Karen filed a claim for workers' compensation benefits and was directed to her employer's medical provider network. She advised the insurance carrier that she wanted to seek treatment with her pre-designated physician, Dr. Joe. Dr. Joe has never treated Karen, as he recently took over her regular physician's medical practice. Dr. Joe is recommending three months of physical therapy.

- A. Is Karen's claim compensable? Discuss.**
- B. Must the insurance carrier provide medical treatment whether the claim is accepted or denied? Discuss.**
- C. Does the insurance company have to authorize the treatment recommended by Dr. Joe? Discuss.**

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### **Sample Question #12**

For four years, John Smith worked for ACME Food Services as a warehouseman. On Friday morning, shortly after reporting to work and while loading cartons onto a parked truck, he was hit from behind by a forklift and killed.

The accident investigation, which included blood testing according to company policy, revealed that the forklift driver, Bill Jones, was high on amphetamines at the time of the accident. Bill Jones explained the accident occurred because he was not able to see John Smith when he (Bill Jones) made a sudden pull out at the intersection in the warehouse to avoid collision with another, oncoming forklift. Bill Jones also claimed that the other forklift driver, also employed by ACME, was going too fast. A number of the other employees reported that the forklift drivers drove too fast and were often reckless. These other employees also confirmed that there had been other forklift accidents over the years.

When hired, Bill Jones reported to ACME Food Services that he was experienced with forklift operation from his last employment, two years prior. ACME Food Services confirmed the prior employment. At the time of hire, Bill Jones also reported that he has served time in state prison, six years prior, for illegal drug sales. In the six months that he had worked for ACME, there were no problems with his performance, but he had been warned about his pattern of calling in sick on Mondays, after being off work on the weekend.

At the time of the accident, John Smith was a widower as his wife had died three years earlier, leaving him with three children to raise. He had, however, a live-in girlfriend who worked full-time, earning \$32,000.00 per year. The girlfriend had a five-year-old son who also lived in the household, and for whom she received \$600.00 per month in child support from an ex-husband.

- A. What are John Smith's children's potential claims, if any, and the possible defenses to those claims? Discuss.**
  
- B. What are John Smith's household members' potential claims, if any, and the possible defenses to those claims? Discuss.**