WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

KARINA TOVAR, *Applicant*

vs.

PACIFIC DENTAL SERVICES;
INSURED BY ARCH INDEMNITY INSURANCE
administered by GALLAGHER BASSETT, INC., *Defendants*

Adjudication Number: ADJ12777220
Los Angeles District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION AND GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant and lien claimant Bell Community Medical Group, represented by MMCK Litigation and Translations, each seek reconsideration of the Findings & Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on August 2, 2024. By the F&O, the WCJ found that applicant while employed during the period of January 17, 2017 through November 25, 2019, as a benefits coordinator, by Pacific Dental Services, sustained injury arising out of and in the course of employment to her cervical spine, bilateral wrists, and lumbar spine.

Defendant contends that the WCJ should have dismissed lien claimant's Bell Community Medical Group's lien for failure to comply with the procedural requirements and that the WCJ exceeded his authority by finding Dr. Bazel's medical reports to be medical-legal expenses; ordering defendant to reimburse a non-party to this case; finding Dr. Wasserman's August 11, 2020 report a medical-legal expense; and admitting exhibits not previously served on defendant at least 20 days before trial in compliance with Labor Code[1] section 5703 in violation of defendant's due process rights.

Lien claimant contends that the WCJ incorrectly found that lien claimant's Exhibit 5 is inadmissible based on its failure to comply with sections 5703(a)(1) and 5703(a)(2); and that a

[1] All further statutory references are to the Labor Code, unless otherwise stated.

finding of good cause to impose sanctions in the of $2,500.00 against it is unwarranted and/or does not warrant the maximum sanctioned amount of $2,500.00.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that both Petitions be denied and that an Order of Sanctions in the Amount of $2,500.00 against lien claimant's representative MMCK Litigation and Translations be issued for its failure to timely provide a notice of representation for lien claimants in compliance with regulation WCAB Rule 10868 (Cal. Code Regs., tit. 8, §10868).

We did not receive an Answer from any party.

We have considered the allegations in the Petitions, and the contents of the Report. Based on our review of the record, for the reasons stated in the WCJ's report, which we adopt and incorporate, and for the reasons discussed below, we will deny defendant's petition for reconsideration. We will grant lien claimant's petition for reconsideration solely to defer the issue of sanctions (Finding of Fact #9) and otherwise affirm the F&O.

DISCUSSION

I.

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event

Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on August 30, 2024, and 60 days from the date of transmission is October 29, 2024. This decision is issued by or on October 29, 2024 so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on August 30, 2024, and the case was transmitted to the Appeals Board on August 30, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 30, 2024.

II.

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903, emphasis added.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. *(Id.* at p. 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary

decisions, are not 'final' "]; *Rymer*, *supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer*, *supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes findings regarding threshold issues. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal. Although the decision contains findings that are final, as explained below, while it is not entirely clear, we conclude that the WCJ issued a notice of intention to sanction, and not an order to pay sanctions. A notice of intention is a non-final order, and an order to pay is a final order. Thus, we will apply the removal standard to our review the issue of the notice of intention to sanction. (See *Gaona, supra*.) Lien claimant also raised the issue of the WCJ's exclusion of Exhibit 5, which is also an interim and not a final order.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd*. (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70

Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, based upon the WCJ's analysis of the merits of the petitioner's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy. Here, as a result of the due process violations discussed below, we believe that lien claimant will suffer significant prejudice and/or irreparable harm if the putative notice of intention is allowed to stand. Thus, we will amend Finding of Fact # 9 to defer the issue of sanctions.

Section 5813 provides that "[t]he workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813(a).)

The imposition of sanctions as described in section 5813 rests with the sound discretion of the WCJ. WCAB Rule 10832(a)(3) (Cal. Code Regs., tit. 8, § 10832(a)) requires a WCJ to issue a notice of intention (NIT) prior to sanctioning a party in order to ensure that the interested party is afforded due process. As relevant here, WCAB Rule 10832 states:

> (a) The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including but not limited to: . . . (3) *Sanctioning a party*; . . . .
>
> (b) A Notice of Intention may be served by designated service in accordance with rule 10629.
>
> (c) If an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may: (1) Sustain the objection; (2) Issue an order consistent with the notice of intention together with an opinion on decision; or (3) Set the matter for hearing.

(Cal. Code Regs., tit. 8, § 10832(a), (b), (c).)

WCAB Rule 10868(a) (Cal. Code Regs., tit. 8, § 10868(a)) states:

> Whenever any lien claimant obtains representation after a lien has been filed, or changes such representation, the lien claimant shall within 5 days, file and serve a notice of representation in accordance with rules 10390, 10400, 10400, 10401 and 10402. If a copy of the notice of representation is not in the record at the time of

> the hearing, the lien claimant's representative shall lodge a copy at the hearing and shall personally serve a copy at the hearing on all parties appearing.

(Cal. Code Regs., tit. 8, § 10868(a).)

WCAB Rule 10868(d) states that: "Any violation of this rule *may* give rise to monetary sanctions, attorney's fees and costs under Labor Code section 5813 and rule 10421."

Here, as stated in the WCJ's Report, at the lien trial on January 22, 2024, (after the matter had already been submitted at trial) defendant advised the WCJ that MMCK litigation and Translations had not filed their Notice of Representation as required by WCAB Rule 10868 until January 22, 2024. Per the WCJ's Report, the WCJ wrote on the Minutes of Hearing: "**MMCK LITIGATION FILED THEIR NOTICE OF REPRESENTATION FOR BELL COMMUNITY MEDICAL GROUP TODAY. PARTIES TO FILE A NEW PTCS AT LEAST 20 DAYS BEFORE THE LIEN TRIAL DATE**."

On August 2, 2024, the WCJ issued the Findings and Order Following Resubmission of Case with Notice of Intent to Order Sanctions Against MMCK Litigation and Translations finding in relevant part: "The Court finds good cause to impose sanctions in the amount of **$2,500** against MMCK Litigation and Translations for its failure to timely provide Notice of Representation for Lien Claimants in compliance with regulation 8 CCR § 10868."

In the Opinion on Decision, the WCJ states, "**NOTICE OF INTENT TO ORDER SANCTIONS AGAINST MMCK LITIGATION AND TRANSLATIONS**: Notice of Intent to Order Sanctions in the amount of **$2,500.00** against MMCK Litigation and Translations for its failure to timely provide Notices of Representation for Lien Claimants in compliance with regulation 8 CCR § 10868."

Here, it appears that the WCJ issued a Notice of Intent without a time limit for lien claimant to respond. Yet, in the F&A, the WCJ finds good cause to impose the sanctions, but there is no explanation or reason given as to why there is good cause. In his Report, the WCJ requests that the Appeals Board issue the order of sanctions.

Due process requires that a party be provided with reasonable notice and an opportunity to be heard. (*Katzin v. Workers' Comp. Appeals Bd*. (1992) 5 Cal.App.4th 703, 711-712 [57 Cal.Comp.Cases 230].) As a matter of due process, an NIT must clearly state the reason(s) for its issuance and a date in order to comply which is not present here. Thus, adequate notice and a

meaningful opportunity to respond is not afforded to lien claimant. If an NIT is issued in violation of due process, the corresponding order issued thereafter is invalid.

Accordingly, we deny defendant's petition for reconsideration. We grant lien claimant's petition for reconsideration solely to defer the issue of sanctions (Finding of Fact #9) and otherwise affirm the F&O.

For the foregoing reasons,

IT IS ORDERED that the defendant's Petition for Reconsideration of the August 2, 2024 Findings & Order is **DENIED**.

IT IS ORDERED that the lien claimant's Petition for Reconsideration of the August 2, 2024 Findings & Order is **GRANTED**.

IT IS FURTHER ORDERED that as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 2, 2024 Findings & Order is **AFFIRMED**, except that it is **AMENDED** as follows:

Finding of Fact

9. The issue of sanctions is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 29, 2024

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

KARINA TOVAR
MMCK LITIGATIONS AND TRANSLATIONS
MATIAL LAW GROUP

DLM/oo

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

REPORT AND RECOMMENDATION ON PETITIONS FOR RECONSIDERATION

I
INTRODUCTION

1.	Applicant's Occupation: Date of Injury: Parts of Body Injured:	Benefits coordinator January 17, 2017 thru November 25, 2019 Cervical spine, bilateral wrists, and lumbar Spine
2.	Identity of Petitioner Verification:	**Applicant and Defendant** filed Petitions. The Petitions are verified and timely.
3.	Date of Findings of Fact:	August 2, 2024

4. **Petitioner's contentions**:

Applicant contends:

(a) the evidence does not justify the findings of fact;
(b) the WCJ acted in excess of its power;
(c) the findings of fact do not support the Order, Decision or Award.

Defendant contends:

(a) the evidence does not justify the findings of fact;
(b) the WCJ acted in excess of its power;
(c) the findings of fact do not support the Order, Decision or Award.

II
FACTS

Applicant, Karina Tovar, while employed during the periods January 17, 2017 through November 25, 2019, as a benefits coordinator, by Pacific Dental Services, claimed to have sustained injury arising out of and in the course of employment to her cervical spine, bilateral wrists, and lumbar spine. Pursuant to the parties' stipulation, the employer's workers' compensation carrier was Travelers Property Casualty Company of America.

The case in chief was resolved via Order Approving Compromise and Release approved by Judge Penny Barbosa on October 26, 2021.

On July 31, 2023 the matter proceeded to Trial to address the lien of Bell Community Medical Group. Following review of all submitted evidence the undersigned WCJ found the medical reporting of Dr. Michael Bazel and Panel QME Dr. Robert Wilson meet the substantial

medical evidence threshold and support a finding that applicant sustained injury arising out of and in the course of employment to her cervical spine, bilateral wrists, and lumbar spine. The undersigned WCJ found medical reports rendered by Dr. Michael Bazel on June 30, 2020 (Exhibit 6); July 21, 2021 (Exhibit 7); October 1, 2021 (Exhibit 8); the radiology reports by Dr. Safvi Amjad dated October 28, 2020 (Exhibit 18); and the medical report of Dr. Bruce Wasserman dated August 11, 2020 (Exhibit 19) are reasonable medical-legal expenses to be paid by defendant per Title 8 California Code of Regulations Section 9795. The WCAB to retain jurisdiction over any dispute regarding the amount owed under Title 8 California Code of Regulations Section 9795.

The undersigned WCJ also found the medical treatment services provided by Dr. Michael Bazel rendered on July 14, 2020; July 21, 2020; August 28, 2020; September 3, 2020; October 7, 2020; February 19, 2021; March 19, 2021; September 7, 2021 (Exhibit 15) to be reasonable and necessary medical treatment to be paid by defendant per Official Medical Fee Schedule pursuant to Labor Code section 5307.1. The WCAB to retain jurisdiction over any dispute regarding the amount owed per Official Medical Fee Schedule. The undersigned WCJ also found the medical reports of Dr. Michael Bazel September 7, 2020 (Exhibit 9), September 8, 2020 (Exhibit 10), September 9, 2020 (Exhibit 11), September 10, 2020 (Exhibit 12), September 11, 2020 (Exhibit 13), September 14, 2020 (Exhibit 14); the medical reports of Dr. Arash Pershen dated July 28, 2020 (Exhibit 16); and the medical report of Dr. Bruce Wasserman dated August 27, 2020 (Exhibit 17) failed to comply with Labor Code 5703(a)(2) are inadmissible, and the cost associates with the reports are disallowed. All other issued were deferred, and the matter Ordered off calendar.

In response to the Findings & Order dated September 8, 2023 defendant filed a Petition for Reconsideration dated October 5, 2023 raising the first time the issue of standing, arguing Dr. Safvi Amjad, Dr. Arash Pershen, and Dr. Bruce Wasserman are not parties to the above matter; they did not participate at the Lien Trial; and are not affiliated with the Lien Claimant, Bell Community Medical Group. In response to defendant's Petition for Reconsideration the undersigned WCJ issued an Order Vacating the Findings & Order on October 13, 2023 and set the matter for Hearing pursuant to regulation §10955.

At the Hearing on December 12, 2023 the parties were Ordered to meet and confer to address whether the lien of Bell Community Medical Group included services rendered by Dr. Arash Pershen and Dr. Bruce Wasserman. The matter proceeded to Lien Trial on January 22, 2024 at which time the undersigned WCJ was informed that MMCK Litigation had just filed their notice

of representation for Bell Community Medical Group earlier that same day. The notice of representation filed by MMCK Litigation identifying their representation of Bell Community Medical Group is dated January 22, 2024 (Joint 1). Parties were ordered to file a new pre-trial conference statement, ordered to file all trial exhibits including any new exhibits not previously filed, and the matter was continued to another Lien Trial date.

The matter proceeded to Lien Trial, was submitted for decision on June 3, 2024, and the undersigned issued a Findings and Order Following Resubmission of Case with Notice of Intent to Order Sanctions Against MMCK Litigation and Translations dated August 2, 2024. Following review of all evidence the undersigned WCJ found the medical reporting of Dr. Michael Bazel and Panel QME Dr. Robert Wilson meet the substantial medical evidence threshold and support a finding applicant sustained injury arising out of and in the course of employment to her cervical spine, bilateral wrists, and lumbar spine. The undersigned WCJ found the medical reports rendered by Dr. Michael Bazel on June 30, 2020 (Exhibit 6); July 21, 2021 (Exhibit 7); October 1, 2021 (Exhibit 8); September 7, 2020 (Exhibit 9), September 8, 2020 (Exhibit 10), September 9, 2020 (Exhibit 11), September 10, 2020 (Exhibit 12), September 11, 2020 (Exhibit 13), September 14, 2020 (Exhibit 14); the radiology reports by Dr. Safvi Amjad dated October 28, 2020 (Exhibit 18); and the medical report of Dr. Bruce Wasserman dated August 11, 2020 (Exhibit 19) to be reasonable medical-legal expenses to be paid by defendant per Title 8 California Code of Regulations Section 9795. The WCAB to retain jurisdiction over any dispute regarding the amount owed under Title 8 California Code of Regulations Section 9795.

The undersigned WCJ also found the medical treatment services provided by Dr. Michael Bazel rendered on July 14, 2020; July 21, 2020; August 28, 2020; September 3, 2020; October 7, 2020; February 19, 2021; March 19, 2021; September 7, 2021 (Exhibit 15); Dr. Arash Pershen dated July 28, 2020 (Exhibit 16); and the medical report of Dr. Bruce Wasserman dated August 27, 2020 (Exhibit 17) to be reasonable and necessary medical treatment to be paid by defendant per Official Medical Fee Schedule pursuant to Labor Code section 5307.1. The WCAB to retain jurisdiction over any dispute regarding the amount owed per Official Medical Fee Schedule.

The undersigned WCJ found the lien claimant's exhibit 5 is inadmissible based on a failure to comply with Labor Code 5703(a)(l) and 5703(a)(2); lien claimant's exhibits 2, 9, 10, 11, 12, 13, 14, 16, 17, 23, 24, 25, 26, 27, 28, 29, 30, 31 were admitted into evidence over defendant' s objection; and defendant's exhibits F and G were admitted into I evidence over the lien claimant's

objection. The undersigned WCJ denied defendant's amended petition for attorney fees. The undersigned WCJ found good cause to impose sanctions in the amount of $2,500.00 against MMCK Litigation and Translations for its failure to timely provide Notice of Representation for Lien Claimants in compliance with regulation 8 CCR §10868. All other issues were deferred, and the matter ordered off calendar.

In response to the Findings and Order following resubmission of case with Notice of Intent to Order Sanctions against MMCK Litigation and Translations dated August 2, 2024, defendant filed a Petition for Reconsideration dated August 27, 2024, and Lien Claimant filed a Petition for Reconsideration dated August 27, 2024.

III
DISCUSSION:

A Petition for Reconsideration is the appropriate mechanism to challenge a final order, decision, or award (Labor Code Section 5900). An order that resolves or disposes of the substantive rights and liabilities of those involved in a case is a final order. See Maranian v. Workers' Compensation Appeals Board (2000) 81 Cal. App. 4th 1068 [65 Cal. Comp. Cases 650; Safeway Stores, Inc. v. Workers' Compensation Appeals Board (Pointer) (1980) 104 Cal. App. 3d 528 {45 Cal. Comp Cases 410].

MEDICAL-LEGAL EXPENSES:

A provider of medical-legal services has the initial burden of proof that: (1) a contested claim existed at the time the expenses were incurred, and that the expenses were incurred for the purpose of proving or disproving a contested claim pursuant to Labor Code section 4620, and (2) its medical-legal services were reasonably, actually, and necessarily incurred pursuant to Labor Code section 4621(a) [Colamonico v. Secure Transportation (2019) 84 Cal. Comp. Cases 1059 (Appeals Board en bane opinion)].

In the present case, defendant issued a Notice of Denial of Claim on January 28, 2020 satisfying the first element that a contested claim exist at the time the alleged medical-legal services were rendered. Once the lien claimant has met its burden of proof pursuant to section 4620(a), it has a second hurdle to overcome; the purported medical-legal expense must be reasonably, actually, and necessarily incurred.

After reviewing all records submitted at Trial the undersigned WCJ found the medical reports rendered by Dr. Michael Bazel on June 30, 2020 (Exhibit 6); July 21, 2021 (Exhibit 7);

October 1, 2021 (Exhibit 8); September 7, 2020 (Exhibit 9); September 8, 2020 (Exhibit 10); September 9, 2020 (Exhibit 11); September 10, 2020 (Exhibit 12); September 11, 2020 (Exhibit 13); September 14, 2020 (Exhibit 14); the radiology report by Dr. Safvi Amjad dated October 28, 2020 (Exhibit 18); and the medical report of Dr. Bruce Wasserman dated August 11, 2020 (Exhibit 19) are reasonably, actually, and necessarily incurred medical legal expenses to be paid by defendants per Title 8 California Code of Regulations Section 9795. The WCAB to retain jurisdiction over any dispute regarding the amount owed under Title 8 California Code of Regulations Section 9795.

MEDICAL TREATMENT:

When a lien claimant is litigating the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured employee and must prove by preponderance of the evidence all of the elements necessary to the establishment of its lien.

In the present case, defendant denied liability for the alleged industrial injury on January 28, 2020 arguing no medical or factual evidence exist to support the alleged injury is industrial. After reviewing records submitted at Trial, the undersigned WCJ found the medical evidence submitted by Dr. Michael Bazel and Panel QME Dr. Robert Wilson met the substantial medical evidence threshold and supports a finding that applicant sustained injury arising out of and in the course of employment to her cervical spine, bilateral wrists, and lumbar spine.

After rev1ewmg records submitted at Trial including all addendums, the undersigned WCJ found the medical treatment services provided by Dr. Michael Bazel rendered on July 14, 2020; July 21, 2020; August 28, 2020; September 3, 2020; October 7, 2020; February 19, 2021; March 19, 2021; September 7, 2021 (Exhibit 15); Dr. Arash Pershen dated July 28, 2020 (Exhibit 16); and the medical report of Dr. Bruce Wasserman dated August 27, 2020 (Exhibit 17) are reasonable and necessary medical treatment to be paid by defendant per Official Medical Fee Schedule pursuant to Labor Code section 5307.1. The WCAB to retain jurisdiction over any dispute regarding the amount owed per Official Medical Fee Schedule.

INADMISSIBILITY OF EXHIBIT PER LABOR CODE 5703:

Labor Code 5703(a) states in relevant parts,

> The appeals board may receive as evidence either at or subsequent to a hearing, and use as proof of any fact in dispute, the following matters, in addition to sworn testimony presented in open hearing:

(a) Reports of attending or examining physicians.

(1) Statements concerning any bill for services are admissible only if made under penalty of perjury that they are true and correct to the best knowledge of the physician.

(2) In addition, reports are admissible under this subdivision only if the physician has further stated in the body of the report that there has not been a violation of Section 139.3 and that the contents of the report are true and correct to the best knowledge of the physician. The statement shall be made under penalty of perjury.

In the present matter, the lien claimants exhibit 5 was found inadmissible based on a failure to comply with Labor Code 5703(a)(l) and 5703(a)(2). Lien Claimant argues exhibit 5 is not a medical report and thus not required to comply with Labor Code 5703(a)(l) and 5703(a)(2). After further review the undersigned agrees the lien claimant's exhibit 5 is not a medical report, but only a summary of bills. Nevertheless lien claimant's exhibit 5 should remain inadmissible as it fails to identify the name of the patient or applicant that received the alleged services. Lien claimant's exhibit 5 was not authenticated at Trial and the document on its face fails to contain any information to support it relates to the current applicant's claim.

ATTORNEY FEES AND SANCTIONS:

As discussed above this matter was initially submitted for decision following a Lien Trial to address the issues of (1) injury arising out of and in the course of employment and (2) the lien of Bell Community Medical Group. The undersigned WCJ issued a Finding and Order on September 8, 2023. Defendant then filed a Petition for Reconsideration raising for the first time the issue of standing. Specifically, defendant argued the Court cannot issue a finding regarding the services rendered by Dr. Safvi Amjad, Dr. Arash Pershen, and Dr. Bruce Wasserman because neither doctor submitted documentation to show they were employees or shareholders of Bell Community Medical Group and thus neither doctor was properly represented at Trial. In response to the Petition for Reconsideration the undersigned WCJ issued an Order Vacating the Finding & Order and set the matter for Status Conference that took place on December 13, 2024. At the Status Conference parties were ordered to meet and confer to address whether the lien of Bell Community Medical Group included services rendered by Dr. Wasserman and Dr. Pershen. Parties were allowed an opportunity to file additional exhibits, and the matter was set for Lien Trial on January 22, 2024. At the lien Trial on January 22, 2024 WCJ Medina was informed MMCK litigations & Translations had not filed a Notice of Representation. Also at the lien Trial the representative for

MMCK litigations & Translations informed the undersigned WCJ the Notice of Representation for Bell Community Medical Group was filed earlier that same day as the Lien Trial on January 22, 2024 (Joint Exhibit 1). In response WCJ Medina wrote on the Minutes of Hearing, "MMCK LITIGATION FILED THEIR NOTICE OF REPRESENTATION FOR BELL COMMUNITY MEDICAL GROUP TODAY. PARTIES TO FILE A NEW PTCS AT LEAST 20 DAYS BEFORE THE LIEN TRIAL DATE." The matter was then continued to a new Lien Trial date and the matter was submitted on June 3, 2024.

Defendant requested sanctions and attorney fees against lien claimant Bell Community Medical Group and their representative MMCK litigations & Translations based on a failure to timely provide a Notice of Representation. However, defendant's amended petition for sanctions states it was not until January 22, 2024 (after the matter had already been submitted at Trial) that defendant advised undersigned WCJ that MMCK litigation and Translations had not filed there Notice of Representation (Doc ID# 50878998 page 3 line 10). The undersigned WCJ denied defendant's request for attorney fees as they failed to timely notify the Court and raise the issue of representation prior to the matter having initially been submitted at Trial. The owner of MMCK litigation and Translations, Marti Oregel filed a First Amended Declaration of Marti Oregel dated April 5, 2024 that attempts to explain why MMCK Litigation and Translations failed to file a Notice of Representation for Bell Community Medical Group prior to January 22, 2024 (Exhibit 23). The failure by MMCK Litigation and Translations to file a timely Notice of Representation and their failure to comply with regulation 8 CCR § 10868(c)(2) identifying when their representation began warrants sanctions against MMCK Litigation and Translations.

The undersigned WCJ issued a Notice of Intent to Order Sanctions against MMCK Litigation and Translations in the amount of $2.500.00 for its failure to timely provide Notices of Representation for Lien Claimants in compliance with regulation 8 CCR § 10868. The Lien Claimant's Petition for Reconsideration acknowledges their failure to timely file a Notice of Representation, but argues the act was without malice and thus should not warrant the imposition of sanctions. MMCK Litigation and Translations failure to provide a Notice of Representation prior to January 22, 2024, after having made repeated assertions to the Court and defendants, including on the record at Trial, of their representation of Bell Community Medical Group, whether deliberate or due to incompetence, is an unacceptable ethical violation that caused delay in resolution of this matter. Arguably MMCK Litigation and Translations should be sanctioned for

each appearance that took place prior to January 22, 2024 where they alleged to represent Lien Claimant, Bell Community Medical Group without a signed Notice of Representation.

IV
RECOMMENDATION

For the reasons stated above, it is respectfully requested the Lien Claimant's Petition for Reconsideration and the defendant's Petition for Reconsideration be denied; and an Order of Sanctions in the amount of $2,500.00 against MMCK Litigation and Translations be issued for its failure to timely provide Notice of Representation for Lien Claimants in compliance with regulation 8 CCR § 10868.

Date: 08/30/2024

EDGAR MEDINA
WORKERS' COMPENSATION JUDGE