

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

**VIRGINIA GALVAN, *Applicant***

**vs.**

**REGIONAL CENTER OF ORANGE COUNTY, INC.;  
CYPRESS INSURANCE COMPANY c/o  
BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Numbers: ADJ15777619, ADJ15777625  
Anaheim District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Joint Findings and Order (F&O) that was issued by the workers' compensation administrative law judge (WCJ) on August 12, 2025. The WCJ found that applicant sustained injury arising out of and occurring in the course of employment to her neck, shoulders, wrists, hands, mid back, back, spine, hips, knees, ankles, and joints. The WCJ further found that defendant failed to provide evidence the applicant is required to treat within its medical provider network (MPN). The WCJ ordered that the applicant can self-procure treatment outside the defendant's MPN.

Defendant contends, in pertinent part, that applicant failed to establish that defendant neglected or refused to provide reasonable medical care, the WCJ's Order permitting treatment outside the MPN is unsupported by the findings of fact, the record does not support an adverse inference that medical care was not provided, and the WCJ based his decision on a legal theory that was not clearly framed or litigated as the central issue at trial.

We have received an Answer from applicant.

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

We have considered the allegations of the Petition, the Answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons stated

in the WCJ’s Report and Joint Opinion on Decision, which we adopt and incorporate, we will deny reconsideration.

## I.

Former Labor Code section 5909<sup>1</sup> 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, 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.

Under 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 12, 2025, and 60 days from the date of transmission is Saturday, October 11, 2025. The next business day that is 60 days from the date of transmission is Monday, October 13, 2025. (See Cal. Code. Regs., tit. 8, § 10600(b).<sup>2</sup> This decision is issued by or on Monday, October 13, 2025, 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

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<sup>1</sup> All section references are to the Labor Code, unless otherwise indicated.

<sup>2</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 12, 2025, and the case was transmitted to the Appeals Board on August 12, 2025. 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 section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 12, 2025.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

**/s/ PAUL F. KELLY, COMMISSIONER**



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

**OCTOBER 13, 2025**

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

**VIRGINIA GALVAN  
LAW OFFICES OF THOMAS F. MARTIN  
HALLETT, EMERICK, WELLS & SAREEN**

**JL/abs**

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

**JOINT REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**I**  
**INTRODUCTION**

Defendants, by and through their attorney of record, filed a Petition for Reconsideration to this Court's Opinion on Decision and Findings and Order. At the time of filing this Report and Recommendation on Reconsideration, the applicant had not filed a response thereto.

**1. ADJ1577619**

Occupation: Deferred

Age: 38

Date of injury: 4/29/21

Parts of body injured: Neck, shoulders, wrists, hands, mid back, back, spine, hips, knees, ankles and joints. All other body parts were deferred

**ADJ1577625**

Occupation: Deferred

Age: 38

Date of injury: 4/8/21

Parts of body injured: Neck, shoulders, wrists, hands, mid back, back, spine, hips, knees, ankles and joints. All other body parts were deferred

**2. Identity of Petitioner: Regional Center of Orange County, defendants' attorney**

Timeliness: Yes - Filed 8/1/25

Verified: Yes

Properly served: No, the Petition was not served on all parties as required

**3. Date of Joint Findings and Order: 7/8/25**

**4. Defendant's contentions: Defendant contends this court erred in finding the applicant can treat outside the defendant's MPN.**

**II**  
**BACKGROUND**

This matter was proceeded to trial on the applicant's designation of Boomerang Medical Group as the applicant has elected PTP, see Joint. Exh. X1, and defendant's contention that the group is not within the defendant's MPN and applicant must treat within the MPN.

### III DISCUSSION

The first thing the court wants to point out is defendant's Statement of Facts is inaccurate. On page 2 lines 6-8, the defendant asserts medical treatment was provided to the applicant. Further, on page 22 lines 26-28 and continuing on page 3 lines 1-3, the defendant references a trial brief, and an allegedly new theory raised at trial, that the MPN was not validly noticed permitting the applicant to treat outside the MPN. The defendant did not submit any evidence at this trial. They offered no documentary evidence nor did they call the applicant to the stand and elicit testimony from her regarding any treatment or notices she may have received. There is no evidence for the court to review in this matter. The court did request trial briefs, but trial briefs are argument and cannot be considered evidence. Trial briefs may refer to evidence but the evidence itself must be listed on the Pre-Trial Conference Statement (hereinafter PTCS) to be offered, and in this case it was not. As set forth in the original PTCS, dated and signed by the parties on 3/11/25, EAMS Doc. ID#56765479, on page 5 of 10. The applicant set forth in the "Other Issues" section, her contentions that medical control was at issue due to the invalid notice of the MPN and neglect or refusal to provide treatment. At trial on 7/7/25, the parties narrowed the issues for the court to address and completed an Amended PTCS dated 7/7/25, EAMS Doc. ID#79340689. They took the original PTCS and crossed out the items that were not to be addressed by the court. The issues raised on this Amended PTCS were exactly the same as raised on this first PTCS; medical control due to the invalid notice of the MPN and neglect or refusal to provide treatment. This is not a newly identified issue as claimed by the defendant in its petition for reconsideration. Defendant's mis-statements of the facts are at best misleading to the court and the Board, if not an attempt to provide false information to the Board.

Defendant contends that applicant has not met her burden to establish neglect or a refusal to provide treatment. This burden however is misplaced, it is the defendant's burden to establish the existence of the MPN, that defendant provided the required Notices of the MPN, **8 Cal. Code of Regs. §9767.12**, both prior to the injury and subsequent to the injury, and that treatment was provided and not neglected. In order to meet this burden, the defendant must submit evidence of its MPN, the notices provided and the treatment offered. The defendant did not submit any evidence, either documentary or through testimony, to meet its burden. As set forth in the Opinion on Decision, the court addressed **Knight v. United Parcel Service (2006)** 71 Cal.Comp.Cas. 1423 as well as Senate Bill 863 which resulted in Labor Code §4616.3(b)<sup>1</sup> being implemented. In its analysis, the court held as follows:

"Prior to the amendments as set forth in Senate Bill 863, the controlling case was **Knight v. United Parcel Service (2006)** 71 CCC 1423 (appeals board *en banc*). Senate Bill 863 made it a requirement, through Labor Code §4616.3(b) that the failure to post the notices or give the requisite notices was no longer a basis to treat outside the MPN. The standard now is that there must be a neglect or refusal to treat. Here there is no evidence showing the applicant was being treated in the MPN and as set forth above this shows the neglect or refusal to treat as required to allow the appointment of a physician outside the MPN. The failure to provide the notices as required denied the applicant her right to change physicians within the MPN or

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<sup>1</sup> All further references to the California Labor Code

provide her with the knowledge on how to seek a specialist or seek a second or third opinion within the MPN, this is denial of care, sufficient to allow the applicant to treat outside the MPN, *San Diego Unified School District v. WCAB (Robledo)* (2013) 79 Cal.Comp.Cas. 95 (writ denied), *Ovando v. Bodycote International, Inc.*, 2016 Cal. Wrk. Comp. P.D. LEXIS 77.”

On page 4 lines 14-25, the defendant attempts to argue, “(T)here is no evidence that treatment was interrupted, delayed, or denied.” Part of this statement is true, there was no evidence submitted by the defendant from which the court could rely on to show the defendant has established control and provided treatment. The parties are required to fill out a PTCS at the MSC. This was done, these issues were raised and the defendant failed to offer any evidence to support its position that there was a valid MPN, that notices were provided, or that medical treatment was provided. There was no evidence listed by the defendant on either of the PTCS completed (marked as ID ONLY in EAMS for the convenience of the Board). As set forth by defendant and the court in its Opinion on Decision, pages 2 and 3, §5502(d)(3) closes discovery on the day of the MSC, except as to evidence not known of before the MSC or was not available. None of the evidence defendant refers to in the petition is unknown, it all existed prior to the MSC but was not listed on the PTCS. The Judge has a duty to further develop the record where there is insufficient evidence on an issue, or issues, *McClune v. Workers' Comp. Appeals Bd. (1998)* 63 Cal.Comp.Cas. 261, Labor Code, §§ 5701, 5906<sup>2</sup>; *Tyler v. Workers' Comp. Appeals Bd. (1997)* 62 Cal.Comp.Cas. 924. The Judge has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers' Comp. Appeals Bd. (2000)* 65 Cal.Comp.Cas. 264. The Judge may not leave matters undeveloped where it is clear from the evidence submitted that additional discovery is needed, *Id.* at p. 404. The Board in its en banc decision in *McDuffie v. Los Angeles County Metro. Trans. Auth. (2002)* 67 Cal.Comp.Cas. 138, §§5701 and 5906 authorizes the Judge and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings. However, the Court of Appeals has recently addressed this issue, developing the record, in a published opinion, *DPR Construction v. WCAB (McClanahan), (2025)* 111 Cal. App. 5th 1136, 90 Cal.Comp.Cas. 491. The Court of Appeals in overturning the Board held the Board cannot develop the record and save a party by allowing evidence in on an issue that existed before the MSC and not listed by a party. This case is directly on point here. The defendant knew of this evidence and did not list it. The court and Board cannot bail a party out and develop the record in this situation. In the Opinion on Decision, this court held in discussing §5502 and in quoting **DPR Construction** *supra*, found the following:

“Section 5502

In workers’ compensation proceedings, discovery closes on the date of the mandatory settlement conference. (*Telles, supra*, 92 Cal.App.4th at p. 1164; § 5502, subd. (d)(3).) If the claim is not resolved at the conference, the parties must file a pretrial conference statement noting the specific issues in dispute, listing the exhibits, and disclosing witnesses. (§ 5502, subd. (d)(3); Cal. Code Regs., tit. 8, § 10759, subd. (b).) Evidence not disclosed or obtained thereafter is not admissible unless the proponent can demonstrate it was not available or could not have been discovered by the exercise of due diligence before the settlement conference. (§ 5502, subd. (d)(3).) The purpose of this requirement is two-fold: (1) to “eliminate the element of surprise

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<sup>2</sup> All further references to the Cal. Labor Code unless otherwise specified

in workers' compensation proceedings" and (2) " " " "to guarantee a productive dialogue leading, if not to expeditious resolution of the whole dispute, to thorough and accurate framing of the stipulations and issues for hearing.' " " " " (Telles, at pp. 1164, 1167.) The board abuses its discretion when it relieves a party from the sanctions of section 5502 without that party showing good cause. (*San Bernardino Community Hospital v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 938 (*San Bernardino*).)"

Additionally, in the ***DPR Construction*** case supra. The Court of Appeals referenced ***Telles Transport, Inc. v. WCAB (Zuniga)*** (2001) 66 Cal.Comp.Cas 1290, which held, the failure to list the evidence on the PTCS is a strategic mistake and a party and the Board are estopped from reopening the record to introduce the records that existed prior to the MSC. In ***Jones v. Stanford University***, 2013 Cal. Wrk. Comp. P.D. LEXIS 379, the Board in a panel decision (cited for guidance) held that when a party has the opportunity to present evidence and fails to do so, that party waives its right to appeal on the deficiency of the evidence.

Based on this court's review of the record there is no basis to develop the record. The issues raised in the petition are not supported by the evidence. The one line on the PTCS that references "some treatment was provided" is insufficient to establish treatment within the MPN. There was no documentary evidence or testimonial evidence proffered to support the defendant's position that there was a valid MPN, that the applicant was provided the required notices, or that defendant provided treatment within the MPN. This court finds no reason to augment the record on this issue. It was the defendant's burden to prove the existence of the MPN, that notices were sent, and there was no refusal or neglect to provide treatment.

#### **IV** **CONCLUSION**

Based upon the above this court requests the Petition for Reconsideration be denied and the Findings Orders be upheld.

DATE: 8/12/25

**Alan Skelly**  
WORKERS' COMPENSATION JUDGE



**JOINT**  
**OPINION ON DECISION**

The above-entitled matters were submitted for decision on 7/7/2025. The parties stipulated that ADJ1577832 is a denied case and that matter was ordered off calendar. The matter was submitted for decision on the two remaining admitted cases ADJ15777619, 15777625. The court has now had an opportunity to review the minutes of hearing, summary of evidence, the evidence submitted by the parties and offers its opinion on decision as set forth below.

The sole remaining issue for the court to decide is, was applicant's Appointment of IPM Medical Group/Boomerang under Labor Code §4600 effective, Joint Exh. X1. Defendant's position is that the applicant was treating within the defendant's MPN and therefore the appointment of Boomerang outside the MPN was improper. Applicant's position is that the defendant failed to provide proof that the applicant was provided the notices as required in **8 Cal. Code of Regs. §9767.12** of the MPN and her rights therein. There was no evidence submitted by the defendant, in this matter, to prove the notices were sent or that treatment was being provided within the MPN. This failure results in the court taking an adverse inference from the lack of evidence to show that the defendant was not providing the requisite care and therefore it constitutes denial of medical care. This denial of medical care allows the applicant to designate a PTP under Labor Code §4600. Applicant's attorney designated IPM Medical Group/Boomerang as the applicant's PTP on 9/25/24, Joint Exh. X1.

Prior to the amendments as set forth in Senate Bill 863, the controlling case was ***Knight v. United Parcel Service (2006) 71 CCC 1423 (appeals board en banc)***. Senate Bill 863 made it a requirement, through Labor Code §4616.3(b) that the failure to post the notices or give the requisite notices was no longer a basis to treat outside the MPN. The standard now is that there must be a neglect or refusal to treat. Here there is no evidence showing the applicant was being treated in the MPN and as set forth above this shows the neglect or refusal to treat as required to allow the appointment of a physician outside the MPN. The failure to provide the notices as required denied the applicant her right to change physicians within the MPN or provide her with the knowledge on how to seek a specialist or seek a second or third opinion within the MPN, this is denial of care, sufficient to allow the applicant to treat outside the MPN, ***San Diego Unified School District v. WCAB (Robledo) (2013) 79 Cal.Comp.Cas. 95 (writ denied)***, ***Ovando v. Bodycote International, Inc.***, 2016 Cal. Wrk. Comp. P.D. LEXIS 77. The parties are required to submit a Pre-Trial Conference Statement identifying the issues and listing the evidence to be provided at trial. the Court of Appeals, in a recently published opinion recently overturned the board stating the discovery closes on the issues at the MSC and unless there is newly discovered evidence the Board cannot save a party by allowing evidence in on an issue that existed before the MSC and not Listed, ***DPR Construction v. WCAB (McClanahan)***, 2025 Cal. App. LEXIS 371, (official cite not available to the court at this time);

“Section 5502

In workers' compensation proceedings, discovery closes on the date of the mandatory settlement conference. (*Telles, supra*, 92 Cal.App.4th at

p. 1164; § 5502, subd. (d)(3).) If the claim is not resolved at the conference, the parties must file a pretrial conference statement noting the specific issues in dispute, listing the exhibits, and disclosing witnesses. (§ 5502, subd. (d)(3); Cal. Code Regs., tit. 8, § 10759, subd. (b).) Evidence not disclosed or obtained thereafter is not admissible unless the proponent can demonstrate it was not available or could not have been discovered by the exercise of due diligence before the settlement conference. (§ 5502, subd. (d)(3).) The purpose of this requirement is two-fold: (1) to “eliminate the element of surprise in workers’ compensation proceedings” and (2) “ ‘ ‘ ‘to guarantee a productive dialogue leading, if not to expeditious resolution of the whole dispute, to thorough and accurate framing of the stipulations and issues for hearing.’ ” ’ ” (*Telles*, at pp. 1164, 1167.) The board abuses its discretion when it relieves a party from the sanctions of section 5502 without that party showing good cause. (*San Bernardino Community Hospital v. Workers’ Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 938 (*San Bernardino*).)

Here any evidence the defendant could have offered but did not list on the PTCS is not admissible. Therefore there is no defense evidence or testimony to rebut the applicant’s position that there was a neglect or refusal to provide care to the applicant, whereby allowing applicant to designate a primary treating physician outside the MPN, and the court recognizes applicant’s election of IPM Medical group/Boomerang as the PTP in this matter, and applicant is entitled to treat outside the MPN.

All other issues are deferred.

DATE: 7/8/25

**Alan Skelly**  
WORKERS' COMPENSATION JUDGE