WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

AMAUD HINES, *Applicant*

vs.

STATE OF CALIFORNIA, DEPARTMENT OF STATE HOSPITALS, NAPA, legally uninsured, adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ10290726
Oakland District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration[1] in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Defendant State of California Department of State Hospitals, legally uninsured and administered by State Compensation Insurance Fund (SCIF) seeks reconsideration of the July 18, 2019 Findings and Orders (F&O), wherein the workers' compensation administrative law judge (WCJ) found in relevant part that the WCAB has jurisdiction over the lien dispute because lien claimant Dr. Martinovsky's treatment to applicant was provided pursuant to defendant's Medical Provider Network (MPN) rather than pursuant to the Knox-Keene Act. The WCJ further determined that the services provided by lien claimant were subject to the Official Medical Fee Schedule, or in the absence of a fee schedule, reasonable and customary rates.

SCIF contends that the WCAB lacks jurisdiction over the billing dispute because a chain of contracts forms an express agreement between SCIF and lien claimant.

We have received an Answer from lien claimant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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[1] Commissioners Lowe and Sweeney, who were previously a member of this panel, no longer serve on the Workers' Compensation Appeals Board. Other panelists have been appointed in their place.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will rescind the F&O, and substitute new findings of fact that pursuant to Labor Code[2] section 5304, the Workers' Compensation Appeals Board (WCAB) is without jurisdiction over this controversy because an express agreement fixing the amounts to be paid was made between the persons or institutions rendering the treatment and the employer or insurer.

FACTS

Applicant claimed injury to his head, cervical spine, lumbar spine, brain and psyche while employed as a psychiatric technician by defendant Department of State Hospitals, Napa, on February 2, 2016. The claim resolved by way of Compromise and Release, approved December 28, 2017.

On November 19, 2018, Integrated Pain Care filed a Notice and Request for Allowance of Lien in the amount of $10,130.10 for medical treatment provided by applicant's Primary Treating Physician Gary Martinovsky, M.D.[3]

On July 1, 2019, the parties proceeded to trial on the issue of the lien of Integrated Pain Care, and whether the WCAB had jurisdiction over the dispute pursuant to section 5304. The parties stipulated that all treatment subject to the lien dispute was medically reasonable and necessary. The WCJ heard testimony from defendant's lien representative, and ordered the matter submitted for decision the same day.

On July 18, 2019, the WCJ issued his F&O, determining in relevant part that while a chain of contracts exists between SCIF and Dr. Martinovsky, the treatment rendered by Dr. Martinovsky was provided under defendant's MPN, and was not subject to the terms of the Blue Cross Prudent Buyer Plan agreement. (Findings of Fact Nos. 1 & 2.) Because Dr. Martinovsky's treatment was not governed by an express agreement with SCIF, the WCJ determined that the WCAB had jurisdiction over the lien dispute, and that the services were subject to the Official Medical Fee

[2] All further references are to the Labor Code unless otherwise noted.

[3] The WCJ determined that "Dr. Martinovsky and Integrated Pain Care are alter egos for the purpose of enforcement of the Blue Cross contracts in dispute herein." (Opinion on Decision, at p. 8.) The WCJ's characterization is not challenged by any party.

Schedule, or in the absence of a fee schedule, reasonable and customary rates. (Findings of Fact Nos. 4 & 5.)

Defendant's Petition avers the contract between Blue Cross and Dr. Martinovsky applies to treatment provided to workers' compensation patients within its MPN, and that because the treatment provided by Dr. Martinovsky fell within the chain of contracts linking SCIF, Blue Cross, and Dr. Martinovsky, the WCAB has no jurisdiction over this dispute.

Lien claimant's Answer states that no express agreement exists fixing the amount of compensation payable to lien claimant, and that the WCAB retains jurisdiction over the dispute.

The WCJ's Report observes that the contract between Dr. Martinovsky and Blue Cross concerns treatment provided pursuant to the Knox-Keene Act of 1975, which governs medical treatment provided by Health Care Organizations (HCOs). In contrast, the medical treatment for which Dr. Martinovsky filed a lien was provided pursuant to SCIF's MPN. The treatment provided by Dr. Martinovsky was not provided pursuant to the Blue Cross Prudent Buyer Plan agreement, and there was no chain of contracts between the provider, Dr. Martinovsky, and the payor, SCIF. Consequently, there was no express agreement between SCIF and Dr. Martinovsky that would otherwise obviate WCAB jurisdiction over the dispute pursuant to section 5304. Accordingly, the Appeals Board retains jurisdiction over the dispute, and the services rendered are payable pursuant to either the Official Medical Fee Schedule, or reasonable and customary rates if the services are not scheduled.

DISCUSSION

The lien of Integrated Pain Care was filed for services rendered by Dr. Martinovsky who in turn has entered into an agreement with Blue Cross entitled the Prudent Buyer Plan. The agreement provides for reimbursement of scheduled services at specified rates. (Ex. C, Prudent Buyer Plan, dated February 10, 2006.)

SCIF has entered into an agreement with Blue Cross, entitled the Managed Care Services Agreement, which allows SCIF access to the preferred rates negotiated by Blue Cross in its Prudent Buyer Plan agreement. (Ex. D, Managed Care Services Agreement, dated May 1, 1998.)

Pursuant to its Managed Care Agreement with Blue Cross, SCIF has reimbursed Integrated Pain Care for services rendered by Dr. Martinovsky at the rates specified in the Prudent Buyer

Agreement. Dr. Martinovsky has filed a lien seeking rates in excess of those specified in the Prudent Buyer Agreement.

SCIF maintains that its Managed Care Agreement with Blue Cross, and the Prudent Buyer agreement between Blue Cross and Dr. Markinovsky, represent a chain of contracts. Because the chain of contracts between SCIF, Blue Cross, and Dr. Martinovsky creates an express agreement, SCIF contends the WCAB is without jurisdiction over this billing dispute.

The F&O determines that a chain of contract does exist as between Dr. Martinovsky, Blue Cross and SCIF. (Finding of Fact No. 1.) However, the WCJ observes that the treatment rendered by Dr. Martinovsky was accomplished pursuant to SCIF's MPN, while the Prudent Buyer Plan agreement was limited to care provided under the Knox-Keene Act. The treatment provided by Dr. Martinovksy as part of the SCIF MPN was therefore not subject to the provisions of the Prudent Buyer Agreement, or any other agreement in the evidentiary record. Because there was no contract between Dr. Martinovsky and Blue Cross with respect to the services rendered, there was no express agreement between Mr. Martinovsky and SCIF.

The WCJ therefore rejected SCIF's assertion of an express agreement with Dr. Martinovsky and determined that Dr. Martinovky's treatment was not subject to the rates provided in the Prudent Buyer Plan. The WCJ concluded that Dr. Martinovsky's treatment was instead subject to reimbursement pursuant to the Official Medical Fee Schedule, or in the event the provided services were not scheduled, at reasonable and customary rates. (Finding of Fact No. 4.)

SCIF's Petition contends that section 4611(a) allows for the sale, lease or transfer of a health provider's contract to a payor. (Petition, at p. 3:3.) SCIF also contends that the provisions of section 5304 obviating WCAB jurisdiction over any express agreement between a payor and a provider is applicable to treatment rendered pursuant to section 4600.3.

The California Workers' Compensation system was intended by the legislature to be a complete system, as described in Divisions 4 and 5 of the Labor Code. These divisions represent an expression of the police power and are intended to make effective and apply to a complete system of workers' compensation the provisions of Section 4 of Article XIV of the California Constitution.

Article XIV provides in relevant part that "administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance

of any character. . .” (Cal.Const., art XIV, § 4.) Thus, under the grant of authority in the California Constitution, the Appeals Board operates as an appellate court of limited jurisdiction that reviews and decides appeals from decisions issued by workers’ compensation administrative law judges. (Cal. Const., art. XIV, § 4; §§ 111-116, 133-134, 3201, 5300-5302, 5900 et seq.; *Bankers Indemnity Ins. Co. v. Industrial Acc. Com.* (1935) 4 Cal.2d 89; *Fremont Indemnity v. Workers’ Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965 [49 Cal.Comp.Cases 288]; *Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 376 [57 Cal.Comp.Cases 391] [“[t]he WCAB . . . is a constitutional court”].)

In *Stevens v. Workers’ Comp. Appeals Bd.* (2015) 241 Cal.App.4th 1074, 1087-1088 [80 Cal.Comp.Cases 1262], the Court of Appeal explained that: “The state Constitution gives the Legislature ‘plenary power … to create … and enforce a complete system of workers’ compensation.’ (Cal. Const., art. XIV, § 4.) Acting under this power, the Legislature enacted the workers’ compensation law to govern compensation to California workers who are injured in the course of their employment. (§ 3201 et seq.).” The right to workers’ compensation benefits is “wholly statutory,” “exclusive of all other statutory and common law remedies, and substitutes a new system of rights and obligations for the common law rules governing liability of employers for injuries to their employees.” (*Castellanos v. State of California* (2024) 2024 Cal. LEXIS 3981, *11, citing *Graczyk v. Workers’ Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1002, 1003 [229 Cal. Rptr. 494].)

In discussing Article XIV, section 4 of the California Constitution, the court in *Stevens* noted that:

> [S]ection 4 “affirms the legislative prerogative in the workers’ compensation realm in broad and sweeping language” and confers on the Legislature “the power to ‘fix and control the method and manner of trial of any … dispute[s over compensation for injury] [and] the rules of evidence [applicable to] the tribunal or tribunals designated by it.’” ([*City and County of San Francisco v. Workers’ Comp. Appeals Bd.* (*Wiebe*) (1978) 22 Cal.3d 103, 115 [148 Cal. Rptr. 626, 583 P.2d 151]], at p. 115.) The Legislature’s broad power over workers’ compensation matters has been repeatedly affirmed. (See, e.g., *Bautista, supra,* 201 Cal.App.4th at p. 725 [“The grant of ‘plenary power …’ gives the Legislature complete, absolute, and unqualified power to create and enact the workers’ compensation system.”]; *Facundo-Guerrero v. Workers’ Comp. Appeals Bd.* (2008) 163 Cal.App.4th 640, 650 [77 Cal. Rptr. 3d 731] [intent behind Cal. Const., art. XIV, § 4 “was … to endow [the Legislature] expressly with exclusive and ‘plenary’ authority to determine the contours and content of

> our state's workers' compensation system"].) These cases confirm that nearly any exercise of the Legislature's plenary powers over workers' compensation is permissible so long as the Legislature finds its action to be "necessary to the effectiveness of the system of workers' compensation." (*Greener v. Workers' Comp. Appeals Bd.*, *supra*, 6 Cal.4th at p. 1038, fn. 8.)
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> *(Id.* at pp. 1094-1095.)

Section 5304 is thus a reflection of the legislature's plenary power to enact and enforce a complete system of workers' compensation, and to limit that system as is deemed necessary. Originally enacted in 1937, and remaining virtually unchanged since then, section 5304 provides:

> The appeals board has jurisdiction over any controversy relating to or arising out of Sections 4600 to 4605 inclusive, unless an express agreement fixing the amounts to be paid for medical, surgical or hospital treatment as such treatment is described in those sections has been made between the persons or institutions rendering such treatment and the employer or insurer.
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> (Lab. Code, § 5304.)

The legislature has determined that in the event of any controversy arising out of medical treatment provided pursuant to sections 4600 to 4605 inclusive, where the controversy is between two or more parties to an express agreement fixing the amount to be paid, the WCAB lacks jurisdiction to decide the issue. This is consistent with the principle that the Appeals Board has exclusive jurisdiction over proceedings concerning the right to compensation and should address issues of contract interpretation between parties only when necessary to determine issues over which it has exclusive jurisdiction. (*Victor Valley Transit Authority v. Workers' Comp. Appeals Bd.* (*Sophy*) (2000) 83 Cal.App.4th 1068 [65 Cal.Comp.Cases 1018].)

Section 4611 further provides that "[w]hen a contracting agent sells, leases, or transfers a health provider's contract to a payor, the rights and obligations of the provider shall be governed by the underlying contract between the health care provider and the contracting agent." (Lab. Code, § 4611(a).)

In *Tri-City Medical Center v. Workers' Comp. Appeals Bd.* (*Streeter*) (2010) 75 Cal.Comp.Cases 790 [2010 Cal. Wrk. Comp. LEXIS 97], lien claimant Tri-City Medical Center provided medical treatment pursuant to section 4600 to applicant who had sustained an admitted industrial injury. Tri-City Medical had a contract with Blue Cross, and affiliate Blue Cross Life and Health Insurance Company had an agreement with SCIF. Because a chain of contracts existed

between the provider, Tri-City Medical Center, and the payor, SCIF, we held that there was an express agreement that obviated WCAB jurisdiction. We noted:

> In the law of contracts, "express" means only that the agreement be "stated in words," (Civil Code section 1620), rather than implied by the conduct of the parties. (See Witkin, Calif. Law, Contracts, § 11.) Section 5304 does not require that the agreement of the parties be expressed within the four corners of a single contract. Rather, it is entirely appropriate to review the terms of several inter-related contracts to determine whether there was an agreement to fix the amounts to be paid for medical treatment between Tri-City and SCIF as an "other payor."

(*Id.* at p. 794.)

Having concluded that an express agreement existed between Tri-City and SCIF, we affirmed the WCJ's determination that pursuant to section 5304 the WCAB lacked jurisdiction over the dispute.

In response to lien claimant's Petition for Writ of Review, the Court of Appeal noted:

> Substantial evidence supports the WCAB's finding the contract between Tri-City and Blue Cross read in conjunction with the contract between Blue Cross Life and Health and State Fund formed a chain of contracts resulting in an express agreement between Tri-City and State Fund within the meaning of section 5304, divesting the WCAB of jurisdiction. As the WCAB noted in its decision, the evidence shows Tri-City and Blue Cross entered into an agreement to channel patients to Tri-City, including individuals entitled to treatment under worker's compensation insurance policies such as that provided by State Fund; and an agreement between Blue Cross Life and Health and State Fund provided State Fund access to the Blue Cross managed care services program. The agreements between Blue Cross Life and Health and State Fund entitled State Fund to use Tri-City's hospital services as an other payor at the preferred rates negotiated by Blue Cross. The WCAB did not err by finding Blue Cross met disclosure requirements of section 4609, subdivision (a) in that the contract between Tri-City and Blue Cross states additional other payors who may participate in the managed care network may be added by agreement, and Blue Cross provided adequate notification of the addition of other payors such as State Fund.
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> *(Id.* at pp. 795-796.)

Here, the parties have similarly identified a dispute arising out of medical treatment provided pursuant to sections 4600 through 4605, inclusive. There is no dispute that the treatment provided by Dr. Martinovsky was medically necessary, and that Dr. Martinovsky and Blue Cross had an agreement fixing the amounts to be paid for medical, surgical or hospital treatment as such

treatment is described in sections 4600 through 4605. (Minutes of Hearing and Summary of Evidence (Minutes), dated July 1, 2019, at p. 2:28; Ex. C, Blue Cross Prudent Buyer Plan, dated February 10, 2006.) Nor is there a dispute that SCIF also entered into an agreement with Blue Cross Life and Health to access to the Blue Cross managed care services program, and that the agreement with Blue Cross Life and Health entitled SCIF to obtain the preferred rates negotiated by Blue Cross with Dr. Martinovsky. (*Streeter, supra*, 75 Cal.Comp.Cases at p. 796.)

The WCJ's Opinion on Decision observes that pursuant to section 139.3, "[t]he channeling or referral of patients for profit is generally prohibited under workers' compensation law." (Opinion on Decision, at p. 9.) However, notwithstanding the prohibition of section 139.3, the agreement between SCIF and Blue Cross requires SCIF to expend reasonable good faith efforts to channel its policyholders to the BC Life Networks. (Report, at p. 6.) The Opinion on Decision notes that the Blue Cross Prudent Buyer Plan agreement with Dr. Martinovsky applies only to medical treatment provided under the auspices of the Knox-Keene Act and would not apply to medical treatment provided pursuant to SCIF's MPN. Accordingly, "[i]f Dr. Martinovsky's office was used to provide health care services pursuant to a Knox-Keene Act plan, the channeling or referral of patients per the Blue Cross contract is legal. However, here, the health care was provided under a Medical Provider Network operated by SCIF alone and was not provided under a Knox-Keene Act plan, which means that the contracts, which contain channeling provisions cannot be applied." (*Id.* at p. 7.)

We observe, however, that neither the contract between Dr. Martinovsky and Blue Cross, nor the contract between Blue Cross and SCIF, contemplates the distinction between medical treatment provided pursuant to the Knox-Keene Act and medical treatment provided under the provisions of a workers' compensation MPN. Rather, the Prudent Buyer Plan agreement as between Dr. Martinovsky and Blue Cross expressly includes the provision of medical treatment within the workers' compensation context. Section 4.18 provides for medically necessary physician services to workers' compensation patients and requires the physician to complete a Doctor's First Report of Injury as defined in the California Labor Code. (Ex. C, Prudent Buyer Plan, dated July 28, 2006, at p. 5.) The agreement also provides that the physician will accept scheduled compensation for such services. (*Ibid*.) Additionally, section 4.17 of the agreement expressly provides that the plan "may be sold, leased, transferred or conveyed to Other Payors, which may include workers' compensation insurers…." (*Id.* at p. 4.) Thus, rather than limiting the

subject medical treatment to that offered pursuant to the Knox-Keene Act, the agreement between Dr. Martinovsky and Blue Cross specifically contemplates and addresses treatment provided in the context of a workers' compensation injury.

Moreover, in enacting a complete system of workers' compensation, the legislature has codified its determination that any controversies arising out of a contract fixing payment for treatment under sections 4600 through 4605 inclusive do not fall within the jurisdiction of the WCAB.

Here, as in *Streeter*, *supra*, the agreement with Blue Cross Life and Health entitled SCIF to reimburse Dr. Martinovsky's services as a primary treating physician pursuant to section 4600 at the preferred rates negotiated by Blue Cross. The treatment provided falls within the scope of the medical treatment required by sections 4600-4605, inclusive.

And here, as in *Streeter*, *supra*, a contract between the medical care provider and Blue Cross, when read in conjunction with the contract between affiliate Blue Cross Life and Health and SCIF, formed a chain of contracts resulting in an express agreement between the provider and SCIF *fixing the amounts to be paid*, thus falling within the meaning of section 5304 and divesting the WCAB of jurisdiction.

We therefore conclude that we lack jurisdiction over this dispute because the reimbursement issues herein arose out of treatment rendered pursuant to sections 4600 to 4605 inclusive, and there is an express agreement between SCIF and Dr. Martinovsky fixing the amounts to be paid for medical, surgical or hospital treatment. In so finding, we offer no opinion as to the merits of lien claimant's assertions with respect to reimbursement for services provided as applicant's primary treating physician. The parties remain free to pursue any remedy afforded under the law in an appropriate forum.

Accordingly, we will rescind the F&O and substitute new Findings of Fact that pursuant to section 5304, the WCAB is without jurisdiction over the controversy relating to or arising from the medical, surgical, or hospital treatment provided by Integrated Pain Care and Dr. Martinovsky, M.D., because an express agreement fixing the amounts to be paid was made between the persons or institutions rendering the treatment and the employer or insurer.

For the foregoing reasons,

IT IS ORDERED as the **DECISION AFTER RECONSIDERATION** of the Workers' Compensation Appeals Board that the Findings and Orders dated July 18, 2019 is **RESCINDED**, with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. The Workers' Compensation Appeals Board is without jurisdiction, pursuant to Labor Code section 5304, over the controversy relating to or arising from the medical, surgical, or hospital treatment provided by Integrated Pain Care and Gary Martinovsky, M.D., herein because an express agreement fixing the amounts to be paid was made between the persons or institutions rendering the treatment and the employer or insurer.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 13, 2024

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED ON THE FOLLOWING PAGE AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

SAR/abs

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

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