

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

MOHAMAD SAIRAFE, *Applicant*

vs.

PCH PETROLEUM, INC.;
THE HANOVER AMERICAN INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ11757597
Anaheim District Office

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

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 stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

We note, however, that the Appeals Board no longer has a post office box. Defendant is instructed to remit payment for sanctions as follows:

ANNE SCHMITZ

Secretary and Deputy Commissioner

WORKERS' COMPENSATION APPEALS BOARD

455 GOLDEN GATE AVE., SUITE 9328

SAN FRANCISCO, CA 94102

ATTN: SANCTIONS COORDINATOR

Payment shall be made by check payable to the WORKERS' COMPENSATION APPEALS BOARD, TAX I.D. 94-3160882, for transmission to the General Fund and shall reference the case name and number on the memo portion of the check.

Former Labor Code section 5909¹ 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 January 27, 2026 and 60 days from the date of transmission is Saturday, March 28, 2026. The next business day that is 60 days from the date of transmission is Monday, March 30, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, March 30, 2026, so that we have timely acted on the petition as required by Labor Code 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.

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

² 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.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on January 27, 2026, and the case was transmitted to the Appeals Board on January 27, 2026. 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 January 27, 2026.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 30, 2026

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

**MOHAMAD SAIRAFE
MASHNEY LAW
HANNA BROPHY
BRADFORD AND BARTHEL
EMPLOYMENT DEVELOPMENT DEPARTMENT**

TF/md

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

REPORT AND RECOMMENDATION ON RECONSIDERATION
AND LABOR CODE SECTION 5909(b) NOTICE

I. INTRODUCTION

Applicant, born __, while employed on 06/23/2018 at Long Beach, California by PCH Petroleum,

Inc., then insured by The Hanover American Insurance Company, sustained injury arising out of and occurring in the course of employment to face, lip, psyche, teeth numbers 7,8,9,10,11,12 and 13 and lumbar spine.

Defendant has filed a timely and verified petition for reconsideration wherein they dispute the Findings, Award and Order dated 05/27/2025 finding that defendant's revocation of authorization for Dr. Jerome Peterson, D.D.S./Guru Dentistry to treat applicant constitutes a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay pursuant to Labor Code section 5813 and Cal. Code of Regs., tit. 8, section 10421(a) and (b)(6); that Applicant is entitled to additional temporary disability for the period 01/10/2020 and continuing at a weekly rate to be adjusted by the parties with jurisdiction reserved up to the maximum allowed pursuant to Labor Code section 4656(c)(2) less amounts previously paid by defendant; that applicant sustained injury to urological and erectile dysfunction; and that applicant's attorney has performed services of a reasonable value of 15% of the temporary disability.

Defendant also disputes the orders that Applicants' objections to defendant's motion to admit the medical reports of Dr. Cheri Lewis, D.D.S. dated 06/19/2023 and Dr. Stephen Choi dated 06/26/2020 as additional defense exhibits are sustained, and they are excluded as evidence; and deferring the issue of the lien of EDD.

Defendant contends that there is no substantial evidence to justify sanctions; that the medical reports of Dr. Cheri Lewis dated 06/19/2023 and Dr. Stephen Choi dated 06/26/2020 are admissible because they were properly obtained and timely served on applicant's attorney prior to the 08/05/2025 mandatory settlement conference despite the fact that these reports were not listed on defendant's exhibit sheet attached to the first amended pretrial conference statement; that the medical report of Dr. Lewis 06/19/2023 is admissible as evidence even though it was obtained pursuant to Labor Code section 4050; that the award of temporary disability is not based on substantial medical evidence; that the award of attorney fees should be annulled because the award of temporary disability is not based on substantial medical evidence; that the deferral of the issue of the lien of EDD should be annulled for further development of the record to determine the nature and extent of payments by EDD and how they would impact, if at all, the 104 week cap pursuant to Labor Code section 4656(c)(2); and that the finding of injury to urological and erectile dysfunction is not based on substantial medical evidence.

II. STATEMENT OF FACTS

Applicant, born __, while employed on 06/23/2018 at Long Beach, California by PCH

Petroleum, Inc., then insured by The Hanover American Insurance Company, sustained injury arising out of and occurring in the course of employment to face, lip, psyche, teeth numbers 7,8,9,10,11,12 and 13, and lumbar spine.

A trial was held on 08/05/2025. The issues in dispute were objection to evidence, parts of the body injured, earnings, temporary disability, need for further medical treatment; specifically dental, coronary heart disease, urological dysfunction and erectile dysfunction, the lien of the Employment Development Department, attorney fees, applicant's motion to compel defendant to authorize Dr, Jerome Peterson, D.D.S./Guru Dentistry as applicant's secondary treating physician to treat applicant's dental injury and applicant's petition for sanctions and attorney fees pursuant to Labor Code section 5813 dated 05/14/2024 and applicant's petition for penalties pursuant to Labor Code sections 4650 and 5814 for unreasonable delay of benefits and sanctions, costs and attorney fees pursuant to Labor Code section 5813 dated 05/27/2024.

Neither party offered witness testimony and the parties stipulated to submit the matter for decision based on the present record.

On 08/19/2025 an order vacating submission was issued. The matter was set for trial on 09/16/2025.

The minutes of hearing (MOH) for 09/16/2025 trial state that in addition to applicant and defense counsel Ms. Margaret Hatch from EDD was present. The MOH states that the case was continued to give the parties time to clean up the exhibits and to file trial briefs. Specifically, it was noted that Joint Exhibit s "EE" and "KK" were missing. The joint exhibit sheet listed these exhibits as reports from Drs. Fadoul and Abri when in fact they were deposition transcripts from each doctor. Joint Exhibit "SS" listed the wrong date for the medical report of Dr. Robert Thaler. Applicant's Exhibit "30" and Defendant's Exhibit "N" are duplicative and that the parties are to decide whether this exhibit should be offered as a joint exhibit or offered by one party only. It was also noted that attached to Applicant's Exhibit "30" and Defendants Exhibit "N" is a Labor Code section 4050 report from Dr. Cheri Lewis, D.D.S. dated 06/19/2023 and that this report should be listed on either the joint exhibit sheet or listed on either the applicant's or defendant's exhibit sheet attached to the first amended pretrial conference statement.

The MOH states that defense counsel decided to withdraw many of the defendant's exhibits and that they needed to reorganize them.

The MOH also states that the parties were to file memorandum of points and authorities regarding defendant's claim that the QME reports are not substantial medical evidence by the next hearing.

Lastly, the MOH states that applicant agrees to defer his petition for sanctions, costs and attorney fees dated 09/10/2024.

The MOH ordered that the trial be continued to 11/05/2025, that the parties are to file amended exhibit sheets and file any exhibits not already filed in EAMS by 10/26/2025 and that defendant is to file their trial brief on the issue of lack of substantial medical evidence no later than 10/01/2025 and that applicant will have until 10/16/2025 to file a trial brief in response.

It was also ordered that EDD is to file and serve their exhibits no later than 10/01/2025.

The MOH for the 11/05/2025 trial indicates that applicant and defense counsel were present. There was no appearance by EDD. In addition, EDD failed to file their exhibits prior to the 11/05/2025 as ordered.

The MOH further states that Defendant's Exhibit "N" is withdrawn, that Joint Exhibits "EE" and "KK" were deposition transcripts of QME Drs. Abdo Fadoul dated 06/18/2025 and David Abri dated 11/19/2024, respectively and Joint Exhibit "SS" is listed as QME medical reports of Dr. Nicholas Thaler dated 07/28/2024. All three were admitted as evidence.

The MOH indicates that defendant made a motion to have the medical reports of Dr. Cheri Lewis, D.D.S. dated 06/19/2023 and QME report of Dr. Stephen Choi dated 06/26/2020 be admitted as evidence as additional defense exhibits. Applicant attorney objected to the admission of Dr. Lewis' report on the grounds that Dr. Lewis' examination and report were obtained pursuant to Labor Code section 4050 and that both reports were not listed on defendant's exhibit sheet attached to the first amended pretrial conference statement in violation of Labor Code section 5502(d)(3). The objections were sustained and both reports were excluded as evidence.

On 11/29/2025 defendant filed a petition for reconsideration/petition for removal regarding the Court's ruling at the 11/05/2025 trial sustaining applicant's objection to defendant's motion to have the medical reports of Dr. Cheri Lewis, D.D.S. dated 06/19/2023 and QME Dr. Stephen Choi dated 06/26/2020 be admitted as evidence and excluding them as evidence.

On 11/20/2025 an order issued rescinding decision regarding admissibility of evidence dated 11/05/2025 and that defendant's motion and applicant's objection to the admissibility of the reports of Dr. Cheri Lewis, D.D.S. dated 06/19/2023 and QME Dr. Stephen Choi dated 06/26/2020 will be taken under submission and added as an issue to be addressed as part of the Court's decision. In the interim, the reports of Dr. Lewis and Dr. Choi will be marked for identification only as Defendant's Exhibit's "P" and "Q", respectively.

A Findings, Award and Order was issued on 12/22/2025 finding that applicant sustained injury to face, lip, psyche, teeth numbers 7,8,9,10,11,12 and 13, lumbar spine, coronary heart disease, urological dysfunction and erectile dysfunction while employed for PCH Petroleum, Inc. on 06/23/2028; that applicant is entitled to additional temporary disability for the period 01/10/2020 and continuing at a weekly rate to be adjusted by the parties with jurisdiction reserved up to the maximum allowed pursuant to Labor Code section 4656(c)(2) less amounts previously paid by defendant; that applicant is need of further medical treatment for his dental injury, coronary heart disease, urological dysfunction and erectile dysfunction to cure or relieve from the effects of the injury herein; that applicant's attorney has performed services of a reasonable value of 15% of the temporary disability; and that defendant's revocation of authorization for Dr. Jerome Peterson, D.D.S./Guru Dentistry to treat applicant constitutes a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay pursuant to Labor Code section 5813 and Cal. Code of Regs., tit. 8, section 10421(a) and (b)(6).

The Court ordered that Applicants' objections to defendant's motion to admit the medical reports of Dr. Cheri Lewis, D.D.S. dated 06/19/2023 and QME Dr. Stephen Choi dated 06/26/2020 as additional defense exhibits are sustained, and they are excluded as evidence; that the issue of earnings is deferred for further development of the record. The parties have 30 days from the date of this order, plus additional time allowed pursuant to Cal. Code of Regs., tit. 8, section 10605, to obtain a wage statement and/or other wage documentation to support their respective contentions regarding applicants' average weekly wage at the time of injury and, thereafter, to meet and confer to try and resolve this issue. If the parties are unable to resolve this issue either party may file a declaration of readiness to proceed; that the issue of the lien of EDD is deferred; that defendant is to authorize Dr. Jerome Peterson, D.D.S./Guru Dentistry to treat the applicant for his dental injury subject to utilization review and IMR procedures. (Labor Code section 4610 and 4610.6 and Cal.Code of Regs., tit. 8, section 9792.6, et. al. and 10575.); and that Kimberly Look, The Hanover American Insurance Group, Attorney Gary Sax, Law Offices of Bradford & Barthel, LLP, Attorney Michael Giachino and Law Offices of Hanna Brophy, MacLean, McAleer & Jensen, LLP, jointly and severally, pay sanctions in the sum or \$999.00; that the issue of attorney fees pursuant to Labor Code section 5813 and California Code of Regs., tit. 8, section 10421(a) is deferred until the Court receives an itemization from Applicant Attorney, Mashney Law setting forth the amount of attorney fees claimed, services performed, time spent for each service performed and hourly rate charged in connection with litigating the issue of defendant's revocation of authorization for Dr. Peterson to treat applicant for his dental injuries. Mashney Law has 15 days from the date of this order, plus additional time allowed pursuant to Cal. Code of Regs., tit. 8, section 10605, to file this documentation with the Court. Thereafter, defendant will have 15 days, plus additional time allowed pursuant to Cal. Code of Regs., tit. 8, section 10605, to respond in writing on the issue of applicant attorneys' entitlement to attorney fees; and that Applicant's petition for penalties, sanctions and attorney fees for failure to pay 104 weeks temporary disability indemnity and to provide medical treatment for applicant's urological dysfunction, erectile dysfunction and coronary artery disease dated 05/27/2025 is denied.

III. DISCUSSION

A. Sanctions

Defendant contends that defendant's revocation of authorization for Dr. Jerome Peterson, D.D.S./Guru Dentistry to treat applicant did not constitute a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay pursuant to Labor Code section 5813 and Cal. Code of Regs., tit. 8, section 10421(a) and (b)(6) because it is supported by "collateral medical evidence." (Pet. For Recon, at 8-22:23.) Defendant further argues that sanctions should not be imposed on the Law Firm of Hanna Brophy because they did not become involved in the litigation of this case until long after the acts that occurred that are the subject of the Court's finding.¹ These contentions lack merit.

Applicant filed a petition for sanctions and attorney fees pursuant to Labor Code section 5813 dated 05/14/2024. In their petition applicant contends that defendants' revocation of their authorization for Dr. Jerome Peterson, D.D.S./Guru Dentistry to treat applicant is frivolous, unsupported by the law and is intended to cause unreasonable delay. Defendant never filed a response to applicant's petition for sanctions and attorney fees.

Labor Code section 5813 states:

“(a) The 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. In addition, a workers’ compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars (\$2,500) to be transmitted to the General Fund.

(b) The determination of sanctions shall be made after written application by the party seeking sanctions or upon the appeal board’s own motion.

Cal. Code of Regs. tit. 8, sections 10421(a) and (b)(6) state:

“(a) On its own motion or upon the filing of a petition pursuant to rule 10510, the Workers’ Compensation Appeals Board may order payment of reasonable expenses, including attorney’s fees and costs and, in addition, sanctions as provided in Labor Code section 5813. Before issuing such an order, the alleged offending party or attorney must be given notice and an opportunity to be heard. In no event shall the Workers’ Compensation Appeals Board impose a monetary sanction pursuant to Labor Code section 5813 where the one subject to the sanction acted with reasonable justification or other circumstances make imposition of the sanction unjust.

(b) Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers’ Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit. Violations subject to the provisions of Labor Code section 5813 shall include but are not limited to the following:

(6) Bringing a claim, conducting a defense or asserting a position:

(A) That is:

(i) Indisputably without merit;

(ii) Done solely or primarily for the purpose of harassing or maliciously injuring any person; and/or

(iii) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation; and

(B) Where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.”

Applicant’s Exhibit “30” consists of defendant’s notice of revoking authority dated 04/26/2024 addressed to Dr. Jerome Peterson. The notice states:

“DR. JEROME PETERSON YOUR OFFICE WILL NOT LONGER BE RECOGNIZED AS AN AUTHORIZED DENTIST on the above claim.

In response to your RFA dated 04/23/2024 whereas you are requesting: MFL Composite Three Surface anterior D2332 tooth #6 Quality x 1 HANOVER INSURANCE OBJECTS TO ANY

AND ALL SERVICES DONE BY YOUR OFFICE MOVING FORWARD and any past authorization you may have is hereby revoked.

PER CHERI LEWIS, DDS --- TREATMENT IS NOT RELATED NOR NECESSARY for the industrial injury and treatment for any industrial injury has long since been completed and no more services are necessary.

Hanover Insurance revokes all authorizations given to your offices and will no longer recognize any reports from your office and they will not be subject to Utilization Review as they will now be considered self procured and not related. (Emphasis added.)

Defendants' notice states they are revoking any past authorization Dr. Peterson may have received and if services were provided pursuant to any prior authorization, then defendant will not pay for that treatment.

Labor Code section 4610.3(a) states:

“(a) Regardless of whether an employer has established a medical provider network pursuant to Section 4616 or entered into a contract with a health care organization pursuant to Section 4600.5, an employer that authorizes medical treatment shall not rescind or modify that authorization after the medical treatment has been provided based on that authorization for any reason, including, but not limited to, the employer’s subsequent determination that the physician who treated the employee was not eligible to treat that injured employee. If the authorized medical treatment consists of a series of treatments or services, the employer may rescind or modify the authorization only for the treatments or services that have not already been provided.” (Emphasis added.)

Defendant's notice of revocation of authorization for Dr. Peterson to treat applicant is based solely on the medical report of Dr. Cheri Lewis, D.D.S. dated 06/19/2023. As discussed in the section entitled “Objection to Evidence” below, defendant had the applicant evaluated by Dr. Lewis pursuant to Labor Code section 4050. It is well established that medical reports issued based on a Labor Code section 4050 evaluation are not admissible as evidence.

After The Law Firm of Hanna Brophy was substituted and appointed as defense counsel in this case, they made a motion at trial to have the report of Dr. Lewis admitted as evidence to prove that defendant's revocation of authorization was not an act of bad faith or was a tactic that is frivolous or solely intended to cause unnecessary delay. The Law Firm of Hanna Brophy has argued the same in the petition for reconsideration they prepared and signed under penalty of perjury on behalf of defendant. In addition, in their petition for reconsideration the Law Firm of Hanna & Brophy argues that they are unaware of any statutory or case law that holds Labor Code section 4050 examination reports are not admissible. (See section entitled “Objection to Evidence” below.)

Furthermore, the argument that The Law Offices of Hanna Brophy should not be sanctioned creates a potential conflict of interest with their client in violation of the California Rules of Professional Conduct section 1.7(b); specifically, in the event that the Court's finding and order imposing sanctions against The Hanover American Insurance Company is affirmed, then sanctions should not be imposed on The Law Offices of Hanna & Brophy.

Rule 1.7(b) states:

*“(b) A lawyer shall not, **without informed written consent*** from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer’s representation of the client will be materially limited by the lawyer’s responsibilities to or relationships with another client, a former client or a third person,* **or by the lawyer’s own interests.**”* (emphasis added.)

Subsection 1.7(d) states:

“(d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:
(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;*
(2) the representation is not prohibited by law; and
(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

No evidence was offered by The Law Offices of Hanna Brophy that they obtained written consent from their client in compliance with rule 1.7.

B. Objection to Evidence.

Defendant made a motion at the 11/05/2025 trial to have the medical reports of Dr. Cheri Lewis, D.D.S. dated 06/19/2023 and QME Dr. Stephen Choi dated 06/26/2020 admitted into evidence as additional defense next in order.

Applicant objected to the admissibility of Dr. Lewis’ report on the grounds that Labor Code section 4050 reports are not admissible as evidence in workers’ compensation proceedings.

Applicant objected to the admissibility of both reports on the grounds that they were not listed on defendant’s exhibit sheet attached to the first amended pretrial conference statement.

At the 11/05/2025 trial defendant informed the Court that Dr. Lewis’ examination of the applicant occurred pursuant to Labor Code section 4050. (MOH 11/05/2025 trial at, 3:17-19.)

Defendant admits they have no explanation to offer why these reports were not listed on defendant’s exhibit sheet attached to the first amended pretrial conference statement.

Defendant contends that the reports of Dr. Cheri Lewis, D.D.S. dated 06/19/2023 and QME, Dr. Stephen Choi dated 06/26/2020, are admissible because Dr. Choi’s report was properly obtained through the QME process and Dr. Lewis’ report was obtained pursuant to Labor Code section 4050 and that these reports were well known to the parties prior to the time the first amended pretrial conference statement was prepared, signed and filed with the Court at the

08/05/2025 trial. Essentially defendant is arguing that their failure to list these reports on their exhibit sheet attached to first amended pretrial conference statement constitutes harmless error.

Defendant further states that they are not aware of any case law or other legal authority that would make a medical report obtained under section 4050 inadmissible as a matter of law.

These contentions lack merit.

Labor Code section 4050 states:

“Whenever the right to compensation under this division exists in favor of an employee, he shall, upon the written request of his employer, submit at reasonable intervals to examination by a practicing physician, provided and paid for by the employer, and shall likewise submit to examination at reasonable intervals by any physician selected by the administrative director or appeals board or referee thereof.”

Labor Code section 4062.2(a) states:

“(a) Whenever a comprehensive medical evaluation is required to resolve any dispute arising out of an injury or a claimed injury occurring on or after January 1, 2005, and the employee is represented by an attorney, the evaluation shall be obtained only as provided in this section.”

In the case of *Felissa Lopez v. Target Corp.* 2012 Cal. Wrk. Comp. P. D. LEXIS 422 the WCAB held that

“ . . . although defendant is permitted by section 4050 to obtain an evaluation by Dr. Markovitz, that report is not admissible into evidence because of the limitations of sections 4061(h), 4062(a), and 4062.2”

In the case of *Adney v. Americold Logistics* 2019 Cal. Wrk. Comp. P.D. LEXIS 27 the WCAB held:

“The Court of Appeal has previously opined that section 4050 may not be used to circumvent the former procedures for obtaining medical evaluations for injuries prior to January 1, 2005. (Nunez v. Workers' Comp. Appeals Bd. (2006) 136 Cal.App.4th 58 [71 Cal.Comp.Cases 161]; Cortez v. Workers' Comp. Appeals Bd. (2006) 136 Cal.App.4th 596 [38 Cal. Rptr. 3d 922, 71 Cal.Comp.Cases 155].) Likewise, defendant cannot circumvent application of current section 4062.2 to applicant's claim through an examination by a physician under section 4050. (See Catlin v. J.C. Penney, Inc. (March 16, 2017, ADJ7264010, ADJ7498085) [2017 Cal. Wrk. Comp. P.D. LEXIS 106] [holding that a medical examination under section 4050 cannot circumvent the medical evaluation and reporting procedures in sections 4060, 4061, 4062 or 4610].)”

Labor Code section 5502(d)(3) states:

“If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall

close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.”

In the Case of *DPR Construction v. Workers’ Comp. Appeals Bd.* (2025) 111 Cal. App. 5th 1136, 1143 and 1145; 90 Cal. Comp. Cases 491,) the Court of Appeals

“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 twofold: (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. 1167, 1164.) 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 [88 Cal. Rptr. 2d 516] (San Bernardino).)

Here, the WCJ admitted the Hanley reports even though those reports were not listed on the pretrial conference statement. The board concedes this admission was not permitted by section 5502, but contends any error was harmless because the Hanley reports did not form the basis of the board’s decision. Applying long-standing precedent, we disagree that this error is reviewed for harmlessness.

Section 5502 establishes the “bounds of discretion vested in the [WCJ] for keeping discovery open after the mandatory settlement conference.” (County of Sacramento v. Workers’ Comp. Appeals Bd. (1999) 68 Cal.App.4th 1429, 1433 [81 Cal. Rptr. 2d 266].) “[D]is regard for the statutory procedural mechanisms for resolving workers’ compensation cases is inappropriate.” (Ibid.) Such disregard is not subject to harmless error analysis. (San Bernardino, supra, 74 Cal.App.4th at p. 938.)

In San Bernardino, the WCJ allowed the employee to offer additional testimony through a witness not disclosed at the time of the mandatory settlement conference. (San Bernardino, supra, 74 Cal.App.4th at p. 931.) The court concluded that the board abused its discretion and annulled its decision. (Id. at pp. 935, 938.) In doing so, the court explicitly rejected the argument that the employer was not prejudiced because it was given additional time to prepare to meet the unexpected evidence. (Id. at p. 938.)

According to the court, “the absence of prejudice cannot be the deciding factor” because “[a]n opposing party might often be unable to show specific prejudice” or the WCJ “could virtually always obviate any possible prejudice by granting a continuance or scheduling further hearings ... [which] would threaten to make section 5502, subdivision (d)(3) meaningless.” (Ibid.;

see also Burtnett v. King (1949) 33 Cal.2d 805, 807 [205 P.2d 657] [“where a statute requires a court to exercise its jurisdiction in a particular manner, follow a particular procedure, or subject to certain limitations, an act beyond those limits is in excess of its jurisdiction.”].) We see no reason to depart from this precedent. (See Arentz v. Blackshere (1967) 248 Cal.App.2d 638, 640 [56 Cal. Rptr. 809] [adopting rule from appellate court decision that “has stood without contradiction for seven years”]; Wolfe v. Dublin Unified School Dist. (1997) 56 Cal.App.4th 126, 137 [65 Cal. Rptr. 2d 280] [“we ordinarily follow the decisions of other districts without good reason to disagree”].)”

C. Temporary Disability

Defendant paid temporary disability indemnity from 06/23/2018 through 07/29/2018 at the weekly rate of \$347.67. Applicant claims an additional period of temporary disability from 01/21/2020 and continuing up to the two-year cap less amounts previously paid by defendant.

Based on the medical report of Dr. Barbara Justice (Psychiatry) dated 11/29/2022 (Joint Exhibit “RR”) the Court found that applicant is entitled to additional temporary disability for the period 01/10/2020 and continuing at a weekly rate to be adjusted by the parties with jurisdiction reserved up to the maximum allowed pursuant to Labor Code section 4656(c)(2) less amounts previously paid by defendant.

Defendant contends that Dr. Justice’s report does not constitute substantial medical evidence because applicant resigned his employment with PCH Petroleum, Inc. in December 2018 and that the circumstances surrounding the resignation of employment are not associated with emotional/psychological issues but rather due to a major familial dispute with his brother who was the owner of applicant’s place of employment.

In support of this contention defendant relies on a medical report from Dr. William Boehm (Psychology) dated 01/09/2019, reviewed by Dr. Justice on page 90 in the review of records section of her report. This contention lacks merit.

Dr. Justice noted that Dr. Boehm stated that applicant had a long and deep hatred of his brother who owned the gas station where he worked for 35 years. Defendant ignores the fact that Dr. Justice took a comprehensive history from the applicant regarding his relationship with his brother, which indicates that applicant stopped working for his brother because of psychological problems and physical pain that applicant continued to experience as a result of the industrial injury.

Specifically, on pages 13 and 14 of Dr. Justice’s report under the section entitled “History of Present Illness and Events Related to the Applicant’s Claim” the doctor notes;

“The claimant started working in the United States in September 1983 right after immigrating to this country when he worked at the Exxon gas stations in Long Beach, California, which later on, became an independent Mobil gas station. Mr. Sairafe’s brother was the owner and provided him with a job when first arrived in the United States. He stated, “He really helped me out.” The claimant continued to work for his brother all these years as General Manager.

In 2017, there was a change in management when the claimant's nephew became the General Manager and his brother, the owner of the station, demoted Mr. Sairafe to the position of Cashier and Clerk and reduced his wages. He had previously functioned in the role of General Manager and was earning about \$900 per week and as a Cashier/Clerk, he was earning approximately \$500 per week. Although the claimant was upset about this situation, he stated he went along with it, as he needed a job, but Mr. Sairafe did not understand the reasoning except that his brother wanted to promote his son to the position of General Manger.

The claimant indicated that things continued to be "okay" at work, although his brother was always mean to me, "noting . . . and that was nothing new." . . .

Dr. Justice notes that applicant reported that after the injury at work he was off work for approximately one month and that:

"The claimant returned to the workplace but resigned his position in December of that year, as he continued to be traumatized and scared that someone might return and harm him. While he did go back to work, Mr. Sairafe stated it was for a brief period of time and he suffered from Post-traumatic Stress Disorder-like symptoms and could no longer continue working. . . .

One month after the assault, Mr. Sairafe's brother asked him to return to the workplace and the claimant acquiesced, but did not really feel able to do so, because of his physical pain, particularly in his back. He indicated that his brother "lured" him back, stating "Come back and we'll take care of you." Mr. Sairafe was then placed on light duty for about six months in the capacity of Cashier. The claimant was in continual pain, taking his pain medications, which did help him cope throughout the day while attending physical therapy.

Eventually, Mr. Sairafe could not tolerate his ongoing pain any longer and decided to resign his position. . . ."

In support of their contention defendant also relies on Dr. Justice's review of a report from Dr. Adrienne Pasek, Psy. D. from Genesis Psychology Group, Inc. dated 11/01/2018 located on pages 81 through 88 of Dr. Justice's report wherein Dr. Pasek finds applicant's condition was permanent and stationary. Dr. Pasek diagnosis is listed as Adjustment Disorder Unspecified (DSM-5). Dr. Pasek evaluated applicant while he was still working. There is no indication that Dr. Pasek ever re-examined applicant after the applicant resigned or reviewed any additional reports or records. In fact, Dr. Justice notes on page 87 that Dr. Pasek's opinion is based on applicants' reporting only.

In addition, on pages 143 and 144 under the section entitled "Comments on Records" of her report Dr. Justice states:

". . . that those doctors who diagnosed the claimant with adjustment disorder with Mixed Mood (or per DSM-V, Unspecified), clearly underestimated the severity of the assault and its impact upon the claimant who continues to suffer from bona fide symptoms including PTSD noted in other section of this report. . . ."

Defendant also relies on a permanent and stationary report from Dr. Christopher Ingalls, Ph. D dated 01/09/2021 reviewed by Dr. Justice on pages 117 through 122 of her report. It appears that Dr. Ingalls examined applicant in early 2021 and did not review any medical reports or records.

On page 144 of her report under the section “Comments on records” Dr. Justice states:

“I will also state that Dr. Ingalls found that the claimant to be permanent and stationary as of January 29, 2021, and provided a GAF rating of 68. I do not agree that the claimant is either MMI status or functioning with a high GAF at this time and provided a GAF [of 55, provisional] in the middle to moderate range, which I believe, more accurately reflects the severity of his symptoms.”

In contrast to Drs. Boehm and Ingalls, Dr. Justice performed a compressive evaluation of applicant which included, taking a thorough history of injury as well as past history and current complaints, review of voluminous medical reports and records, including the reports of Drs. Boehm and Ingalls, totaling 4983 pages (page 3 of Dr. Justice’s report) and psychological testing.

D. Lien of EDD

EDD paid benefits from 01/05/2019 through 04/25/2019 and from 04/29/2019 through 01/06/2020 at the weekly rate of \$306.00. The Court noted that applicant is not claiming additional temporary disability benefits for this period. However, EDD may still have a claim for reimbursement of benefits for additional benefits applicant may be entitled to receive pursuant to Labor Code section 4904. Therefore, the issue of the lien of EDD was deferred.

Defendant contends that the Courts decision to defer the lien of EDD was improper because the payment of benefits by EDD is relevant to the issue of temporary disability. Defendant also contends that since there is no evidence to explain whether EDD paid disability or unemployment benefits and that EDD should be ordered to provide documentation in support of their lien or their lien should be dismissed.

These contentions lack merit.

Labor Code section 4656(c)(2) states:

“(2) Aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury.”

The statute does not state that the two-year period of temporary disability benefits must be continuous rather than intermittent.

In addition, according to the MOH for 09/16/2025 trial Ms. Ms. Margaret Hatch from EDD appeared and EDD was ordered to file and serve their exhibits no later than 10/01/2025. EDD failed to comply with the Court’s order. To date EDD has not filed any exhibits.

E. Nature and Extent of Injury, specifically injury to urological and erectile dysfunction

The Court's finding of injury to urological and erectile dysfunction is based on the medical report from QME Dr. Abdo Faddoul (Urologist) dated 12/13/2023 (Joint Exhibit "HH"). Defendant contends that based on the testimony set forth in Dr. Fadoul's deposition transcript dated 06/18/2025 (Joint Exhibit "EE") Dr. Fadoul's opinions are not based on substantial medical evidence because the doctor failed to perform any "objective" testing and that Dr. Faddoul did not review all of the medical records sent to him. These contentions lack merit.

On pages 140 and 141 of his 12/13/2023 report under the section entitled "Causation" Dr. Faddoul states:

"Regarding the causation for the patient's urinary symptomatology, he does have an enlarged prostate. But his urinary symptoms began after December 2018 with no symptoms prior to that time. In addition, he has very significant lumbar disc disease resulting in pain that radiates into his bilateral lower extremities. There is spinal canal stenosis with foraminal stenosis which have been described in multiple reports. His lumbar spine condition has been rated.

As far as the association between lumbar disc disease and urinary symptoms, it is well known that the signal from the bladder carried by the efferent fibers through the spinal cord up to the brain to indicate it is full can be disrupted by the presence of disc disease. The disease affects the fibers going up to the brain and the signal from the bladder to the brain is interrupted. Therefore, when the bladder fills up with fluid, it empties on its own as the brain is unable to suppress it. The efferent fibers from the brain to signal the bladder not to empty and to hold the urine will not occur due to fact that the signal is interrupted at the level of the spinal cord secondary to the disease.

In addition to this occurring, as noted above, is the presence of an enlarged prostate which blocks the channel and irritates the bladder. The patient would therefore have the same symptoms of frequency and difficulty emptying the bladder.

Based on the available information, this case involves a combination of two different causative factors. These two contributing factors will be addressed under the Apportionment section.

In summary, the patient's urinary problems are partially related to the lumbar disc disease and to benign prostatic hypertrophy. This is said in all medical probability.

As far as his erectile dysfunction, it is due to the pain in his back which suppresses his ability to get an erection and it takes him a long time to ejaculate. However, there are other numerous other factors involved which include the following:

The patient has diabetes, and there is three times greater possibility of developing erectile dysfunction compared to the general population per the Campbell-Walsh urology textbook. Secondly, he is an active smoker, there is 1.6 times greater possibility of developing erectile dysfunction compared to the general population. He is on antihypertensive medication which results in a 4 times greater possibility of developing erectile dysfunction compared to the general

population. Additionally, if one is on psychotropic medication there is 9 times greater possibility of having erectile dysfunction than the general population. The presence of high cholesterol and vascular disease in this patient both increase the possibility of developing erectile dysfunction.

All of these factors combined would adversely affect his erection and this information will be taken into consideration in the Apportionment section. This is said in all medical probability.”

In support of their contention that Dr. Faddoul’s opinion is not based on any objective testing defendant refers to Dr. Faddoul’s deposition testimony when he was asked about his comment on page 139 of his 12/13/2023 report that applicant does not have any objective factors at this time to confirm his findings.

This comment was made on page 139 of Dr. Faddoul’s report in the section entitled “Impairment Rating”. In that section Dr. Faddoul states that he does find that applicant has permanent impairment rating based on the Criteria in the AMA Guides for bladder disease. Dr. Faddoul determined that applicant would be in Class, 0-15% WPI which describes the symptoms and signs of bladder disorder and required intermittent treatment, and there is normal function between malfunctioning episodes.

In that report Dr. Faddoul goes on to state:

“This patient does have urgency, frequency and incontinence. Regarding treatment, he has been on continuous treatment. There is no normal function. Though I do not have any objective factors at this time to confirm these findings, the patient’s symptoms are significant, and therefore, I will give the patient 12% WPI related to his urinary symptom. His symptoms do affect his activities of daily living because he has to change his underwear frequently and has to be close to a bathroom all of the time. This is said in all medical probability.”

At his deposition Dr. Faddoul testified that he did not perform a urinalysis because the only reason to perform a urinalysis is if the patient has burning or blood in the urine or other symptoms to check for an infection and that applicant did not have any subjective symptoms of an infection

Dr. Faddoul testified that he did not have applicant undergo a urine cytology because there was no indication applicant had blood in his urine.

Dr. Faddoul testified that he did not have applicant undergo an ultrasound because applicant needs to go to a urologist who will decide what testing needs to be done for purposes of treatment or assessing applicant permanent impairment rating. (Depo. Transcript of Dr. Faddoul dated 06/18/2025 at, 9:18-14:6.).

At his deposition Dr. Faddoul was asked about performing testing on the applicant to evaluate him for erectile dysfunction. Dr. Faddoul testified that studies are no longer done for erectile dysfunction because most people take Viagra. Dr. Faddoul testified that you cannot give Viagra to this applicant or perform testing on him because he has” *so much bad vascular disease.*” Dr. Faddoul testified that applicant has heart disease and that you do not want to do any injection

of vasoactive drugs inside the penis and study the penis for blood flow because it would be too risky for the applicant. (Depo. Transcript dated 06/18/2025 at, 25:24-26:10 and 27:16-27:9.)

Defendant contends that a third-party named Praveen Goud, rather than Dr. Faddoul reviewed the medical records submitted for his review. This contention lacks merit.

On page 142 of his 12/13/2023 report under the section entitled "Compliance Disclosure Statement" Dr. Faddoul states, in relevant part, that:

*"An initial excerpting of the medical records was completed by Praveen Goud, who is trained in medical record excerpting. In combination with the examination, **the excerpts and records were reviewed to define the relevant medical issues.**" [Emphasis added.]*

This disclosure was signed by Dr. Faddoul on 12/18/2023. At his deposition Dr. Faddoul testified as follows:

"Q. How did you use Praveen Gurt [sic] to organize and summarize your medical records?"

A. This is done through ExamWorks. Okay? That's the – that's the company I work with. What they do, they help us to put things together. They do the management with the billing, with the appointments, with the attorneys. And part of the job that they do, they send the records to be excerpted -- the records -- you know, to go through the record, for somebody to go through the records who's trained in that. Okay. So when I get the excerpting, I go through it, all of it. And then what I do, I review the records myself. I review the actual records myself -- anything that is related to urology. Anything that is related to my report, I go through it myself.

I'm going to give you an example. The patient, like I stated in this one, he has diabetes. So I go look how long has he had diabetes, what medication he's on, and so on and so forth. And every single item that I have, I review it myself to be sure where I'm now in a deposition – I write all my reports considering I'm going to get deposed. So all information that I have I can defend it. So every single item in my report has been on basis of reviewing the actual records themselves.

Q. So you're going through Examworks?"

A. Let me finish. The patient has been seen by a dentist. Okay? Dr. Peterson in that report. He has multiple files. I'm not going to review every dental thing, every single one of them. I know he saw a dentist. But that's not relevant for me to talk about. You follow me? But anything else related to other things that affects my report, I go through it in detail. (Depo. Transcript Dr. Faddoul dated 06/18/2025 at, 44:3-45:9.)

IV. RECOMMENDATION

The petition for reconsideration should be denied.
This case was transmitted to the Recon Unit on January 27, 2026.

DATE: January 27, 2026

Howard Lemberg
WORKERS' COMPENSATION JUDGE