WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SEDALIA SEARCY (GREEN), ***Applicant***

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT,
permissibly self-insured, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, ***Defendants***

Adjudication Number: ADJ14483830
Marina Del Rey District Office

OPINION AND ORDER GRANTING PETITION FOR REMOVAL AND DECISION AFTER REMOVAL

Applicant seeks removal in response to the Findings and Order (F&O) issued on May 20, 2022, wherein a workers' compensation administrative law judge (WCJ) denied applicant's request to select a new Qualified Medical Evaluator (QME).

Applicant contends the F&O does not comply with Labor Code[1] section 5313 because the decision fails to address the issues submitted for decision from trial, including applicant's petition to strike the reporting of the QME as not substantial medical evidence and for failure to comply with section 4628.

We have not received an answer from any party.

The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition for Removal and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. For the reasons discussed below, we will grant the Petition for Removal, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision.

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

BACKGROUND

Applicant alleges injury to the circulatory system, stress, and chest, while employed as a bus driver by defendant Los Angeles Unified School District from August 14, 2006 to April 9, 2019. Defendant denies the injury arose out of and in the course of employment (AOE/COE).

Applicant while unrepresented selected Julius Woythaler, M.D., as the QME in internal medicine. Thereafter, applicant retained legal representation. (Application for Adjudication, April 8, 2021, p. 11.) Dr. Woythaler evaluated the applicant on July 15, 2020, and issued two medical-legal reports. (Exs. 1 & 2, Reports of Julius Woythaler, M.D., various dates.) The parties also undertook the deposition of Dr. Woythaler on September 15, 2021. (Ex. 3, Transcript of the Deposition of Julius Woythaler, M.D., September 15, 2021.)

On October 12, 2021, applicant filed a "Petition seeking to Disqualify PQME Dr. Julius Woythaler" on grounds that the QME reporting was not substantial medical evidence, and because the report did not comply with section 4628.

On October 14, 2021, defendant filed its opposition to applicant's October 12, 2021 petition.

On December 1, 2021, the parties proceeded to trial, framing issues of injury AOE/COE and "entitlement to replacement panel and disqualification of Dr. Woythaler as QME based upon the Applicant's [October 1, 2021] Petition." (Minutes of Hearing (Minutes), December 1, 2021, at p. 2:8.)

On May 20, 2022, the WCJ issued her F&O, determining that applicant "selected her Panel QME Evaluator while unrepresented by counsel," and that "[s]he is not allowed to select a new evaluator now that she is represented by counsel." (F&O, May 20, 2022, p. 1.) Accordingly, the WCJ denied applicant's request to select a new panel QME.

Applicant's Petition for Removal (Petition) contends the F&O does not address the issue raised and submitted at trial of whether QME Dr. Woythaler should be disqualified. Applicant asserts that because the WCJ has not made and filed findings upon all facts involved in the controversy, the F&O does not meet the requirements of section 5313.

DISCUSSION

I.

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).)

Section 5313 provides:

> The appeals board or the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Board en banc).)

A decision "must be based on admitted evidence in the record" (*Hamilton*, *supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

Section 5815 also provides:

> Every order, decision or award, other than an order merely appointing a trustee or guardian, shall contain a determination of all issues presented for determination by the appeals board prior thereto and not theretofore determined. Any issue not so determined will be deemed decided adversely as to the party in whose interest such issue was raised.

Thus, when sections 5313 and 5815 are read together, the WCJ is required to "file findings upon all facts involved in the controversy" and to issue a corresponding award, order or decision that states the "reasons or grounds upon which the [court's] determination was made." (Lab. Code, §§ 5313, 5815; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-622 [2010 Cal. Wrk. Comp. LEXIS 74] (Appeals Board en banc).)

The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision…." (*Hamilton*, *supra*, at p. 476.) The Court of Appeal has further observed that pursuant to section 5908.5, decisions of the WCAB must state the evidence relied upon and specify in detail the reasons for the decision. (*Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351] (*Evans*).) The purpose of the requirement is "to assist the reviewing court to ascertain the principles relied upon by the lower tribunal, to help that tribunal avoid careless or arbitrary action, and to make the right of appeal or of seeking review more meaningful." (*Evans*, *supra*, at p. 755.)

Here, the parties framed two issues for decision: (1) whether applicant sustained injury arising out of and in the course of employment, and (2) the "entitlement to replacement panel and disqualification of Dr. Woythaler as QME based upon the Applicant's 10/1/21 Petition." (Minutes, at 2:8.) The WCJ's decision does not substantively address either issue. Accordingly, the decision fails to make the requisite "findings upon all facts involved in the controversy," and does not meet the minimum standards set forth in sections 5313 and 5815, or in our en banc decision in *Hamilton*, *supra*. Accordingly, we will rescind May 20, 2022 Findings and Order, and return the matter to the WCJ to conduct further proceedings consistent with this opinion.

II.

While we return this matter to the trial level for the WCJ to create an adequate record and to file findings upon all facts involved in the controversy, we offer the following observations relevant to the issues at bar. Applicant's Petition to Disqualify the QME asserts two primary allegations: (1) the QME should be disqualified from the case because his reporting does not constitute substantial medical evidence; and (2) the QME should be disqualified from this case because his reporting violates section 4628.

With respect to applicant's contention that the QME should be "disqualified" because his reports do not constitute substantial medical evidence, we observe the following.

Generally, the Appeals Board is broadly authorized to consider the reports of attending or examining physicians. (Lab. Code, § 5703(a)(1); *Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal. 4th 1231, 1239 [78 Cal. Comp. Cases 1209] (*Valdez*).) Section 4064(d) provides, in relevant part, that "[a]ll comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board …" except as provided in specified statutes. (Lab. Code, § 4064(d).) Notwithstanding this broad evidentiary remit, however, the Labor Code and WCAB Rules provide specific minimum standards relevant to the technical preparation of medical-legal reporting as well as the contents of those reports. This is because, "in litigation of injured workers' claims for workers' compensation benefits, the medical evaluation report is a crucial element of proof, if not the most crucial element, considered by the WCJ in deciding the issues." (*Crawford v. Workers' Comp. Appeals Bd.* (1989) 213 Cal.App.3d 156, 169 [54 Cal.Comp.Cases 198].) The reliability of the evaluation, as reflected in the report, goes to the core issue of the compensability of the claim. (*Ameri-Medical Corp. v. Workers' Comp. Appeals Bd.* (*Lizzi*) (1996) 42 Cal.App.4th 1260, 1279 [61 Cal.Comp.Cases 149].) Thus, the analysis of whether a report is *substantial evidence* to support a finding is separate from whether the report is *admissible and/or should be struck*.

A.

Section 4628 sets forth mandatory minimum standards for both the preparation of medical-legal reporting and the concomitant disclosures that must be made by the evaluating physician. The statute provides, in relevant part:

> (a) Except as provided in subdivision (c), no person, other than the physician who signs the medical-legal report, except a nurse performing those functions routinely performed by a nurse, such as taking blood pressure, shall examine the injured employee or participate in the nonclerical preparation of the report, including all of the following:
>
> (1) Taking a complete history.
> (2) Reviewing and summarizing prior medical records.
> (3) Composing and drafting the conclusions of the report.
>
> (b) The report shall disclose the date when and location where the evaluation was performed; that the physician or physicians signing the report actually performed the evaluation; whether the evaluation performed and the time spent performing the evaluation was in compliance with the guidelines established by

the administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2 or Section 5307.6 and shall disclose the name and qualifications of each person who performed any services in connection with the report, including diagnostic studies, other than its clerical preparation. If the report discloses that the evaluation performed or the time spent performing the evaluation was not in compliance with the guidelines established by the administrative director, the report shall explain, in detail, any variance and the reason or reasons therefor.

(c) If the initial outline of a patient's history or excerpting of prior medical records is not done by the physician, the physician shall review the excerpts and the entire outline and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant medical issues.

In addition to report preparation and disclosure requirements of section 4628, WCAB Rule 10682 further describes the required scope and content of medical reporting offered into evidence in proceedings before the Appeals Board, providing in relevant part:

(b) Medical reports should include where applicable:

(1) The date of the examination;
(2) The history of the injury;
(3) The patient's complaints;
(4) A listing of all information received in preparation of the report or relied upon for the formulation of the physician's opinion;
(5) The patient's medical history, including injuries and conditions, and residuals thereof, if any;
(6) Findings on examination;
(7) A diagnosis;
(8) Opinion as to the nature, extent and duration of disability and work limitations, if any;
(9) Cause of the disability;
(10) Treatment indicated, including past, continuing and future medical care;
(11) 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;
(12) Apportionment of disability, if any;
(13) 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;
(14) The reasons for the opinion; and
(15) The signature of the physician.

In death cases, the reports of non-examining physicians may be admitted into evidence in lieu of oral testimony.

> (c) All medical-legal reports shall comply with the provisions of Labor Code section 4628. **Except as otherwise provided by the Labor Code and the Rules of Practice and Procedure of the Workers' Compensation Appeals Board, failure to comply with the requirements of this rule will not make the report inadmissible but will be considered in weighing the evidence.**

(Cal. Code Regs., tit. 8, § 10682, emphasis added.)

Thus, medical-legal reporting prepared in the course of workers' compensation proceedings must meet the technical preparation and disclosure requirements described in section 4628 as well as the substantive content requirements described in WCAB Rule 10682.

B.

In those instances where the WCJ determines that one or more medical-legal reports do not meet the relevant minimum standards established by the Administrative Director and the Appeals Board, and the record offers no other competent medical-legal evidence, the WCJ must first consider whether the deficiencies in the report can be cured. (Lab. Code, §§ 5701, 5906; *Tyler v. Worker's Comp. Appeals Bd.* (1997) [56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc); see also *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 937-938 [646 Cal.Comp.Cases 986] ["the Board may act to develop the record with new evidence if … it concludes that neither side has presented substantial evidence on which a decision could be based"].) Development of the record may include, but is not limited to, supplemental reporting, inquiries of the court, or discovery conducted by the parties designed to address the deficiencies in the reporting.

Efforts designed to cure otherwise deficient medical-legal reports are consistent with principles of due process. All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) Due process, in turn, requires that any adjudication of the issues be based on a complete record, including competent medical-legal evidence. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal. App. 4th 389 [62 Cal.Comp.Cases 924].) Allowing the parties and the evaluating physicians the opportunity to cure any identified deficiencies in the medical-legal report promotes a full adjudication based on a complete record.

These principles are reflected in WCAB Rule 10670(b)(4) (Cal. Code Regs., tit. 8, § 10670(b)(4)), which provides that the WCAB may decline to receive in evidence reports that do not comply with section 4628, "unless good cause has been shown for the failure to comply and, after notice of non-compliance, compliance takes place within a reasonable period of time or within a time prescribed by the workers' compensation judge."

Additionally, an initial determination as to whether any apparent deficiencies in the medical-legal reporting may be cured is consistent with our constitutional obligation to resolve claims expeditiously, inexpensively, and without encumbrance of any character. (Cal. Const. Art. XIV, § 4.) If deficiencies can be cured through development of the record, the reporting may then be used as a basis for the prompt determination of issues in workers' compensation disputes, to the extent it is comprehensive and persuasive.

Any determination by a WCJ as to whether a report may be cured will be fact specific. The WCJ may wish to consider factors including, but not limited to, the nature of the deficiency, e.g., whether the deficiency is a technical violation that may be cured, versus systemic or pervasive deficiencies in the reporting that are, in the WCJ's assessment, unlikely to be cured; prior efforts by the parties or by the court to remedy the deficiencies; prejudice to the parties in restarting the medical-legal process versus preserving the existing reporting; case specific considerations, such as how long the case has been pending, or the extent to which the deficiencies in the reporting were within the parties' or the physician's control.

We emphasize that the WCJ is vested with the full power, jurisdiction, and authority to hear and determine all issues of fact and law presented, and it is within the sound discretion of the WCJ to accept or reject the testimony of an expert witness, so long as the WCJ does not act arbitrarily. (*Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 752 [2023 Cal. Wrk. Comp. LEXIS 30].)

Accordingly, the decision to attempt to cure a deficient report is discretionary to the WCJ, based on the individual facts and circumstances of each case. In so doing, the WCJ should create a complete record describing the factors relevant to the decision to attempt to cure the record, consistent with principles of due process.

C.

If a deficient medical-legal report cannot be cured, the reporting should generally remain in evidence unless the WCJ determines the report to be statutorily inadmissible. The weight

accorded the evidence, including the weighing of medical-legal reporting in evidence, is a matter to be determined by the WCJ and by the Appeals Board. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312. 317 [35 Cal.Comp.Cases 500]; *Lundberg v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 436, 440 [33 Cal.Comp.Cases 656].) All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. (Lab. Code, § 3202.5.) Even in instances where a WCJ determines that a report has limited or no evidentiary weight with respect to the medical-legal conclusions reached by the evaluating physician, or because of other procedural or substantive deficiencies, the report may nonetheless contain information relevant to the determination of issues necessary to the adjudication of the claim. Examples of relevant information may include a record of presenting symptoms, medical histories, a review of medical records that later become lost or otherwise unavailable, records of diagnostic testing, and clinical observations.

Allowing deficient medical-legal reporting to remain in evidence while assigning it the appropriate evidentiary weight is consonant with well-established principles favoring the broad admissibility of evidence in workers' compensation proceedings. Indeed, "the Appeals Board is accorded generous flexibility by sections 5708 and 5709 to achieve substantial justice with relaxed rules of procedure and evidence." (*Barr v. Workers' Comp. Appeals Bd.* (2008) 164 Cal.App.4th 173, 178 [73 Cal.Comp.Cases 763].) Similarly, the Appeals Board is broadly authorized to consider "[r]eports of attending or examining physicians." (Lab. Code, § 5703(a); *Valdez, supra*, at p. 1239.) Section 4064(d) provides the no party is prohibited from obtaining *any* medical evaluation or consultation at the party's own expense, and that *all* comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board except as provided in specified statutes. (Lab. Code, § 4064(d); *Valdez*, *supra*, at p. 1239.) Section 4062.3(a) further provides that any party may provide to the QME, subject to the restrictions set forth in the statute, any records prepared or maintained by the employee's treating physician or physicians and medical and nonmedical records relevant to determination of the medical issue. (Lab. Code, § 4062.3(a).) Finally, WCAB Rule 10682(c) (Cal. Code Regs., tit. 8, § 10682(c)), provides that a failure to comply with the specific minimum requirements set forth under the rule will not render the reporting inadmissible but will instead be considered in the weighing of the evidence. Taken together, these statutory, regulatory, and case law proscriptions underscore the

importance of allowing for the full consideration of the entire evidentiary record, in furtherance of the substantial justice required in workers' compensation proceedings.

Accordingly, even in those instances where a report does not meet minimum standards, it should generally remain in evidence and be accorded its appropriate evidentiary weight. (See also Cal. Code Regs., tit. 8, § 10682(c).)

D.

If a report is determined to be statutorily inadmissible pursuant to section 4628, the QME is entitled to certain due process protections.

While medical-legal reports will generally remain in evidence despite issues of substantiality, there are a limited number of circumstances under which a report may be deemed inadmissible. Section 4628 requires the evaluating physician to take a complete medical history from the applicant, to review and summarize the prior medical record, and to compose and draft the conclusions of the report. Where the initial outline of a patient's history or excerpting of the applicant's medical record is accomplished by someone other than the physician, the physician must review the excerpts or summary, and make relevant inquiry of the applicant, as well as disclose the name and qualifications of those persons assisting in the nonclerical preparation of the report. (Lab. Code, § 4628(c).)

The California Court of Appeal has described section 4628 as an anti-ghostwriting statute designed "to ensure that the doctor who signed the report had actually examined the injured worker and had prepared the evaluation." (*Scheffield Med. Group v. Workers Comp. Appeals Bd.* (1999) 70 Cal.App.4th 868, 881 [64 Cal.Comp.Cases 358].) The statute requires that persons participating in the preparation of the report "whether in-house or contracted out, [are] to be accurately identified so the litigants would know everyone involved in the evaluation process." (*Ibid.*) Observing that the Legislature drafted "a relatively unambiguous statute leaving little room for equitable considerations," the Court in *Scheffield* characterized subdivisions (a) through (e) of section 4628 as "a strict liability statute." (*Ibid.*) This is because, "[w]here the report is based on a cursory examination, or prepared over a physician's signature by a typist who merely inserts boiler-plate paragraphs into the report, the document is useless to the WCJ, who must rely on the findings in the report to determine issues in a case." (*Ameri-Medical Corp., supra,* 42 Cal.App.4th 1260, 1279.)

Consequently, a violation of section 4628 that cannot be cured renders the report inadmissible and eliminates any liability for payment of any medical-legal expense incurred in connection with the report. (Lab. Code, § 4628(e).) When a WCJ determines that a report is not curable and it appears that the report violates the preparation and/or disclosure requirements of section 4628, due process considerations arise and require the WCJ to carefully follow the notice requirements of section 139.2(d)(2) and Appeals Board Rule 10683. This is because in both instances, the due process rights of the *evaluating physician* are implicated, due to the potential consequences of such a finding including the potential loss of QME reappointment under section 139.2(d)(2), and the potential effect on the physician's ability to recover fees for the reporting under section 4628(e). In those instances, the WCJ should issue a notice of intention (NIT) to enter a specific finding describing the identified deficiencies. (Cal. Code Regs., tit. 8, §10832.) The NIT should afford the parties and the physician a reasonable period in which to object, and the opportunity for the parties and the physician to request a hearing on the proposed finding. The NIT must be served to the parties and the evaluating physician. (Lab. Code, §§ 139.2(d)(2), 4628; Cal. Code Regs., tit. 8, §§ 10682-10683.) If no timely objection is received, or following a hearing requested by the parties in response to the NIT, the WCJ may determine whether to take further action as contemplated by the NIT. Should the WCJ determine there has been a violation of section 4628, or that the report merits rejection under section 139.2(d)(2) and Appeals Board Rule 10683, the WCJ must "make a specific finding to that effect, and shall give notice to the medical evaluator and to the administrative director." (Lab. Code, § 139.2(d)(2).)

Accordingly, we recommend that the WCJ consider issuing bifurcated findings of fact to address section 4628 violations, to facilitate the consideration of the issues affecting the physician's rights as distinguished from those issues pertaining to the underlying case in chief. As explained above, if a determination is made that a violation of 4628(e) has occurred, it renders the QME's reporting inadmissible.

Separately, when the WCJ determines that replacement of the QME is warranted, the WCJ should follow the protocols for development of the record, including determining whether the parties will agree to an AME, and if not, the appointment of a regular physician pursuant to section 5701, or the issuance of an order for a new panel of QMEs pursuant to DWC Rule 32.6. (*McDuffie, supra,* at p. 138.) As discussed above, given the broad statutory mandate that medical reporting is generally admissible, we emphasize that a WCJ is not required to find that the reporting of a QME

who has been replaced is inadmissible unless a specific provision in the Labor Code like section 4628(e) requires it.

III.

Upon return of this matter to the trial level, we offer the following nonbinding guidance to the WCJ and to the parties. The parties have placed in issue the October 1, 2021 Petition filed by applicant seeking to "disqualify" the reporting of QME Dr. Woythaler. (Minutes, at p. 2:11.) Applicant's underlying "Petition seeking to Disqualify PQME Dr. Julius Woythaler" presents questions of whether the reporting of QME Dr. Woythaler constitutes substantial medical evidence because it is based on an incorrect legal theory, and whether the report from Dr. Woythaler violates the report preparation and disclosure requirements of section 4628, especially regarding the physician's review and signing of the report. (Petition to Disqualify PQME Dr. Julius Wothaler, dated October 1, 2021, at p. 7:23.)

Accordingly, the WCJ should first determine whether the reporting of Dr. Woythaler is substantial medical evidence. The WCJ should address applicant's specific contentions regarding the QME's understanding and application of correct principles of causation and apportionment, with due consideration to defendant's Opposition petition dated October 14, 2021. If the WCJ determines that the reporting of Dr. Woythaler does not constitute substantial medical evidence, the WCJ should next assess whether there is other competent evidence in the record that addresses the issues in contention, and if not, whether the deficiencies in the QME reporting can be cured. If, in her sound discretion, the WCJ determines that the reporting cannot be cured, the reporting should remain in evidence absent a specific statutory proscription excluding it from evidence, and the WCJ may thereafter determine the best course for development of the record.

In addition, if the WCJ determines that the report violates section 4628 as alleged in applicant's October 12, 2021 petition, the WCJ must determine whether the deficiencies can be cured. ((See Cal. Code Regs., tit. 8, § 10670(b)(4).) If the deficiencies cannot reasonably be cured, the WCJ should issue a Notice of Intention pursuant to WCAB Rule 10832 and provide both the parties and the QME with notice and the opportunity to be heard. (Cal. Code Regs., tit. 8, § 10832.) If, following the necessary notice to the parties and any resulting hearings, the WCJ determines that the reporting of Dr. Woythaler violates section 4628 and the deficiencies cannot be cured, the report will be deemed inadmissible pursuant to section 4628(e), and the WCJ should determine the best course for development of the record.

In either analysis, the WCJ should make the requisite "findings upon all facts involved in the controversy," such that the decision complies with section 5313 and our decision in *Hamilton, supra*. (Lab. Code, § 5313.)

IV.

In summary, the parties have placed in issue applicant's contentions as set forth in the petition to disqualify the QME that the reporting is not substantial evidence and violates section 4628. Insofar as the F&O does not address the issues framed for decision, however, the decision does not comply with section 5313, which requires that the WCJ "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties." Accordingly, we will grant applicant's petition, rescind the May 20, 2022, Findings and Order, and return the matter to the WCJ for further proceedings and decision, from which any aggrieved person may thereafter seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the decision of May 20, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the decision of May 20, 2022, is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 30, 2025

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

SEDALIA SEARCY (GREEN)
MALLERY & STERN
LAUGHLIN, FALBO, LEVY & MORESI

SAR/abs

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