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UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION, FIRST STREET COURTHOUSE

VANGUARD MEDICAL MANAGEMENT
 BILLING, INC., a California corporation; *et*
al.,

Plaintiffs,

v.

CHRISTINE BAKER, in her official
 capacity as Director of the California
 Department of Industrial Relations; *et al.*,

Defendants.

CASE NO.: 5:17-cv-00965-GW-DTB

**DECLARATION OF PAIGE S. LEVY IN
 SUPPORT OF DEFENDANTS'
 SUPPLEMENTAL OPPOSITION TO
 PLAINTIFFS' MOTION FOR
 PRELIMINARY INJUNCTION**

Hearing

Date: August 24, 2017

Time: 8:30 a.m.

Dept: Courtroom D, 9th Floor

THE HONORABLE GEORGE H. WU

United States Courthouse
 350 West 1st Street
 Los Angeles, CA 90012

1 I, PAIGE S. LEVY, hereby declare and state as follows:

2 1. I make this Declaration of my own personal knowledge and if called to testify, I
3 could and would testify competently to the matters stated herein. I declare the following in support
4 of Defendants' Supplemental Opposition to the Motion for Preliminary Injunction in this matter.

5 2. I am the Chief Judge of the California Division of Workers' Compensation
6 ("DWC"). The DWC is a division of the California Department of Industrial Relations ("DIR"),
7 which is a department within the Labor and Workforce Development Agency ("LWDA"). I have
8 been Chief Judge of the DWC since February 1, 2016. Prior to my appointment as Chief Judge, I
9 served as the Presiding Judge for the Marina Del Rey District Office of the DWC for
10 approximately four years, commencing in 2012. Prior to that time, I served for approximately
11 seven years as a Workers' Compensation Administrative Law Judge ("WCALJ") within the
12 Marina Del Rey District Office of the DWC, commencing in 2005. Prior to becoming an WCALJ,
13 I was in private practice for approximately ten years, specializing in workers' compensation law.
14 My current office is located in the Marina Del Rey District Office of the DWC. As the Chief
15 Judge of the DWC, I am an employee of the State of California. Although I am a member of the
16 California State Bar, my Bar membership is currently inactive due to my service as an
17 administrative law judge.

18 3. I have served on a number of professional committees related to my experience in
19 workers' compensation law. I served as Chair of the Workers' Compensation State Bar Executive
20 Committee for the 2013-2014 term, and in total served on the Committee for five years. I have
21 also been a board member for the California Conference of Workers' Compensation Judges. I was
22 the project manager for the 2013 revisions to the DWC Policy and Procedural Manual, and have
23 served as a member of the DWC Ethics Advisory Committee.

24 4. As the Chief Judge of the DWC, it is my role to oversee the more than 160
25 WCALJ's who adjudicate workers' compensation cases within the DWC's 24 District Offices and
26 satellites, including with respect to administrative processes, training, and accountability. I
27 monitor, oversee, and establish various administrative processes and procedures within the DWC
28 and District Offices that are used for effective case management, maintenance of case calendars,
case reporting, and records management. In addition, I oversee and coordinate various processes
and administrative functions related to the judicial, legal, and related operational activities of the
Division. I also oversee training for the WCALJ's with respect to both the substantive law that
governs workers' compensation cases (statutory and regulatory) and the administrative processes

1 and procedures within the DWC and WCAB. As part of that role, I coordinate the annual training
2 for WCALJ's, coordinate training for new judges throughout the year as necessary, and also
3 implement and supervise training as necessary concerning the content and impact of new
4 legislation and the implementation of any new administrative processes or requirements. As part
5 of my duties as Chief Judge, I also advise the Administrative Director of the DWC, the Director of
6 the Department of Industrial Relations, the DIR and DWC legal units, and other members of the
7 Administration, upon their request, on issues concerning legislative proposals, new legislation, and
8 other issues related to legislative or policy changes within the workers' compensation system.

9 5. As Chief Judge, I have no role in adjudicating individual cases; nor do I have any
10 role in supervising WCALJs with respect to their decisions in individual cases. Any claim of error
11 with respect to a decision made by a WCALJ in a particular case would be by way of a Petition for
12 Removal or Petition for Reconsideration made to the Workers' Compensation Appeals Board
13 ("WCAB"). My role as Chief Judge is in monitoring and supervising the training of judges,
14 monitoring the performance of judges on issues unrelated to their decisions in individual cases
15 (e.g., whether decisions are being issued in a timely manner, whether calendars are being
16 maintained, investigating complaints of conflict of interest, etc.), and in supervising the
17 administrative systems and processes that are used within the DWC to carry out its statutory and
18 regulatory obligations with respect to the adjudication of workers' compensation cases.

19 6. As part of my duties, I hold a monthly conference call training and meeting with
20 all of the Presiding Judges of the DWC District Offices. The purpose of this monthly call is to
21 advise the Presiding Judges concerning any matters that will impact their work, including any new
22 legislation, any new administrative procedures of the DWC or WCAB, any issues or concerns with
23 respect to our Electronic Adjudication Management System (EAMS), and any other matters that
24 may impact the Presiding Judges, the WCALJs or the District Offices. I also use the monthly call
25 to hear from the Presiding Judges about any issues or concerns they may have in their District
26 Offices. When I convey training information to the Presiding Judges in our monthly conference
27 calls, they are then responsible for passing on that information to the WCALJs within their District
28 Office.

 7. The statute that is challenged in this action, Labor Code section 4615 ("Section
4615"), was passed by the Legislature in the 2016 legislative session as part of a package of anti-
fraud bills. The statute went into effect on January 1, 2017. Although the statute technically went
into effect on January 1, 2017, there was necessarily some delay in its practical effect. This is

1 because the statute requires that any lien filed “by or on behalf of” a physician or provider “shall
 2 be automatically stayed upon the filing of criminal charges against that physician or provider for
 3 an offense involving fraud against the workers’ compensation system” or for other specified
 4 crimes. (Lab. Code § 4615.) The statute also requires the Administrative Director of the DWC to
 5 post a list on the website of “the names of any physician or provider of medical treatment services
 6 whose liens were stayed pursuant to this section.” (*Ibid.*) Thus, the practical impact or effect of
 7 the statute was based on when the Administrative Director began identifying physicians and
 8 providers who had been charged with crimes falling within specifications of the statute and began
 9 posting the names of those providers on the department website. Although my recollection is that
 10 the initial list was posted in early January of 2017, it is also my understanding that the list has
 11 expanded over time as the Administrative Director became aware of additional providers who had
 12 been criminally charged.

11 8. As part of its implementation of Section 4615, it is my understanding that once
 12 the names of providers who had been charged with crimes falling within the specifications of
 13 Section 4615 were identified, staff within the DWC also identified liens currently pending in the
 14 workers’ compensation system that were believed to be “filed by or on behalf of” those providers,
 15 and these liens were then flagged (given a “stay” status code) within the DWC electronic case
 16 management system (referred to as EAMS). I was not part of that process, but I have personal
 17 knowledge that it occurred. I was given on one or more occasions a list of providers whose liens
 18 had been identified by DWC staff as likely subject to the Section 4615 stay. On at least one
 19 occasion, I sent out this list out to the Presiding Judges. This list was broader than the list of
 20 criminally-charged providers posted on the DWC website in that it included both the personal
 21 names of physicians and other providers who had been identified as the subject of criminal
 22 charges, and also the names of certain business entities that DWC staff had identified as those that
 23 were filing liens “on behalf of” individuals who had been criminally charged. Many physicians
 24 and other providers within the workers’ compensation system do not file liens in their own name;
 25 they file through a billing entity, medical practice, corporate entity, or other such business entity.
 26 The liens of the individuals and entities on the list created by DWC staff were flagged in EAMS,
 27 as part of a clerical process, for the purpose of alerting WCALJs to the possibility that a stay might
 28 apply to those liens under Section 4615. It is my understanding that the actual flagging process
 29 was done by the manager of the EAMS unit.

9. It is my understanding that there may have been some initial confusion among

1 WCALJs in the District Offices as to how Section 4615 operates and how it applies to liens in
 2 individual cases. This would not surprise me as there is always a learning curve with new
 3 legislature and new statutory provisions. It is also my understanding that there may have been a
 4 few cases in which WCALJ's expressed the view that they could not adjudicate any issues
 5 concerning Section 4615 and affected liens because the statute refers to the stay as "automatic."
 6 Commencing in my March conference call with the Presiding Judges, however, and continuing in
 7 the April, May and June meetings, I instructed the Presiding Judges that issues concerning the
 8 applicability of the Section 4615 stay to any particular lien in an individual case should be heard
 9 by WCALJ's, under usual procedures, and adjudicated based on the language of the statute and the
 10 facts and circumstances of each case. Under applicable statutory and regulatory provisions,
 11 workers' compensation judges have the power "to hear and determine all issues of fact and law
 12 presented," (Cal. Code Regs., tit. 8, §10348), and that would include whether a Section 4615 stay
 13 applies to liens in the case. As such, I instructed the Presiding Judges that: 1) the flagging of liens
 14 as "stayed" within EAMS is just for information purposes to alert judges and parties that a lien
 15 may be subject to a stay based on the filing of criminal charges against a provider; 2) the "stay"
 16 code in EAMS is based on a clerical process and does not reflect a judicial determination that the
 17 lien is, in fact, stayed under Section 4615; 3) that lien claimants have a right to challenge whether
 18 the Section 4615 stay applies to a lien in a particular case (i.e., to challenge whether it is filed "by
 19 or on behalf of" a provider charged with a crime falling within the parameters of Section 4615);
 20 and 4) if that issue is properly raised by any party, including lien claimants, the WCALJs need to
 21 adjudicate the issue by applying the provisions of Section 4615, and any additional applicable
 22 statutory or regulatory provisions, to the facts and circumstances of the particular case. Per usual
 23 procedures, the Presiding Judges to whom I provided training and instruction on these issues, were
 24 expected to distribute the information to the WCALJs in their respective District Offices.

25 10. Following the filing of litigation against the DWC and WCAB concerning the
 26 new anti-fraud legislation, including this case, I asked the Presiding Judges in the DWC District
 27 Offices to send me copies of any orders or decisions of which they were aware, issued by WCALJs
 28 in their respective District Offices, involving challenges to Section 4615 stays. I was subsequently
 informed of several cases in which WCALJ's, and/or the WCAB, have issued orders or decisions
 reflecting either an adjudication as to the applicability of a Section 4615 lien (i.e., either finding
 the stay applied or did not apply), an *intent* to adjudicate the issue (i.e., directing trial on the issue
 or ordering discovery on the issue, etc.), or in the case of the WCAB, an *order or instruction* to the

1 lower court (i.e., the WCALJ) to adjudicate a Section 4615 issue. I am attaching true and correct
 2 copies of the relevant orders and pleadings filed in these cases, all of which are official records of
 3 WCAB proceedings, as follows:

4 Orders and Decisions of the Workers' Compensation Appeals Board (WCAB)

5 a. Attached hereto as Exhibit A is an Opinion and Order Granting Petition
 6 for Removal and Decision After Removal, issued by the WCAB on June 7, 2017, in a
 7 case entitled *Sergio Encisco v. Toys "R" Us, et al.*, WCAB Case No. ADJ9447000. In
 8 this case, the Opinion reflects that the WCALJ had declined to proceed with a lien trial in
 9 March of this year on the ground that the lien claimant, First Line Health Los Angeles,
 10 was on "a list of stayed providers," and therefore the issue for trial was "moot." In its
 11 decision issued on June 7, 2017, the WCAB granted the lien claimant's Petition for
 12 Removal (essentially an appeal of an interim order in a workers' compensation case),
 13 reversed the WCALJ's order, and held that "the WCJ should have allowed the parties to
 14 introduce evidence at the lien trial as to (1) whether Dr. Johnson was under indictment for
 15 a qualifying offense, and (2) whether the lien was filed 'by or on behalf of' Dr. Johnson."
 16 (See Exhibit A hereto, p. 3.) The WCAB further noted that a supplemental Petition had
 17 been filed demonstrating that the criminal charges against the provider had been
 18 dismissed subsequent to the original hearing in any event, and accordingly, the Section
 19 4615 stay, even "to the extent it existed in the first instance," no longer applied. As part
 20 of this Opinion and Order, the WCAB noted that the list created by the DWC of
 21 criminally-charged providers is "provided as a matter of administrative convenience,"
 22 and "is not itself a basis for finding a lien is stayed." (Exhibit A hereto, p. 2, fn. 3.)

23 b. Attached hereto as Exhibit B is an Opinion and Order Granting Petition
 24 for Reconsideration and Decision After Reconsideration issued on May 5, 2017 in a case
 25 entitled *Ricky McNeill v. Marina Shipyard, et al.*, WCAB Case No. ADJ7860537. As is
 26 indicated in the Opinion, the issue before the WCAB, and before the WCALJ in the
 27 challenged order, was whether the Section 4615 stay applied to specific liens filed in that
 28 case. The WCAB granted reconsideration and remanded for further consideration of the
 issue.

c. Attached hereto as Exhibit C is a true and correct copy of an Opinion and
 Order Granting Petition for Removal and Decision After Removal, issued by the WCAB
 on April 13, 2017, in a case entitled *Carmen Aguirre v. County of Los Angeles*, WCAB

Case No. ADJ7921523. In this case, as summarized in the Opinion, two corporate lien claimants had petitioned for removal (i.e., filed an interim appeal) after the WCALJ had stayed all proceedings on their lien claims pending further orders. The order issued by the WCALJ had followed a “Petition for Stay” filed by the defendant in the action and a lien trial that had been conducted on the issues. According to the decision, “the WCJ confirmed with the parties that the criminal complaint pertains to the services for which [the Lien Claimant] seeks reimbursement via its lien claim, and that defendant in this case is one of the alleged victims in the criminal case.” (Exhibit B, hereto, p. 2.) The lien claimants appealed, arguing that the stay did not apply to them because the relevant criminal indictments had been issued against individuals, and the liens at issue had not been filed on behalf of the charged providers. The WCAB granted the Petition for Removal (i.e., overturned the WCJ’s order). Its decision noted that Section 4615 requires the stay of liens filed “by or on behalf of” criminally-charged providers, and that the WCJ had apparently made such a determination at trial. The WCAB held, however, that the WCALJ had not admitted sufficient evidence into the record to support the decision, and therefore it was not supported by substantial evidence. The WCAB remanded the case to the WCALJ “for a new decision after a hearing on the record at which evidence may be presented.” (Exhibit B hereto, p. 4.)

Orders and Decisions of WCALJ’s and Party Pleadings.

d. Attached hereto as Exhibit D is a true and correct copy of a Report and Recommendation on Petition for Reconsideration filed by a WCALJ on March 15, 2017 in a case entitled *Luis Leonel Lopez Vargas, et al. v. Academy of Magical Arts, et al.*, WCAB Case No. ADJ9803711. In workers’ compensation cases, a Report and Recommendation is prepared by a WCALJ, and directed to the WCAB, after the filing of a Petition for Reconsideration by a party in the case. This Report indicates that on February 2, 2017, the WCALJ had concluded that a lien of National Script Pharmacy was stayed pursuant to Section 4615, and that the lien claimant had subsequently filed an untimely Petition for Reconsideration of that order. Although the WCALJ found that the Petition was both untimely and improper because it was not taken from a final order, the judge nevertheless reconsidered his earlier order and concluded that applicability of the Section 4615 stay could be adjudicated. The Report states as follows:

Lien claimant is free to file a Declaration of Readiness to Proceed on its lien if it

1 wishes, and a Lien Conference will be set.[2] If either of the defendants herein
 2 wishes to assert that the lien should be considered stayed pursuant to section
 3 4615, that issue can be heard and a formal finding of fact can be made. If lien
 4 claimant is then aggrieved by that finding, a petition for reconsideration (or
 5 perhaps removal) would be appropriate. Otherwise, there is nothing which
 6 requires action by the Appeals Board. If defendants do not choose to assert that
 7 the lien should be considered stayed, then any regular disputes regarding
 8 defendants' liability to lien claimant can be litigated in the normal fashion.

9 (Exhibit D hereto, p. 4.)

10 e. Attached hereto as Exhibit E are true and correct copies of a Minutes of
 11 Hearing/Order and Supplement to Minutes of Hearing/Order issued on May 4, 2017, trial
 12 briefs filed by a lien claimant (National Script Pharmacy) and a defendant (SCIF), and a
 13 Minutes of Hearing issued on July 19, 2017, in a case entitled *Oliver Munguia v. Virtual*
 14 *Composites Co., et al.*, Case No. ADJ9361128. As is apparent from these pleadings and
 15 the Minutes of Hearing and Supplement, the WCALJ in this case ordered and held a lien
 16 trial on the question of whether Section 4615 required a stay of the lien at issue. The
 17 parties were invited to submit trial briefs on the issue and EAMS records indicate that the
 18 matter is under submission as of the date of this Declaration.

19 f. Attached hereto as Exhibit F is a true and correct copy of Minutes of
 20 Hearing/Order issued by a WCALJ on July 17, 2017 in a case entitled *Francisca Salazar*
 21 *v. 99 Cents Only, et al.*, WCAB Case No. ADJ9734186. The Minutes reflect that the
 22 judge, referring to the WCAB decision in the *Encisco* case, referenced above and
 23 attached hereto as Exhibit A, determined that the stay would be "lifted" as to lien
 24 claimant Firstline Health "in the instant case only."

25 g. Attached hereto as Exhibit G are true and correct copies of a Pre-Trial
 26 Conference Statement and Minutes of Hearing/Order filed on March 23, 2017 in a case
 27 entitled *Leoel Gonzalez v. JMA Industries, et al.*, WCAB Case No. ADJ8586989. These
 28 pleadings show that the WCALJ set the case for a Lien Trial on the sole issue of whether
 the "LC" (lien claim) of Post Surgical Rehab Specialists was stayed pursuant to Labor
 Code section 4615. A subsequent Minutes of Hearing/Order issued on May 11, 2017, a
 true and correct copy of which is also attached hereto as part of Exhibit G, shows that the
 Lien Trial was continued to July 25, 2017, due to the unavailability the court, and that the
 parties were directed to file trial briefs. The Minutes of Hearing/Order issued on July 25,
 2017 at the time of the scheduled Lien Trial, a true and correct copy of which is also

1 attached hereto as part of Exhibit G, shows that the parties agreed to take the matter off
 2 calendar because the lien claimant had failed to file the mandatory declaration required
 3 by Labor Code section 4903.05, subdivision (c)(2), by the due date of July 1, 2017, and
 4 therefore its lien was dismissed by operation of law.

5 h. Attached hereto as Exhibit H is a true and correct copy of an Opinion on
 6 Decision issued by a WCALJ on July 20, 2017 in a case entitled *Carmen Garcia De*
 7 *Herrera v. Micro Solutions Enterprise*, WCAB Case No. ADJ8945010. The Opinion
 8 indicates that “[t]he Court [was] tasked with determining whether an administrative stay
 9 applied to a provider, pursuant to Labor Code §4615, is applicable to related lien
 10 claimants of record.” (Exhibit H hereto, p. 1.) For the reasons set forth in the Opinion,
 11 the judge found that the liens at issue were not subject to the stay.

12 i. Attached hereto as Exhibit I is a true and correct copy of a Minutes of
 13 Hearing/Order issued by a WCALJ on May 2, 2017 in a case entitled *Rosa Casillas v.*
 14 *Colorbok, Inc., et al.*, WCAB Case No. ADJ7432990. The Minutes indicate that the
 15 judge had considered a Petition to Stay the liens of certain lien claimants filed by the
 16 defendant in the case, and objections to the Petition filed by the lien claimants, as well as
 17 additional supporting documents, and found that the Section 4615 stay “applies to said
 18 liens.”

19 j. Attached hereto as Exhibit J is a true and correct copy of a Minutes of
 20 Hearing/Order and Pre-Trial Conference Statement, both dated July 13, 2017, in a case
 21 entitled *Blanca Torres v. Ability Pathways, Inc.*, WCAB Case No. ADJ 9703451. These
 22 pleadings and orders indicate that the matter has been set for a Lien Trial on August 30,
 23 2017, and that one of the issues to be tried is whether the lien of “Dr. Randolph” is stayed
 24 pursuant to Section 4615. (Exhibit J, Pre-Trial Conference Statement, p. 3.)

25 k. Attached hereto as Exhibit K are true and correct copies of a Minutes of
 26 Hearing/Order issued on May 9, 2017 and a Petition for Removal filed on June 2, 2017 in
 27 a case entitled *Adelita Perez v. Illah Sports, Inc., et al.*, Case No. ADJ9544397. The
 28 Minutes of Hearing/Order reflect that the WCALJ in the case ordered a lien of Mesa
 Pharmacy stayed based on the filing of criminal charges against an individual named
 John Gabino. The Petition for Removal indicates that the lien claimant appealed the
 decision. In workers’ compensation cases, a Petition for Removal is type of interim
 appeal to the WCAB. In ruling on the Petition for Removal, the WCAB will review the

1 substantive and procedural issues presented, and will issue a decision either denying the
2 Petition (affirming the underlying order) or granting the Petition and issuing a decision.
3 As of the date of this Declaration, the Petition for Removal in this case remains pending.

4 l. Attached hereto as Exhibit L are true and correct copies of Findings and
5 Orders Re: Lien of Prime Medical Resources, Inc. and an Opinion on Decision, issued by
6 a WCALJ on July 31, 2017 in a case entitled *Julio Acevedo v. Super King Market, et al.*,
7 WCAB Case No. ADJ8706980. These Orders and Opinions demonstrate that the judge
8 in this case held a lien trial to determine, *inter alia*, whether the lien of a particular lien
9 claimant was subject to a Section 4615 stay. The judge found that the lien was not
10 stayed, but that it was invalid because the lien claimant had never complied with the
11 requirement to file a proper declaration under penalty of perjury supporting the lien as
12 required by Labor Code section 4903.8, subdivision (d).

13 m. Attached hereto as Exhibit M is a true and correct copy of an Opinion on
14 Decision dated June 23, 2017 in a case entitled *Beatriz Linares v. Vocal Inc., et al.*,
15 WCAB Case No. ADJ8618080. This document reflects that the WCALJ was
16 adjudicating the “sole issue” of whether a representative of a lien claimant should be
17 sanctioned for “filing multiple DORs where lien is stayed.” (Exhibit M, p. 1.) The judge
18 denied the Petition for sanctions for the reasons stated. Part of the Opinion states:
19 “Regardless, due process requires that even a stayed lien claimant be afforded notice and
20 opportunity to be heard on the issue of whether a particular lien should be stayed
21 pursuant to Labor Code section 4615.” (Exhibit M, p. 2.)

22 n. Attached hereto as Exhibit N is a true and correct copy of a Consolidation
23 Minutes of Status Conference (Further) and Order, issued by a WCALJ on June 19, 2017,
24 in a case entitled *Maria Radilla Roman v. Berkshire Hathaway, et al*, WCAB Case No.
25 ADJ8912696. The Minutes and Order reflect that this judge is presiding over a
26 consolidated lien proceeding the purpose of which is to determine whether the liens of a
27 particular lien claimant (First Choice) “are in fact within the automatic stay of Labor
28 Code Section 4616 [sic], criminal charges being filed against Fred Khalili.” (Exhibit N
hereto, p. 2.) The Minutes and Order further indicate that the judge is allowing
discovery, and intending to set the matter for hearing at the appropriate time.

11. This final case listed above, *Roman v. Berkshire Hathaway*, has particular
significance in this case because the law firm representing the lien claimant in the *Roman* case, in

1 which the WCALJ is allowing discovery and intends to conduct a hearing on the issue of whether
2 the Section 4615 stay applies, is Arent Fox, one of the firms that represents the Plaintiffs in this
3 case. Thus, while plaintiffs' counsel are arguing in the case before this Court that there is no
4 process for lien claimants to challenge a Section 4615 stay, attorneys from Arent Fox are
5 participating in a workers' compensation case in which they have, in fact, challenged the
6 applicability of Section 4615 to certain liens that are in dispute. The judge has allowed the parties
7 to litigate the issue, including by way of ongoing discovery, and has stated an intent to set the
8 matter for a hearing.

9 12. The opinions, decisions and orders referenced in the paragraphs above, and
10 attached hereto as Exhibits, reflect at least the following concerning the adjudication of Section
11 4615 stay issues within workers' compensation cases in the past few months: 1) that WCALJs
12 have considered and adjudicated those issues in a number of cases when and as raised by the
13 parties; 2) that in some cases judges have determined that the stay applies and in other cases have
14 ruled to the contrary; and 3) that when a party believes a WCALJ has erred in ruling on the issue,
15 or in failing to rule on the merits of the issue, lien claimants have appealed the issue to the WCAB
16 on petitions for reconsideration or removal; and 4) the WCAB has ruled on those issues, and has
17 issued opinions and orders which, *inter alia*, recognize that the list of criminally-charged providers
18 generated by the DWC is for informational purposes only and direct judges to determine whether
19 the Section 4615 stay applies by taking evidence as to whether the lien(s) at issue are filed "by or
20 on behalf of" a criminally-charged provider.

21 13. For the Court's information, I provide the following very brief background
22 information concerning how cases, including lien claims, are adjudicated within the workers'
23 compensation system. I provide this information because the workers' compensation system is
24 somewhat unique, and its process and procedures may be unfamiliar to those outside the system.
25 In general, the statutory provisions governing how workers' compensation cases are adjudicated
26 are set forth in California Labor Code sections 5300 to 5956. The applicable regulations, referred
27 to as the Workers' Compensation Appeals Board Rules of Practice and Procedure, are set forth in
28 the California Code of Regulations, title 8, sections 10300 through 10959. The applicable
statutory provisions concerning the filing of lien claims for medical treatment or other services are
set forth in Labor Code sections 4903 through 4906. The regulations concerning liens are found
in, *inter alia*, sections 10770 to 10773. In general terms, an adjudicated workers' compensation
case is commenced by the filing of an Application for Adjudication of Claim by the injured

1 worker. (Lab. Code, § 5500; Cal. Code Regs., tit. 8, § 10400.) Sometimes a case is initiated, after
2 the parties have already settled, by the filing of an opening Compromise and Release or a
3 Stipulations with Request for Award. (*Ibid.*) Lien claims may be filed during the pendency of a
4 case. (See Lab. Code, §§ 4903, 4903.05, 4903.6, 4903.8; Cal. Code Regs., tit. 8, §§10770.) There
5 are multiple requirements that apply to the filing of lien claims and that must be satisfied in order
6 for a lien claimant to be entitled to compensation. I will not go into all of those requirements here,
7 as they are lengthy. Once a lien claimant files a lien in a case, that person or entity becomes a lien
8 claimant “of record” and is listed on the “Official Address Record” (“OAR”) for the case. The lien
9 claimant is then entitled to service of all subsequent pleadings and orders in the case. (Cal. Code
10 Regs., tit. 8, §§ 10500, 10505.) Although listed on the OAR, a lien claimant is technically not a
11 “party” to a workers’ compensation case until the underlying case in chief, between the injured
12 worker and the employer/insurer has either been resolved or abandoned by the applicant. (See Cal.
13 Code Regs., tit. 8, § 10300, subd. (dd).) This means that, in practical terms, liens are always
14 “stayed” in every workers’ compensation case until the underlying case is resolved.

15 14. There are no procedures for law and motion hearings in workers’ compensation
16 cases in the same way there are in civil cases. Instead, there are two ways that parties may bring
17 an issue before a WCALJ for discussion, informal resolution, and/or adjudication. First, at any
18 time during the pendency of a case, a party may request an appearance before a judge by filing a
19 “Declaration of Readiness to Proceed” (“DOR”). The DOR is a form document that asks the party
20 to state the reason for the requested appearance (e.g., the parties have a dispute concerning
21 discovery; settlement negotiations are at an impasse; additional parties need to be joined, etc.).
22 (Cal. Code Regs., tit. 8, § 10414.) Upon the filing of a DOR, and unless a timely objection is filed,
23 a calendar clerk will automatically set the case for hearing before a judge and notice will be sent to
24 all parties. Depending on what is indicated in the DOR, the case will be set for a status
25 conference, a lien conference, an expedited hearing, a mandatory settlement conference, etc. Lien
26 claimants are not supposed to file a DOR requesting a lien conference until they are a “party,” i.e.,
27 until the underlying case has resolved. Judges, however, are authorized to set a lien conference at
28 any time on their own motion. (Cal. Code of Regs., tit. 8, § 10770.1, subd. (a).) At the conclusion
of any conference or hearing before a WCALJ, the judge issues a document titled Minutes of
Hearing/Order, in the form reflected in several of the Exhibits that are attached hereto. The
Minutes of Hearing reflect appearances at the conference, and any orders or instructions of the
judge. The DOR process can be used to raise essentially any kind of issue before a judge in a

1 workers' compensation case.

2 15. The second way that an issue may be brought before a WCALJ for adjudication is
3 by way of the filing of a Petition. (Cal. Code Regs., tit. 8, § 10450.) Petitions are like motions in
4 workers' compensation cases. A Petition is a "request for action" by the WCALJ which indicates
5 the type of relief requested; other parties have the opportunity to file "Answers" (oppositions) to
6 the Petition. (*Ibid.*) Petitions are not set for hearing, but a Petition filed with a DOR would result
7 in the case being set for a conference at which the parties could argue the issues presented in the
8 Petition. Like the DOR process, a Petition can be filed on essentially any kind of issue. There is
9 no bar on lien claimants who are not yet technically parties from filing a Petition. (Cal. Code
10 Regs., tit. 8, § 10450, subd. (i).) Thus, under generally applicable procedures in workers'
11 compensation cases, a lien claimant could file a Petition requesting an adjudication of an issue
12 concerning Labor Code section 4615 and the application of the automatic stay.

13 16. Parties, including lien claimants, may appeal decisions and orders of WCALJ's to
14 the WCAB either by way of a Petition for Removal, which is used if the challenged order is not a
15 final order, or by way of a Petition for Reconsideration, which is used to appeal from a final order
16 or decision. (Lab. Code § 5900, *et seq.*; Cal. Code Regs., tit. 8, §§ 10840-10864.) Any party may
17 appeal an order or decision by way of Petition for Removal or Petition for Reconsideration, and the
18 WCAB considers and rules on all such Petitions. (*Ibid.*) "Any person affected by an order,
19 decision or award" of the WCAB may then apply to the California Supreme Court or to a Court of
20 Appeal within 45 days for a writ of review "for the purpose of inquiring into and determining the
21 lawfulness of" of the WCAB's decision. (Lab. Code, § 5950.)

22 17. I am unaware of any case or instance in which a physician or other provider has
23 asserted that he or she has been mistakenly listed on the list of criminally-charged providers that is
24 posted on the department website. The most recent version of that list is posted here:

25 http://www.dir.ca.gov/Fraud_Prevention/List-of-Criminally-Charged-Providers.pdf

26 As is apparent from the list, it includes not only the name of the charged physician, but also the
27 name of the criminal case, the jurisdiction in which the criminal charges are filed, and a case
28 number. Given that each name posted is referenced with an actual court case, the likelihood of an
error – i.e., the wrong person is listed – is low. If such an error did occur, however, (e.g., John B.
Smith is listed instead of John A. Smith), there would be various ways the affected (wrongly
named) provider could seek to correct the situation. First, he or she could simply write a letter, or
even an email, to the DWC, the Administrative Director, or the Director of the DIR, pointing out

1 the error and requesting correction. There is no reason of which I am aware for why the
2 Administrative Director would not promptly correct an error brought to his attention. Second, the
3 issue could be raised by way either a DOR or a Petition, as described above. If a lien claimant
4 filed a DOR requesting a status or lien conference to address an alleged error in the naming of the
5 physician on the list of criminally-charged providers, standard practice would be for a calendar
6 clerk to set the matter for a conference and a notice of hearing would be generated and sent out to
7 parties. At the hearing, the WCALJ would hear from the parties on the issue, and then issue a
8 Minutes of Hearing/Order, in the form of those that are attached as Exhibits here, stating the
9 judge's findings on the issues raised and issuing any necessary orders. The judge could, for
10 example, find that the provider was erroneously listed, order that the liens of that provider are not
11 stayed, and order the lien claimant to serve a copy of the order on the Administrative Director of
12 the DWC.

13 18. I have reviewed the Court's Tentative Ruling in this case and understand that the
14 Court asked the following questions: "(1) Does the stay prevent charged lien holders from
15 appearing and participating in lien conferences and lien trials? (2) Does it prevent charged lien
16 holders from enforcing liens that are approved in those settings? (3) Does it affect the notice right
17 granted by state regulation." (Tentative Ruling, p. 25, n. 25.) As noted, it is not my role as Chief
18 Judge to adjudicate individual cases or to instruct WCALJ's how to rule in individual cases. That
19 said, and from an administrative standpoint, I offer the following in response to the Court's
20 questions. First, WCALJ's have been instructed that when properly called upon to do so according
21 to usual practices and procedures as described above, they may determine whether the Section
22 4615 stay applies to a particular lien claimant or a particular lien in a case, i.e., whether the lien is
23 "filed by or on behalf of" a provider who has been criminally-charged for an offense as described
24 in Labor Code section 4615. If the WCALJ determines that a Section 4615 stay *does* apply, this
25 would not prevent the lien claimant from appearing and participating in a lien conference initiated
26 by another party, or in any other type of conference, but it would prevent the WCALJ from
27 adjudicating the stayed lien, i.e., it would prevent any orders on the merits of the lien, any order
28 directing discovery on the stayed lien, any order directing payment on the stayed lien, or any order
directing dismissal of the lien. If a particular lien has been determined to be stayed, it would not
thereafter be appropriate for that lien claimant to file a DOR requesting further lien conferences,
unless the circumstances have changed. (For example, if the criminal charges against the provider
were dismissed, which would result in the lifting of the stay under Section 4615, the lien claimant

1 could file a DOR and/or a Petition in order to notify the WCALJ of this development and to
2 request the setting of a lien trial.) With respect to the Court's second question, I understand the
3 Court to be asking whether Section 4615 would allow a defendant to refuse to comply with a prior
4 order for payment on a lien. This would be an issue for a judge to adjudicate in a particular case.
5 In general, however, once a lien has been resolved, either by way of stipulation or following a lien
6 trial, the WCALJ enters an order for payment based on the stipulation or findings at trial. At that
7 point, the lien is complete, i.e., it is no longer a lien. In place of the lien, there is an order for
8 payment. If a defendant subsequently refused to pay in compliance with the judge's order for
9 payment, the beneficiary of that order would have the right under usual procedures to file a
10 Petition for enforcement of the order, or for an order compelling payment, or for sanctions, etc., or
11 to file a DOR asking for an appearance in which to raise the issue. The WCALJ would then
12 adjudicate the issue in the ordinary course. If either party (the defendant or the lien claimant)
13 disagreed with the judge's order on the issue, that party would then have the right to file a Petition
14 for Removal or Petition for Reconsideration to the WCAB. And per usual procedures, if any party
15 then disagreed with the WCAB's decision, that party would have a right to file a Petition for Writ
16 of Review. With respect to the third question, no, the Section 4615 stay does not affect the notice
17 rights of any lien claimants. No changes are made to the Official Address Record (OAR), which is
18 used for service of process, in any case in which the Section 4615 stay may apply. Any lien
19 claimant that may be subject to the stay would continue to receive service of all pleadings and
20 orders filed in the case.

21 I declare the foregoing under penalty of perjury under the laws of the State of California.
22 Executed this 2nd day of August, 2017, at Marina Del Rey, California.

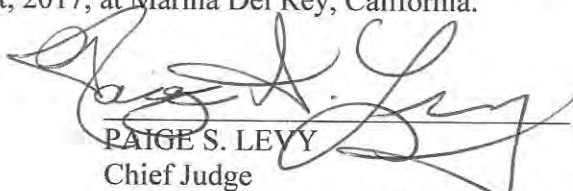
23 
24 PAIGE S. LEVY
25 Chief Judge
26 California Division of Workers' Compensation
27
28

EXHIBIT A

JUN 12 2017

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

SERGIO ENCISO,

Applicant,

vs.

**TOYS "R" US; BARRETT BUSINESS
SERVICES, INC.; ZURICH NORTH
AMERICA,**

Defendants.

Case No. ADJ9447000
(Pomona District Office)

**OPINION AND ORDER
GRANTING PETITION FOR
REMOVAL AND
DECISION AFTER
REMOVAL**

Lien claimant Firstline Health seeks removal of the Minute Order signed by the workers' compensation administrative law judge (WCJ) on March 1, 2017, wherein the WCJ found that lien claimant's lien was stayed by operation of Labor Code section 4615.¹ Lien claimant contends that the WCJ erred because the indictment that defendant alleges stayed the matter was dismissed on March 16, 2017, and because there was no proof that the indicted individual had sufficient relationship to lien claimant to stay the action in the first instance.

We received an Answer from defendant. We also received a "Request for Supplemental Petition for Removal" from lien claimant, which we will consider as a Supplemental Petition pursuant to WCAB Rule 10848 (Cal. Code Regs., tit. 8, § 10848). Finally, we received a Report and Recommendation on Petition for Removal (Report) from the WCJ, recommending we deny removal.² Based on our review of the record, we will grant removal, rescind the Order, and return this matter to the trial level for further proceedings.

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

² The Report also recommends dismissing the Petition because petitioner failed to file a Notice of Representation. However, petitioner did file a Notice of Representation in EAMS on April 24, 2017. The Supplemental Petition explains why the Notice of Representation was not filed earlier. In the circumstances, we will consider any error corrected, and will not dismiss the Petition on this basis.

1 Applicant filed an Application for Adjudication, claiming a cumulative trauma injury to his back,
2 neck and shoulders from December 2013 to March 10, 2014, while employed by defendant unloading
3 trucks. Applicant's claim was resolved via Compromise and Release approved on November 25, 2016.

4 Lien claimant filed a lien seeking compensation for services provided on applicant's behalf
5 during the pendency of his claim. On March 1, 2017, the parties appeared for a lien trial on the issue of
6 whether the lien was stayed pursuant to section 4615. The WCJ took the matter off calendar, writing:
7 "Based on a list of stayed providers (Excel spreadsheet emailed to WCJs on 2/2/17), there is currently a
8 stay on First Line Health Los Angeles pursuant to Labor Code section 4615(a). The issue for trial is
9 therefore moot."

10 This Petition for Removal followed.

11 Section 4615(a) states, in relevant part:

12 Any lien filed by or on behalf of a physician or provider of medical
13 treatment services under Section 4600 or medical-legal services under
14 Section 4621, and any accrual of interest related to the lien, *shall be*
15 *automatically stayed upon the filing of criminal charges against that*
16 *physician or provider* for an offense involving fraud against the workers'
17 compensation system, medical billing fraud, insurance fraud, or fraud
against the Medicare or Medi-Cal programs. The stay shall be in effect
from the time of the filing of the charges until the disposition of the
criminal proceedings.

18 (§ 4615, emphasis added.) Section 4615(b) tasks the Administrative Director with promulgating and
19 making available a list of providers who are currently under indictment for qualifying offenses for
20 purposes of the automatic stay. (*Ibid.*)³

21
22 ³ This list is available online at: [https://www.dir.ca.gov/Fraud_Prevention/List-of-Criminally-Charged-](https://www.dir.ca.gov/Fraud_Prevention/List-of-Criminally-Charged-Providers.pdf)
23 [Providers.pdf](https://www.dir.ca.gov/Fraud_Prevention/List-of-Criminally-Charged-Providers.pdf). We note that this list, provided as a matter of administrative convenience, is not itself a
24 basis for finding a lien is stayed. Instead, section 4615's lien applies automatically upon a triggering
25 indictment, and expires upon disposition of the indictment, whether or not the list yet reflects the
26 indictment or disposition. Furthermore, although not directly relevant here, it is important to note that
27 section 139.21, concurrently enacted with section 4615, provides for a related but different procedure in
the case of someone who has been *convicted* of a qualifying fraud offense. According to section 139.21,
the administrative director "shall promptly suspend" convicted providers; once the suspension goes into
effect, all the provider's liens are consolidated in a special lien proceeding, where a WCJ then determines
whether the liens are the product of fraud and should be disallowed as such. (See Lab. Code § 139.21.)

1 Section 4615's stay applies to any filings made "by or on behalf of" an indicted physician or
2 provider. Here, from our review of the record, it appears the WCJ's conclusion that the lien is subject to
3 the section 4615 stay was not based on a finding that lien claimant itself was under indictment, but
4 instead that one of lien claimant's owners, Dr. David Johnson, was under indictment. (See Report, at 5.)

5 Dr. Johnson's name does appear on the list of criminally charged providers listed on the
6 Administrative Director's website. However, his name does not appear as a "provider." Instead, Dr.
7 Johnson is listed only as a co-defendant to several others listed as providers. According to the Report,
8 the WCJ took the matter off calendar based on an Excel spreadsheet distributed to WCJs on February 2,
9 2017. Under the circumstances, we do not believe the WCJ should have found the section 4615 stay
10 applied to this matter based only upon a spreadsheet, without considering and admitting evidence of the
11 nature of Dr. Johnson's relationship to lien claimant, or whether Dr. Johnson was actually currently
12 under indictment for a qualifying offense. Instead, the WCJ should have allowed the parties to introduce
13 evidence at the lien trial as to (1) whether Dr. Johnson was under indictment for a qualifying offense, and
14 (2) whether the lien was filed "by or on behalf of" Dr. Johnson. (See Lab. Code § 5313; *Hamilton v.*
15 *Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478; *Lamb v. Workmen's Comp.*
16 *Appeals Bd.* (1974) 11 Cal.3d 274 (WCJ's decision should be supported by and refer to substantial
17 evidence in the record).)

18 However, according to the Supplemental Petition, the case against Dr. Johnson, Case Number
19 BA425397-06 in the County of Los Angeles, was dismissed on March 16, 2017. Los Angeles County's
20 online case summary tool appears to confirm this representation. Therefore, regardless of what
21 relationship Dr. Johnson might have to lien claimant, and regardless of whether Dr. Johnson himself was
22 ever a provider whose liens were subject to the section 4615 stay, the dismissal of charges against him
23 ended the section 4615 stay in this case to the extent it existed in the first instance.

24 Accordingly, we will grant removal, rescind the Minute Order, and return the matter to the trial
25 level for further proceedings.

26 ///

27 ///

1 For the foregoing reasons,

2 **IT IS ORDERED** that defendant's Petition for Removal of the Minute Order of March 1, 2017 is
3 **GRANTED.**

4 **IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation
5 Appeals Board that the Minute Order of March 1, 2017 is **RESCINDED** and that the matter is
6 **RETURNED** to the trial level for further proceedings.

7 **WORKERS' COMPENSATION APPEALS BOARD**


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12 **KATHERINE ZALEWSKI**

13 **I CONCUR,**

14
15 

16 **FRANK M. BRASS**

17 

18 **DEPUTY**

19 **RICHARD L. NEWMAN**



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUN 07 2017

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

**FIRSTLINE HEALTH
LIENING EDGE
LANSFORD & GONZALES**

AW/bea



EXHIBIT B

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

RICKY MCNEILL,

Applicant,

vs.

**MARINA SHIPYARD; STATE
COMPENSATION INSURANCE FUND,**

Defendants.

Case No. **ADJ7860537**
(Long Beach District Office)

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

Defendant State Compensation Insurance Fund seeks reconsideration of the Stipulation and Order to Pay Lien Claim (Order) signed by the workers' compensation administrative law judge (WCJ) on February 13, 2017, wherein the WCJ approved a settlement of Coastline Medical Clinic's lien for \$550.00. Defendant contends reconsideration should be granted because, unbeknownst to the litigants, the lien was filed on behalf of a doctor who is currently under indictment for fraud-related offenses. Defendant argues therefore that the matter was automatically stayed by operation of Labor Code¹ section 4615, meaning the WCJ had no power to approve the settlement, and the resulting order was therefore void.

We did not receive an answer from lien claimant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ, recommending that the petition be denied as untimely, but suggesting the WCJ could treat the petition as a petition requesting rescission of the Order. Based on our review of the record, we will grant reconsideration, rescind the Order, and return this matter to the trial level for further proceedings.

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

Initially, we consider the timeliness of the petition. The Order is dated February 13, 2017; the Petition for Reconsideration was received on March 10, 2017. Section 5903 allows 20 days after service of a final order, decision, or award to file a petition for reconsideration, and the time for filing may be extended five days for mailing where service was made on an address in California, with an additional day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10507(a)(1); see § 10508.) A petition for reconsideration is deemed filed on the day it was actually received and not on the date it was deposited in the mail. (Cal. Code Regs., tit. 8, §§ 10845(a), 10230(a).) The time limit for filing a petition for reconsideration is jurisdictional so that the Appeals Board lacks the power to grant an untimely petition. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1058 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979 [46 Cal.Comp.Cases 1008].)

WCAB Rule 10500 (Cal. Code Regs., tit. 8, § 10500) states in pertinent part that:

(a) Except as provided in subdivision (b) below, the Workers' Compensation Appeals Board may, in its discretion, designate a party or lien claimant, or their attorney or agent of record, to make service of notices of the time and place of hearing, orders approving compromise and release, awards based upon stipulations with request for award and any interim or procedural orders.

(c) If the Workers' Compensation Appeals Board effects personal service of a document at a hearing or at a walk-through proceeding, the proof of personal service shall be made by endorsement on the document, setting forth the fact of personal service, the name(s) of the person(s) served and the date of service. The endorsement shall bear the signature of the person making the service.

Here, the Order indicates that defendant's representative was designated to serve the Order on all parties. However, the Order does not reflect that defendant's representative was personally served with the Order (to allow her to serve it on the other parties), and the date field is blank. In these circumstances, we cannot conclude that defendant's representative was personally served with the Order on February 13, 2017; as such, defendant was entitled to the additional five days for service provided for by WCAB Rule 10507. Because the petition was filed March 10, 2017, exactly 25 days after February 13, 2017, we conclude the petition is timely.

1 We turn next to the merits of the petition. Section 4615 states, in relevant part:

2 Any lien filed by or on behalf of a physician or provider of medical
3 treatment services under Section 4600 or medical-legal services under
4 Section 4621, and any accrual of interest related to the lien, *shall be*
5 *automatically stayed upon the filing of criminal charges against that*
6 *physician or provider* for an offense involving fraud against the workers'
7 compensation system, medical billing fraud, insurance fraud, or fraud
8 against the Medicare or Medi-Cal programs. The stay shall be in effect
9 from the time of the filing of the charges until the disposition of the
10 criminal proceedings.

11 (§ 4615, emphasis added.) Section 4615 tasks the Administrative Director with promulgating and
12 making available a list of providers who are currently under indictment for qualifying offenses for
13 purposes of the automatic stay. (*Ibid.*)²

14 Section 4615's stay applies to any filings made "by or on behalf of" an indicted physician or
15 provider. (§ 4615.) Here, lien claimant itself is not listed on the indictment, or on the administrative
16 director's list of doctors and providers currently under indictment. However, the Petition for
17 Reconsideration alleges that the lien was filed on behalf of a doctor who is under indictment for a
18 qualifying offense, and who is listed on the Administrative Director's list of doctors whose liens are
19 subject to the section 4615 stay. We did not receive an answer contesting these allegations. If defendant
20 is correct, the matter was automatically stayed, the WCJ was without power to approve the settlement,
21 and the Order is void as a matter of law.

22 In the absence of any contrary representations that the lien was not filed on behalf of the doctor in
23 question, we believe the most prudent course of action is to rescind the Order and return the matter to the
24 WCJ for further proceedings. These proceedings should be limited to the issue of determining whether
25 the section 4615 stay applies. If the WCJ concludes that the stay does not apply to this case, the Order
26 should be reinstated.

27 ² This list is available online at: https://www.dir.ca.gov/Fraud_Prevention/List-of-Criminally-Charged-Providers.pdf. Although not directly relevant here, it is important to note that section 139.21, concurrently enacted with section 4615, provides for a related but different procedure in the case of someone who has been *convicted* of a qualifying fraud offense. According to section 139.21, the administrative director "shall promptly suspend" convicted providers; once the suspension goes into effect, all the provider's liens are consolidated in a special lien proceeding, where a WCJ then determines whether the liens are the product of fraud and should be disallowed as such. (See Lab. Code § 139.21.)

Accordingly, we will grant reconsideration, rescind the Order, and return the matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the February 13, 2017 Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the February 13, 2017 Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

Cristine E. Gondak

DEPUTY

CRISTINE E. GONDAK

I CONCUR,

Jose H. Razo

JOSE H. RAZO

DEPUTY



RICHARD L. NEWMAN

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 05 2017

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

**PERONA LANGER BECK
COASTLINE MEDICAL
SCIF INSURED (2)**

AW/bea

MCNEILL, Ricky

EXHIBIT C

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CARMEN AGUIRRE,

Applicant,

vs.

**COUNTY OF LOS ANGELES, permissibly
self-insured,**

Defendant.

Case No. **ADJ7921523**
(Van Nuys District Office)

**OPINION AND ORDER
GRANTING PETITION FOR
REMOVAL AND DECISION
AFTER REMOVAL**

Lien claimants Landmark Medical Management, LLC ("Landmark") and PharmaFinance, LLC ("Pharma") seek removal in response to the November 3, 2016 Order issued by the workers' compensation administrative law judge (WCJ), wherein the WCJ stayed all proceedings on Landmark's and Pharma's lien claims pending further order of the court. Lien claimants contend the stay should not have issued, because the criminal indictments that formed the basis of the stay were not against lien claimants, but instead against "individual, natural persons."

We did not receive an answer from defendant. We received a Report and Recommendation on Petitioner for Removal (Report) from the WCJ, recommending that removal be denied. Based on our review of the record, we will grant removal, rescind the Order, and return this matter to the trial level for the WCJ for further proceedings.

FACTUAL BACKGROUND

Applicant settled her cumulative injury trauma claim on August 5, 2015. On December 2, 2015, she filed a Petition to Reopen; that petition is still pending before the WCJ. Lien claimants filed liens pertaining to treatment provided to applicant before the initial settlement.

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1 On August 18, 2016, defendant filed a Petition for Stay of Proceedings under Labor Code section
2 4615,¹ arguing lien claimants' lien trial should be stayed because individuals allegedly associated with
3 lien claimants have been criminally indicted for workers' compensation fraud. On August 23, 2016,
4 defendant filed an amended Petition for Stay, attaching the criminal complaint.

5 On November 3, 2016, the parties appeared before the WCJ for a lien trial on lien claimant's lien.
6 According to the Report, the WCJ confirmed with the parties that the criminal complaint pertains to the
7 services for which Pharma seeks reimbursement via its lien claim, and that defendant in this case is one
8 of the alleged victims in the criminal case. That same day, the WCJ issued an Order stating: "All
9 proceedings re: liens filed by Pharma Finance or Landmark are stayed pending further order from this
10 court."

11 This Petition for Removal followed.

12 DISCUSSION

13 Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers'*
14 *Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5];
15 *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases
16 133, 136, fn. 2].) The Appeals Board will grant removal only if the petitioner shows that substantial
17 prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10843(a);
18 see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration
19 will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code
20 Regs., tit. 8, § 10843(a).)

21 Section 4615 states, in relevant part:

22 Any lien filed by or on behalf of a physician or provider of medical treatment
23 services under Section 4600 or medical-legal services under Section 4621, and
24 any accrual of interest related to the lien, *shall be automatically stayed upon*
25 *the filing of criminal charges against that physician or provider* for an offense
26 involving fraud against the workers' compensation system, medical billing
fraud, insurance fraud, or fraud against the Medicare or Medi-Cal programs.
The stay shall be in effect from the time of the filing of the charges until the
disposition of the criminal proceedings.

27 ¹ All further references are to the Labor Code unless otherwise specified.

1 (§ 4615, emphasis added.) Section 4615 tasks the Administrative Director with promulgating and
2 making available a list of providers who are currently under indictment for qualifying offenses for
3 purposes of the automatic stay. (*Ibid.*)²

4 In circumstances such as these, the WCJ's decision "must be based on admitted evidence in the
5 record" and must be supported by substantial evidence. (See §§ 5903, 5952, subd. (d); *Hamilton v.*
6 *Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478; *Lamb v. Workmen's Comp.*
7 *Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.*
8 (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1
9 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, "the WCJ
10 is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly
11 designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at p. 475.)

12 Section 4615's stay applies to any filings made "by or on behalf of" an indicted physician or
13 provider. (§ 4615.) Here, lien claimants themselves are not listed on the indictment, or on the
14 administrative director's list of doctors and providers currently under indictment. However, the Petition
15 for Stay alleges that a doctor under indictment for a qualifying offense was involved in the provision of
16 the services for which that the lien seeks compensation, and the Report states that the WCJ confirmed
17 this with the parties. It is unclear from the record in what manner and to what extent the indicted
18 individual is alleged to have been involved with the current lien, and therefore whether the lien was filed
19 "on behalf of" the indicted person under the meaning of section 4615. The WCJ did not admit any
20 evidence showing those facts, nor do the Minutes of Hearing contain any stipulations to that effect.
21 Moreover, the indicted doctor's name provided in the Petition for Stay of Proceedings is not the same
22 name provided in the attached indictment; it is not clear which doctor is alleged to have been involved
23 with this particular lien and the indictment. Finally, the relationship between Landmark and Pharma is
24

25 ² This list is available online at: https://www.dir.ca.gov/Fraud_Prevention/List-of-Criminally-Charged-Providers.pdf.
26 Although not directly relevant here, it is important to note that section 139.21, concurrently enacted with section 4615,
27 provides for a related but different procedure in the case of someone who has been *convicted* of a qualifying fraud offense.
According to section 139.21, the administrative director "shall promptly suspend" convicted providers; once the suspension
goes into effect, all the provider's liens are consolidated in a special lien proceeding, where a WCJ then determines whether
the liens are the product of fraud and should be disallowed as such. (See Lab. Code § 139.21.)

1 not entirely clear from the record, nor is it clear why the WCJ believed that *all* liens filed by either
2 Landmark or Pharma must be stayed pursuant to section 4615.

3 In the circumstances, the WCJ's decision is not compliant with *Hamilton*, and we simply do not
4 have the record necessary to determine whether the automatic stay of section 4615 applies to this lien or
5 to any other liens filed by Landmark or Pharma.

6 Accordingly, we will grant lien claimants' Petition for Removal, rescind the Order, and return the
7 matter to the trial level for a new decision after a hearing on the record at which evidence may be
8 presented.

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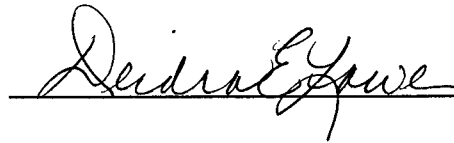
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For the foregoing reasons,

IT IS ORDERED that lien claimants' Petition for Removal of the Order issued by the WCJ on November 3, 2016 is **GRANTED**.

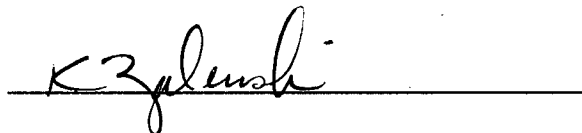
IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the November 3, 2016 Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD



I CONCUR,

DEIDRA E. LOWE



KATHERINE ZALEWSKI

CONCURRING, BUT NOT SIGNING

MARGUERITE SWEENEY



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APR 13 2017

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

CARMEN AGUIRRE
GLAUBER BERENSON
TENENHOUSE, MINASSIAN & ADHAM
THE BLUE LAW GROUP

AW/bea

AGUIRRE, Carmen

EXHIBIT D

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ 9803711

LUIS LEONEL LOPEZ
VARGAS; NATIONAL
SCRIPT PHARMACY (Lien
Claimant)

-vs.-

THE ACADEMY OF
MAGICAL ARTS;
COMPWEST; ICW

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE: Hon. PAUL DeWEESE

DATE: March 15, 2017

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

<u>Date of Injury:</u>	December 2, 2009 to December 2, 2014
<u>Age on DOI:</u>	46
<u>Occupation:</u>	Dishwasher
<u>Parts of Body Alleged:</u>	Multiple
<u>Identity of Petitioner:</u>	Lien claimant, National Script Pharmacy
<u>Timeliness:</u>	The petition was <u>late</u> filed on March 13, 2017
<u>Verification:</u>	The petition was verified
<u>Date of Alleged Order:</u>	February 2, 2017
<u>Petitioner's Contentions:</u>	Petitioner contends the WCJ erred by ordering its lien stayed, but no such order was made.

II **FACTS**

Applicant Luis Leonel Lopez Vargas filed three separate Applications for Adjudication of Claim alleging multiple injuries on November 10, 2014 (**ADJ 9803696**); May 7, 2014 (**ADJ 9937468**); and during the period December 2, 2009 to December 2, 2014 (**ADJ 9803711**). All of applicant's claims were resolved by way of Joint Compromise and Release approved on August 6, 2015.

On October 27, 2016, lien claimant National Script Pharmacy (petitioner herein), through its representative Anthesis Global, Inc., filed a lien in case number **ADJ 9803711**.

On February 2, 2017, in response to a Declaration of Readiness to Proceed filed by a different lien claimant, a Lien Conference was held in case number **ADJ 9803711**. At that time, defendants advised the court that all liens of record had been resolved except for Multicare Health Center (who did not appear at the Lien Conference) and National Script Pharmacy (who did appear). The court noted on the Minutes of Hearing dated February 2, 2017 that a Notice of Intention to Dismiss the lien of Multicare Health Center would be issued as a result of its non-appearance at the conference,¹ and that the lien of National Script Pharmacy was stayed per Labor Code section 4615.

On March 13, 2017, 39 days after the conference, lien claimant filed an untimely and improper petition for reconsideration.

III **DISCUSSION**

The petition for reconsideration is improper in that it is not filed in response to a final decision or order which resolves the substantive rights, liabilities or obligations of the parties. In fact, this judge did not make any order at all regarding National Script Pharmacy.

Labor Code section 4615(a), which took effect on January 1, 2017 as part of Senate Bill 1160, provides that "Any lien filed by ... a physician or provider of medical treatment [or medical-legal] services ... shall be *automatically* stayed upon the filing of criminal charges against that physician or provider [for certain specified offenses]. The stay shall be in effect from the time of the filing of charges until the disposition of the criminal proceedings."

¹ The NOI issued on 2/3/2017, there was no objection, and that lien was ordered dismissed on 3/6/2017.

(emphasis added).

By the express terms of the statute, the stay imposed by section 4615 is automatic. It occurs by operation of law without any order of or action by the Board. This judge's notation on the February 2, 2017 Minutes was not an order, but an observation regarding the already existing (as of January 1, 2017) status of the lien and an explanation for the record regarding why that lien was not resolved or otherwise disposed of at the Lien Conference.

As with all new statutes and procedures, the interpretation and application of section 4615 is evolving at the Board's district offices as guidance and instructions are received over time from the Presiding Judges and the Chief Judge. In late January, at a lien conference in another case, a defendant presented this judge with documentation from the Secretary of State showing that a chiropractor named Bahar Danesh Garib (aka Bahar Gharib-Danesh) was a shareholder of National Script Pharmacy and was listed as holding all of the pharmacy's officer positions. As acknowledged by petitioner, that chiropractor is currently under indictment and there is no doubt that section 4615 would apply to the chiropractor's direct liens. After consultation with the Presiding Judge in the Anaheim District Office, this judge was advised that it was the view of the Presiding Judge as well as her superior, the Associate Chief Judge for the South, that the liens of any companies owned or controlled by indicted individuals should also be considered stayed. As a result, this judge began advising National Script Pharmacy that its liens were considered stayed, including the February 2, 2017 notation on the Minutes of the instant case.

However, after further consultation with the Chief Judge and input from the DWC Legal Department, the Presiding Judge in Anaheim recently advised all of the judges in this office that only lien claimants who were expressly listed as stayed in EAMS or specifically named as indicted providers should be considered automatically stayed pursuant to section 4615. For lien claimants who, as in this case, may be owned or controlled by indicted individuals but who are not themselves indicated or listed as stayed in EAMS, the judges were instructed to consider their status on a case-by-case basis, and that it was up to defendants (or any other interested party with standing to do so) to assert that section 4615 should apply and to provide evidence and argument in support of that position at a hearing on the issue.

This current approach is largely in agreement with the arguments made in the instant petition for reconsideration. If this judge had made an actual order or finding that National

Script Pharmacy's lien was stayed in this case, the order or finding would be rescinded. However, since no order or finding was ever made, there is nothing to rescind in response to the petition.

Lien claimant is free to file a Declaration of Readiness to Proceed on its lien if it wishes, and a Lien Conference will be set.² If either of the defendants herein wishes to assert that the lien should be considered stayed pursuant to section 4615, that issue can be heard and a formal finding of fact can be made. If lien claimant is then aggrieved by that finding, a petition for reconsideration (or perhaps removal) would be appropriate. Otherwise, there is nothing which requires action by the Appeals Board. If defendants do not choose to assert that the lien should be considered stayed, then any regular disputes regarding defendants' liability to lien claimant can be litigated in the normal fashion.

Finally, even if the note on the Minutes were considered an order, the petition for reconsideration is untimely. National Script Pharmacy had a representative present at the February 2, 2017 Lien Conference who was given a copy of the Minutes by defendant. As a result, lien claimant had until February 22, 2017 to file a petition for reconsideration.

IV **RECOMMENDATION**

It is respectfully recommended that lien claimant's Petition for Reconsideration be dismissed as not taken from any order or finding of the court, and that the matter be returned to the trial level for further proceedings upon the request of any party.

DATE: March 15, 2017



PAUL DeWEESE
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:

ANTHESIS PALMDALE , PO BOX 3600 PALMDALE CA 93590
COMPWEST NEWPORT BEACH PO BOX 40799 LANSING MI 48901
DIETZ GILMOR LONG BEACH , 249 E OCEAN BLVD STE 1000 LONG BEACH CA 90802,
MARIAH@DGCATTORNEYS.COM

² Although it will have to wait until the Appeals Board acts on the petition for reconsideration, unless lien claimant withdraws the petition for reconsideration in writing in light of the analysis herein.

INSURANCE CO OF THE WEST SAN DIEGO , PO BOX 509039 SAN DIEGO CA 92150
NATIONAL SCRIPT PHARMACY RESEDA , PO BOX 101565 PASADENA CA 91189
RAPHAEL HEDWAT SHERMAN OAKS , 5170 SEPULVEDA BLVD STE 380 SHERMAN OAKS CA 91403,
HEDWATLAW@GMAIL.COM

ON: 3/15/2017


BY: 

EXHIBIT E

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

CASE NUMBER(s):

ADJ 9361128

Munguia Olives

Applicant,

v.

Virtual Composites Co Inc;
SCIF

Defendants,

MINUTES OF HEARING/ORDER/ORDER AND
DECISION ON REQUEST FOR CONTINUANCE/
ORDER TAKING OFF CALENDAR/
NOTICE OF HEARING

☐ BEFORE ☒ AT
☐ TRIAL ☐ MSC
☐ CONF ☐ EXP HEARING ☒ LIEN
DATE OF HEARING 5/4/2017 REQUEST _____
☐ SUPPLEMENTAL SIGN IN SHEET IS ATTACHED
☐ SUPPLEMENTAL PAGES/ORDERS

APPEARANCES: APPLICANT ☐ PRESENT ☐ NOT PRESENT

APPLICANT REPRESENTED BY

☐ ATTORNEY☐ HEARING REP.

DEFENDANT REPRESENTED BY

SCIF Legal by John Au-Yang

☒ ATTORNEY☐ HEARING REP.

OTHERS APPEARING

Marta Mendoza for Empire Radiology

☐ ATTORNEY☐ HEARING REP.

INTERPRETER

CERTIFICATION NO.

PARTY MAKING REQUEST

☐ JOINT☐ APPLICANT☐ DEFENDANT☐ OTHER

REQUEST FOR:

☐ CONTINUANCE☐ OTOC

REQUEST BY:

☐ LETTER☐ TELEPHONE

POSITION OF OPPOSING PARTY

☐ AGREE☐ OPPOSE

REASON FOR REQUEST

☐ FURTHER DISCOVERY: ☐ APP MED ☐ DEF MED ☐ AME ☐ DEPO
☐ CALENDAR CONFLICT: ☐ APPLICANT ☐ DEFENSE ☐ L.C.
☐ SETTLEMENT PENDING
☐ IMPROPER/INSUFFICIENT NOTICE BY PARTY
☐ IMPROPER DECLARATION OF READINESS/VALID OBJECTION
☐ NON-APPEARANCE ☐ APP ☐ DEF ☐ LIEN CLAIMANT ☐ WITNESS
☐ APPLICANT ☐ DEF COUNSEL ☐ VACATION ☐ ILLNESS
☐ UNAVAILABILITY OF WITNESSES ☐ APP ☐ DEFENSE
☐ DISPUTE RESOLVED BY AGREEMENT ☐ NO ISSUES PENDING
☐ JOINDER ☐ CONSOLIDATION ☐ VENUE ☐ NEW APPLICATION
☐ ARBITRATION ☐ UEBTF ☐ BANKRUPTCY: ☐ AP ☐ DEFENDANT
☐ APPLICANT NOW REPRESENTED ☐ REQUESTS REPRESENTATION
☐ CHANGE OF CIRCUMSTANCES

BOARD REASON

☐ INSUFFICIENT TIME ☐ TO START ☐ TO FINISH
☐ REASSIGNMENT: ☐ REFUSED ☐ NOT AVAILABLE
☐ REPORTER ☐ INTERPRETER ☐ NOT AVAILABLE
☐ WCJ NOT AVAILABLE ☐ CHALLENGE BY _____ ☐ RECUSAL
☐ ARBITRATION ☐ DEFECTIVE WCAB NOTICE

OTHER/COMMENTS

LC Pharmacy withdrawn
then her to avoid costs of
Paced Pharmacy withdraws their
lien. re
Empire Radiology withdraws today.
pos after denial. of Marta Mendoza

GOOD CAUSE APPEARING, IT IS ORDERED THAT THE REQUEST FOR

☐ CONT ☐ OTOC

IS

☐ GRANTED☐ DENIED

DAYS FOR

☐ C & R☐ STIPS,

OTHERWISE:

☐ OTOC☐ RESET☐ OTOC☐ C & R/STIPS SUBMITTED FOR APPROVAL☐ C & R/STIPS APPROVED☐ LIEN STIPS AND ORDER APPROVED☐ N.O.I. TO ALLOW/DISALLOW ISSUED☒ SET FOR:☐ MSC☐ CONF☒ TRIAL☐ LIEN TRIAL☐ CONT'D TESTIMONY

SET ON

July 19th, 17

AT

8:30

AM LOCATION

ANA

BEFORE JUDGE

Hawthorne

DATE

5/4/17

Supp Page V

Alicia Hawthorne
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

NOTICE TO DEFENDANT - APPLICANT - LIEN CLAIMANT: Pursuant to Rule 10500 you are designated to serve this/these document(s) on all parties as shown on the Official Address Record.

Date

5/4/17

By

A. H.

☐ Served on parties and lien claimants present

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

MINUTES OF HEARING (addendum)

CASE NUMBER(S) ADJ 9361128
CASE TITLE Oliver Munguia V. _____

PLEASE PRINT CLEARLY

Lien Claimant: Pharmco
Appearance by: Ralph Gonzalez
Law Firm/Company: _____

PLEASE PRINT CLEARLY

Lien Claimant: _____
Appearance by: _____
Law Firm/Company: _____

Lien Claimant: _____
Appearance by: _____
Law Firm/Company: _____

Lien Claimant: _____
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Law Firm/Company: _____

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Lien Claimant: _____
Appearance by: _____
Law Firm/Company: _____

Lien Claimant: _____
Appearance by: _____
Law Firm/Company: _____

CASE NUMBER(S) ADJ9361128

CASE TITLE Munglia v. Virtual Composites Co Inc.

SUPPLEMENT TO MINUTES OF HEARING/ORDER/ORDER AND DECISION ON REQUEST FOR CONTINUANCE/ORDER

TAKING OFF CALENDAR/NOTICE OF HEARING

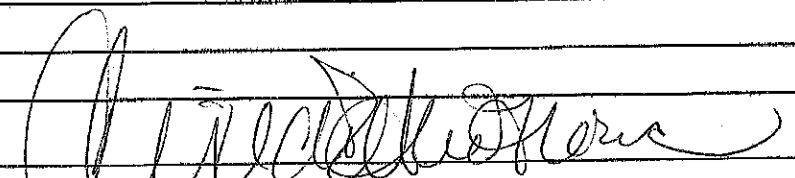
HEARING DATE 5/4/17

COMMENT/DISCUSSION/MOTION Babar Gharib - Danesh is the
sole shareholder of National Script Pharmacy, Inc.
Babar Gharib - Danesh has been indicted. However, National
Script Pharmacy, Inc. is taking the position that
as a corporation they still have standing to proceed

Parties shall have until June 19th, 2017 by
5:00 pm to submit trial briefs on the limited
issue of whether or not the corporation has
standing to proceed independently of the sole
shareholder.

This matter is continued to July 18th, 2017
on the sole issue of ~~whether~~ whether or
not National Script has standing to proceed.

ORDER(S) It is so ordered.


WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

1 **NATIONAL SCRIPT PHARMACY**
PO Box 101565
2 Pasadena, CA 91189-1565
Telephone (877) 201-0820
3

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

5
6 **Oliver Enriquez Munguia**

Applicant,

7
8 vs.

9
10 **Virtual Composites Co., Inc.; SCIF**

Defendants,

Case No.: ADJ9361128

**TRIAL BRIEF IN OPPOSITION TO AN
ORDER STAYING THE LIEN CLAIM
NATIONAL SCRIPT PHARMACY**

11 **TO THE PRESIDING WORKERS' COMPENSATION JUDGE, AND TO**
12 **DEFENDANTS AND TO THEIR ATTORNEY OF RECORD HEREIN:**

13 **National Script Pharmacy**, submits the following written Response to the Honorable WCJ
14 Hawthorne's minute order dated 5/14/2017.

15 1. The Lien Claim for National Script Pharmacy is not subject to any stay issued by the
16 Department of Industrial Relations and therefore has standing for a fair and adequate hearing before
17 the jurisdiction of the WCAB.

18 **I.**

19 **THE LIEN CLAIM FOR NATIONAL SCRIPT PHARMACY IS NOT SUBJECT TO ANY**
20 **STAY**

21 On May 4, 2017, the parties appeared for hearing regarding Liens issues. National Script
22 Pharmacy had wished to proceed but Defendant had raised issues that the Lien Claim for National
23 Script Pharmacy was subject to a stay, as Defendant, SCIF attempted to link this Lien Claimant
24 with physicians who have been stayed by the Department of Industrial Relations. Based upon these

1 arguments by Defendant, the Honorable WCJ Hawthorne issued a Supplement to the minutes of
2 hearing and issued an order that specifically indicated:

3 “Bahar Gharib Danesh is the sole shareholder of National Script Pharmacy, Inc.

4 Bahar Gharib Danesh has been indicted. However National Script Pharmacy, Inc.

5 is taking the position that as a corporation they still have standing to proceed.

6 Parties shall have until June 19th, 2017 by 5:00 pm to submit trial briefs on the

7 limited issue of whether or not the corporation has standing to proceed

8 independently of the sole share holder.

9 This matter is continued to July 18th, 2017 on the sole issue of whether or not

10 National Script has standing to proceed.

11 It is so ordered.”

12 National Script Pharmacy is not subject to any stay by the **Department of Industrial**
13 **Relations** and has standing to proceed on its lien claim. Any motion and/or order that prohibits
14 National Script Pharmacy from proceeding to a fair hearing would be a complete violation of their
15 due process rights.

16 Lien Claimant, National Script Pharmacy is a “Corporation” and as a corporation is
17 separate and distinct from its **officers** and **share holders**.

18 Black’s Law Dictionary; Seventh Edition, Bryan A. Garner 2001, Legal Definition of a
19 corporation specifically states:

20 “**Corporation**, n. An entity (usu. a business) having authority under law to act as

21 a single person distinct from the shareholders who own it and having rights to

22 issue stock and exist indefinitely; a group or succession of persons established in

23 accordance with legal rules into a legal or juristic person that has legal personality

24 distinct from the natural persons who make it up, exists indefinitely apart from

1 them, and has the legal powers that its constitution gives it.” (Emphasis added.)

2 This has been confirmed by the **California Supreme Court** in the matter of *Merco Constr.*
3 *Engineers, Inc. v. Municipal Court* L.A. No. 30825. *Supreme Court of California. July 25, 1978,*
4 wherein the court very clearly stated that:

5 “It is fundamental, of course, that a "corporation is a distinct legal entity separate
6 from its stockholders and from its officers." (Maxwell Cafe v. Dept. Alcoholic
7 Control (1956) 142 Cal. App. 2d 73, 78 [298 P.2d 64].) "A corporation ... in its
8 corporate ... rights and liabilities ... is as distinct [**21 Cal. 3d 730**] from the persons
9 composing it, as an incorporated city is from an inhabitant of that city." (Curtiss v.
10 Murry (1864) 26 Cal. 633, 634-635; see also Miller v. McColgan (1941) 17 Cal. 2d
11 432, 436 [110 P.2d 419, 134 A.L.R. 1424]; Erkenbrecher v. Grant (1921) 187 Cal. 7,
12 9 [200 P. 641]; Jacques, Inc. v. State Bd. of Equalization (1957) 155 Cal. App. 2d
13 448, 460 [318 P.2d 6]; Dandini v. Dandini (1953) 120 Cal. App. 2d 211, 217 [260
14 P.2d 1033]; 6 Witkin, Summary of Cal. Law (8th ed. 1974) p. 4316.).”

15 Therefore, it would be **improper** to “Stay” the lien claim for National Scrip Pharmacy or to
16 deny National Script Pharmacy the standing to a fair hearing.

17 Labor Code Section 4615, states that any physician or provider’s lien shall be automatically
18 stayed upon the filing of criminal charges against that physician or **provider**.

19 “4615. (a) Any lien filed by or on behalf of a physician or provider of medical treatment
20 services under Section 4600 or medical-legal services under Section 4621, and any accrual
21 of interest related to the lien, shall be automatically stayed upon the filing of criminal
22 charges against that physician or **provider** for an offense involving fraud against the
23 workers’ compensation system, medical billing fraud, insurance fraud, or fraud against the
24 Medicare or Medi-Cal programs. The stay shall be in effect from the time of the filing of the

1 charges until the disposition of the criminal proceedings.” (Emphasis added.)

2 National Script Pharmacy as stated is a “Corporation”, and has its own legal personality and
3 is distinct from the natural persons who make it up, and exists indefinitely apart from them.

4 National Script Pharmacy is a pharmacy “**Provider**” and **no physician** who has been
5 indicted has dispensed and/or provided any treatment services and/or medical legal services in any
6 matter for which it has issued billing. Services at National Script Pharmacy have been performed
7 by a pharmacist and **not by any indicted physician**. National Script Pharmacy as a “Provider” **has**
8 **not been named** or **charged** in any indictment.

9 This issue has been previously addressed in the matter of **Luis Leonel Lopez v. The**
10 **Academy of Magical Arts: Compwest; IWC, ADJ9803711** (see attached Report and
11 Recommendation), wherein the Honorable WCJ Deweese, specifically indicated on his Report and
12 Recommendation to the WCAB:

13 “...after further consultation with the **Chief Judge** and input from the **DWC**
14 **Legal Department**, the **Presiding Judge in Anaheim** recently advised all of the
15 judges in this office that only lien claimants who were expressly listed as stayed
16 in EAMS or specifically named as indicated providers should be considered
17 automatically stayed pursuant to section 4615.” (Emphasis added.)

18 WCJ Deweese further stated:

19 “This current approach is **largely in agreement** with the arguments made in the
20 instant petition for reconsideration. If this judge had made an actual order of
21 finding that National Script Pharmacy’s lien was stayed in this case, **the order or**
22 **finding would be rescinded.**” (Emphasis added.)

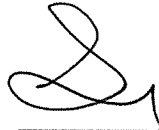
23 Therefore, consistent with the **Honorable WCJ Deweese**, the **Honorable Chief Judge for**
24 **the South**, the **Honorable Presiding WCJ in the Anaheim District Office** and the **DWC Legal**

1 **Department**, it would be improper and a violation of Lien Claimant's due process rights to have its
2 lien claim stayed. National Script Pharmacy it's entitled to a fair and adequate opportunity to be
3 heard.

4 **Wherefore**, it is respectfully requested that this court **deny any request** to "stay" the lien
5 claim for National Script Pharmacy.

6 Date May 17, 2017

Respectfully submitted,

7
8 

9 _____
Jorge D. Shuton
National Script Pharmacy

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VERIFICATION

STATE OF CALIFORNIA OF COUNTY OF LOS ANGELES

I have read the forgoing **OBJECTION TO REQUEST FOR STAY REGARDING**
NATIONAL SCRIPT PHARMACY and know its contents.

/XX/ I am a Hearing Representative for Lien Claimant/ Petitioner, parties to this action, and I am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe, and on that ground allege, that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters, which are stated in the information and belief, and as to those matters I believe them to be true.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on May 17, 2017, at Los Angeles, California.



Jorge D. Shuton
National Script Pharmacy

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ 9803711

LUIS LEONEL LOPEZ
VARGAS; NATIONAL
SCRIPT PHARMACY (Lien
Claimant)

-vs.-

THE ACADEMY OF
MAGICAL ARTS;
COMPWEST; ICW

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE: Hon. PAUL DeWEESE

DATE: March 15, 2017

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

<u>Date of Injury:</u>	December 2, 2009 to December 2, 2014
<u>Age on DOI:</u>	46
<u>Occupation:</u>	Dishwasher
<u>Parts of Body Alleged:</u>	Multiple
<u>Identity of Petitioner:</u>	Lien claimant, National Script Pharmacy
<u>Timeliness:</u>	The petition was <u>late</u> filed on March 13, 2017
<u>Verification:</u>	The petition was verified
<u>Date of Alleged Order:</u>	February 2, 2017
<u>Petitioner's Contentions:</u>	Petitioner contends the WCJ erred by ordering its lien stayed, but no such order was made.

II FACTS

Applicant Luis Leonel Lopez Vargas filed three separate Applications for Adjudication of Claim alleging multiple injuries on November 10, 2014 (ADJ 9803696); May 7, 2014 (ADJ 9937468); and during the period December 2, 2009 to December 2, 2014 (ADJ 9803711). All of applicant's claims were resolved by way of Joint Compromise and Release approved on August 6, 2015.

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On March 13, 2017, 39 days after the conference, lien claimant filed an untimely and improper petition for reconsideration.

III DISCUSSION

The petition for reconsideration is improper in that it is not filed in response to a final decision or order which resolves the substantive rights, liabilities or obligations of the parties. In fact, this judge did not make any order at all regarding National Script Pharmacy.

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¹ The NOI issued on 2/3/2017, there was no objection, and that lien was ordered dismissed on 3/6/2017.

(emphasis added).

By the express terms of the statute, the stay imposed by section 4615 is automatic. It occurs by operation of law without any order of or action by the Board. This judge's notation on the February 2, 2017 Minutes was not an order, but an observation regarding the already existing (as of January 1, 2017) status of the lien and an explanation for the record regarding why that lien was not resolved or otherwise disposed of at the Lien Conference.

As with all new statutes and procedures, the interpretation and application of section 4615 is evolving at the Board's district offices as guidance and instructions are received over time from the Presiding Judges and the Chief Judge. In late January, at a lien conference in another case, a defendant presented this judge with documentation from the Secretary of State showing that a chiropractor named Bahar Danesh Garib (aka Bahar Gharib-Danesh) was a shareholder of National Script Pharmacy and was listed as holding all of the pharmacy's officer positions. As acknowledged by petitioner, that chiropractor is currently under indictment and there is no doubt that section 4615 would apply to the chiropractor's direct liens. After consultation with the Presiding Judge in the Anaheim District Office, this judge was advised that it was the view of the Presiding Judge as well as her superior, the Associate Chief Judge for the South, that the liens of any companies owned or controlled by indicted individuals should also be considered stayed. As a result, this judge began advising National Script Pharmacy that its liens were considered stayed, including the February 2, 2017 notation on the Minutes of the instant case.

However, after further consultation with the Chief Judge and input from the DWC Legal Department, the Presiding Judge in Anaheim recently advised all of the judges in this office that only lien claimants who were expressly listed as stayed in EAMS or specifically named as indicted providers should be considered automatically stayed pursuant to section 4615. For lien claimants who, as in this case, may be owned or controlled by indicted individuals but who are not themselves indicated or listed as stayed in EAMS, the judges were instructed to consider their status on a case-by-case basis, and that it was up to defendants (or any other interested party with standing to do so) to assert that section 4615 should apply and to provide evidence and argument in support of that position at a hearing on the issue.

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LUIS LEONEL LOPEZ VARGAS

ADJ9803711
Document ID: 4960272418938552320

Script Pharmacy's lien was stayed in this case, the order or finding would be rescinded. However, since no order or finding was ever made, there is nothing to rescind in response to the petition.

Lien claimant is free to file a Declaration of Readiness to Proceed on its lien if it wishes, and a Lien Conference will be set.² If either of the defendants herein wishes to assert that the lien should be considered stayed pursuant to section 4615, that issue can be heard and a formal finding of fact can be made. If lien claimant is then aggrieved by that finding, a petition for reconsideration (or perhaps removal) would be appropriate. Otherwise, there is nothing which requires action by the Appeals Board. If defendants do not choose to assert that the lien should be considered stayed, then any regular disputes regarding defendants' liability to lien claimant can be litigated in the normal fashion.

Finally, even if the note on the Minutes were considered an order, the petition for reconsideration is untimely. National Script Pharmacy had a representative present at the February 2, 2017 Lien Conference who was given a copy of the Minutes by defendant. As a result, lien claimant had until February 22, 2017 to file a petition for reconsideration.

IV
RECOMMENDATION

It is respectfully recommended that lien claimant's Petition for Reconsideration be dismissed as not taken from any order or finding of the court, and that the matter be returned to the trial level for further proceedings upon the request of any party.

DATE: March 15, 2017



PAUL DeWEESE
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:

ANTHESIS PALMDALE . PO BOX 3600 PALMDALE CA 93590
COMPWEST NEWPORT BEACH PO BOX 40799 LANSING MI 48901
DIETZ GILMOR LONG BEACH . 249 E OCEAN BLVD STE 1000 LONG BEACH CA 90802.
MARIAH@DGCATTORNEYS.COM

² Although it will have to wait until the Appeals Board acts on the petition for reconsideration, unless lien claimant withdraws the petition for reconsideration in writing in light of the analysis herein.

INSURANCE CO OF THE WEST SAN DIEGO , PO BOX 509039 SAN DIEGO CA 92150
NATIONAL SCRIPT PHARMACY RESEDA , PO BOX 101565 PASADENA CA 91189
RAPHAEL HEDWAT SHERMAN OAKS , 5170 SEPULVEDA BLVD STE 380 SHERMAN OAKS CA 91403.
HEDWATLAW@GMAIL.COM

ON: 3/15/2017

BY: 

LUIS LEONEL LOPEZ VARGAS

ADJ9803711
Document ID: 4960272418938552320

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I am in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1933 W. Whittier Blvd. Montebello, CA 90640.

On May 18, 2017 I served the foregoing document described as: **TRIAL BRIEF IN OPPOSITION TO AN ORDER STAYING THE LIEN CLAIM NATIONAL SCRIPT** on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mailed at Montebello, California, addressed as follows:

WORKERS COMPENSATION APPEALS BOARD

605 W SANTA ANA BOULEVARD, BLDG 28, SUITE 451
SANTA ANA, CA 92701-4070

ANTHESIS PALMDALE	PO BOX 3600 PALMDALE CA 93590
CA MED MANAGEMENT MONTEBELLO	1933 W WHITTIER BLVD MONTEBELLO CA 90640
EDD SDI SANTA ANA	PO BOX 1466 SANTA ANA CA 92701
EMPIRE RADIOLOGY SHERMAN OAKS	14622 VENTURA BLVD STE 725 SHERMAN OAKS CA 91403
JOHN JANSEN SANTA ANA	2114 N BROADWAY STE 200 SANTA ANA CA 92706
MEDICAL LIEN MGT NORCO	PO BOX 6829 NORCO CA 92860
NATIONAL SCRIPT PHARMACY RESEDA	6944 RESEDA BLVD STE A RESEDA CA 91335
PARAMOUNT MGT SERVICES SHERMAN OAKS	14622 VENTURA BLVD STE 725 SHERMAN OAKS CA 91403
PASEO PHARMACY	2237 E COLORADO BLVD STE 104 PASADENA CA 91107
PHARMCO TORRANCE	381 VAN NESS AVENUE STE 1506 TORRANCE CA 90501
PROFESSIONAL DOCUMENTS MGMT SANTA ANA	PO BOX 11430 SANTA ANA CA 92711
SCIF INSURED GLENDALE	PO BOX 65005 FRESNO CA 93650
SCIF INSURED SANTA ANA	PO BOX 65005 FRESNO CA 93650
VIRTUAL COMPOSITES CO	584 EXPLORER ST BREA CA 92821
VITAL IMAGING MED GROUP ANAHEIM	2500 E BALL RD STE 220 ANAHEIM CA 92806

I certify under penalty of perjury that the foregoing is true and correct. Executed on May 18, 2017 at Montebello, California.

1 Type or print name Dalila Oliver

2 Signature 

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John Au-Yeung (SBN 188684)
State Compensation Insurance Fund
1750 E Fourth St Ste 500
Santa Ana, CA 92705-3909

05980024

Mailing Address: PO BOX 65005
FRESNO, CA 93650-5005

Telephone: 714-347-6574
Fax: 714-565-5041

Attorney for Defendant
State Compensation Insurance Fund

DIVISION OF WORKERS' COMPENSATION

STATE OF CALIFORNIA

OLIVER MUNGUIA,

Applicant,

v.

VIRTUAL COMPOSITES CO; STATE
COMPENSATION INSURANCE FUND,

Defendants.

Case No. ADJ9361128

TRIAL BRIEF

COMES NOW STATE COMPENSATION INSURANCE FUND (hereinafter referred to as "State Fund"), the worker's compensation insurance carrier, whose insured in the above captioned matter are VIRTUAL COMPOSITES CO (hereinafter referred to as "Employer"), by and through its counsel State Compensation Insurance Fund Legal Department, hereby submits its Trial Brief in support of its position that a corporation does not have standing to proceed independently of its sole shareholder and therefore the WCAB does not have jurisdiction to adjudicate the liens of National Script Corporation because their liens are subject to the special lien proceedings under LC 139.21(e) as a matter of law.

STATEMENT OF PERTINENT FACTS

1. Case-in-chief was resolved by way of Compromise and Release for \$11,000 on 8/19/2015.
2. Parties had met at a Lien Conference on 3/8/2017, and could not resolve its difference.
3. Matter was set for a Lien Trial on 5/4/2017 before the Honorable Judge Hawthorne.
4. National Script Pharmacy's (hereinafter "NSP") sole shareholder, Dr. Bahar Garib Danesh (hereinafter "Dr. Danesh") has been indicted and put on the stay list by the DIR.
5. National Script the corporation is not on the stay list and has not been indicted.
6. Dr. Danesh is the only officer and shareholder listed in the Statement of Information for NSP filed with the Secretary of State for California.
7. At time of Trial, Judge Hawthorne ordered that parties submit a Trial Brief on the sole issue of "whether or not the corporation has standing to proceed independently of the sole shareholder."

ARGUMENT

I. CURRENT LAW PROVIDES THAT THE SPECIAL LIEN PROCEEDINGS APPLY TO ANY LIENS FILED BY ANY CLINIC, GROUP OR CORPORATION IN WHICH THE SUSPENDED PHYSICIAN, PRACTITIONER, OR PROVIDER HAS AN OWNERSHIP INTEREST.

LC 139.21(e) provides in relevant part that:

"The following procedures shall apply for the adjudication of any liens of a physician, practitioner, or provider suspended pursuant to subparagraph (A) of paragraph (1) of subdivision (a), including any liens filed by or on behalf of the physician, practitioner, or

1 provider or any clinic, group or corporation in which the suspended physician,
2 practitioner, or provider has an ownership interest [emphasis added].”

3 Here, according to the Statement of Information filed by NSP, Dr. Danish is the sole
4 shareholder and officer of NSP, a California corporation. He is the chief executive
5 officer, secretary, director and only officer listed for NSP. Lien claimant does not argue
6 that Dr. Danish is not the sole shareholder nor did they present any evidence to the
7 contrary. Hence, Dr. Danish has the sole ownership interest in any financial outcome of
8 NSP’s collection on any of its liens. No other shareholder are of record and thus no other
9 shareholder’s interest are affected. Dr. Danesh had the sole responsibility and control
10 over NSP’s conduct as an entity. Therefore, it can be argued that Dr. Danish and NSP’s
11 interest and conduct can be treated as one and the same. NSP is merely a corporate shell
12 for Dr. Danesh to perform or conduct his illegal acts. The law did not intend to allow Dr.
13 Danesh to hide behind a corporate shell and prosper.

14
15 **II. AS A MATTER OF LAW THE WCAB HAS NO JURISDICTION TO**
16 **ADJUDICATE ANY LIENS OF NSP.**

17 Lien Claimant relies on the WCJ’s Report and Recommendation on Petition For
18 Reconsideration in Vargas v. The Academy of Magical Arts (ADJ9803711: March 15,
19 2017). According to the WCJ in Vargas: The Presiding Judge in Anaheim recently
20 “advised all of the judges in this office that only lien claimants who were expressly listed
21 as stayed in EAMS or specifically named as indicted providers should be considered
22 automatically stayed pursuant to section 4615. For lien claimants who, as in this case,
23 may be owned or controlled by indicted individuals but who are not themselves indicated
24 or listed as stayed in EAMS, the judges were instructed to consider their status on a case-
25 by-case basis, and that it was up to defendants (or any other interested party with
26 standing to do so) to assert that section 4615 should apply and to provide evidence and
27 argument in support of that position at a hearing on the issue. . . . If defendants do not

1 choose to assert that the lien should be considered stayed, then any regular disputes
2 regarding defendants' liability to lien claimant can be litigated in the normal fashion."
3 (Vargas ADJ9803711).

4 The WCJ in Vargas appear to have reversed the burden of proof by finding defendants
5 must show why the liens of a corporation should be included in the stay. In reality,
6 according to Labor Code § 4615 it is the lien claimant that has the burden to prove their
7 liens are not covered by the stay. The Vargas judge fails to recognize there are two bills
8 that address stayed lien.

9 SB 1160 enacted Labor Code § 4615 which provides in relevant part:

10 "(a) Any lien filed by or on behalf of a physician or provider of medical treatment
11 services under Section 4600 or medical-legal services under Section 4621, and any
12 accrual of interest related to the lien, shall be automatically stayed upon the filing of
13 criminal charges against that physician or provider for an offense involving fraud against
14 the workers' compensation system, medical billing fraud, insurance fraud, or fraud
15 against the Medicare or Medi-Cal programs. The stay shall be in effect from the time of
16 the filing of the charges until the disposition of the criminal proceedings. The
17 administrative director may promulgate rules for the implementation of this section.
18 (b) The administrative director shall promptly post on the division's Internet Web site the
19 names of any physician or provider of medical treatment services whose liens were
20 stayed pursuant to this section."

21
22 It is true that LC 4615 is silent regarding companies in which the indicted provider has
23 an ownership interest. However, SB 1160 is not the end of the reforms. At the same time
24 the legislature also passed AB 1244. AB 1244 enacted LC 139.21, which provides
25 specifics on how suspensions are to be handled. Labor Code 139.21 requires that the lien
26 claimants go through special lien proceedings. They cannot collect on their liens at the
27 WCAB. LC 139.21 also specifies those proceedings apply to any liens filed by any clinic,

1 group or corporation in which the suspended physician, practitioner, or provider has an
2 ownership interest. LC 139.21(e) provides that:

3 “The following procedures shall apply for the adjudication of any liens of a physician,
4 practitioner, or provider suspended pursuant to subparagraph (A) of paragraph (1) of
5 subdivision (a), including any liens filed by or on behalf of the physician, practitioner, or
6 provider or any clinic, group or corporation in which the suspended physician,
7 practitioner, or provider has an ownership interest [emphasis added].”

8 Thus, contrary to the WC Judge in Anaheim’s instructions, the WCAB no longer has
9 jurisdiction over the liens filed by or on behalf of the suspended physician or any clinic,
10 group or corporation in which the suspended physician has an ownership interest.

11 LC 139.21(f) and (g) provide instructions on how to conduct the special lien
12 proceeding. An indicted physician or a company where the indicted physician had an
13 ownership interest may not proceed at the WCAB. They must go to a consolidated
14 special lien proceeding to adjudicate their liens. LC 139.21(f) provides:

15 “After notice of suspension, pursuant to subdivision (d), and if subdivision (e) applies,
16 the administrative director shall appoint a special lien proceeding attorney, who shall be
17 an attorney employed by the division or by the department. The special lien proceeding
18 attorney shall, based on the information that is available, identify liens subject to
19 disposition pursuant to subdivision (e), and workers' compensation cases in which those
20 liens are pending, and shall notify the chief judge regarding those liens. Based on this
21 information, the chief judge shall identify a district office for a consolidated special lien
22 proceeding to adjudicate those liens, and shall appoint a workers' compensation judge to
23 preside over that proceeding.”

24 Further, the language under LC 139.21(g) provides that it shall be presumed that
25 payment should not be made on those liens because they arise from, or are connected to,
26 criminal, fraudulent, or abusive conduct or activity. It is the lien claimant’s burden to
27 rebut this presumption. LC 139.21(g) provides:

1 “It shall be a presumption affecting the burden of proof that all liens to be adjudicated
2 in the special lien proceeding, and all underlying bills for service and claims for
3 compensation asserted therein, arise from the conduct subjecting the physician,
4 practitioner, or provider to suspension, and that payment is not due and should not be
5 made on those liens because they arise from, or are connected to, criminal, fraudulent, or
6 abusive conduct or activity. A lien claimant shall not have the right to payment unless he
7 or she rebuts that presumption by a preponderance of the evidence.”
8

9 Thus, the Vargas judge appears to have failed to recognize that the special lien
10 proceeding apply to any clinic, group or corporation in which the suspended physician,
11 practitioner, or provider has an ownership interest. Allowing the National Script
12 Corporation to collect on their liens at the WCAB circumvents the special lien
13 proceedings which clearly apply to them under LC 139.21(e).
14

15 **CONCLUSION**


16
17 WHEREFORE, Defendant STATE COMPENSATION INSURANCE FUND
18 respectfully prays that the WCAB abstains from exercising any jurisdiction or finds that
19 WCAB does not have jurisdiction to adjudicate the liens of National Script Corporation
20 because their liens are subject to the special lien proceedings under LC 139.21(e) and that
21 the WCAB make such other and further orders as it deems just and proper.

22 STATE COMPENSATION INSURANCE FUND

23 DATED: June 19, 2017

Respectfully submitted,


24 STATE COMPENSATION INSURANCE FUND

25 By: 
26 Oscar Bardales, II, Attorney for John Au-Yeung, Attorney
27
28

VERIFICATION - CCP 446, 2015.5

I am the attorney for State Compensation Insurance Fund in the above-entitled action or proceeding. I have read the foregoing **TRIAL BRIEF** and know the contents thereof. I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 19, 2017 at Santa Ana, California.


Oscar Bardales, II for John Au-Yeung

OLIVER MUNGUIA
05980024
ADJ9361128

SCIF INSURED SANTA ANA
CELIA TAPIA-SOTO
714-565-5899
CTAPIA-SOTO@SCIF.COM

PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5

I declare that I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled cause. My business address is: 1750 E Fourth St Ste 500, Santa Ana, California 92705-3909. On June 19, 2017, I served the attached **TRIAL BRIEF** on the interested parties in said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

NATIONAL SCRIPT PHARMACY
PO BOX 101565
PASADENA, CA 91189

NATIONAL SCRIPT PHARMACY
6944 RESEDA BLVD STE A
RESEDA CA 91335

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice such envelope would be sealed and deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 19, 2017, at Santa Ana, California.

S KAREN RUBIN

Karen Rubin

OLIVER MUNGUIA
05980024
ADJ9361128

EXHIBIT F

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

Riverside District Office, 3737 Main Street, Suite 300, Riverside, CA 92501

FRANCISCA SALAZAR

APPLICANT

v.

99 CENTS ONLY

DEFENDANTS

CASE NUMBER(S) **ADJ9734186**

**MINUTES OF HEARING/ORDER/ORDER AND
 DECISION ON REQUEST FOR CONTINUANCE/
 ORDER TAKING OFF CALENDAR/
 NOTICE OF HEARING**

☐ BEFORE ☒ AT ☐ RATING MSC
☐ TRIAL ☐ MSC ☐ AOE/COE CONF ☐ WALK-THRU
☐ STATUS CONF ☐ EXP HEARING ☒ LIEN CONF ☐ LIEN TRIAL

DATE OF: HEARING **07/17/2017 AM** REQUEST DATE

APPEARANCES

APPLICANT ☐ PRESENT ☐ NOT PRESENT

APPLICANT REPRESENTED BY _____

☐ ATTORNEY ☐ HEARING REP.

DEFENDANT REPRESENTED BY Eric Mandy - HCRG

☐ ATTORNEY ☒ HEARING REP.

OTHERS APPEARING **"ALL OTHERS SIGN IN ON 2ND PAGE"**

☐ ATTORNEY ☐ HEARING REP.

INTERPRETER _____

CERTIFICATION NO. _____

PARTY MAKING REQUEST

☒ JOINT ☐ APPLICANT ☐ DEFENDANT ☐ LIEN CLAIMANT ☐ OTHER _____

REQUEST FOR: ☒ CONTINUANCE

☐ OTOC

REQUEST BY: ☐ LETTER

☐ TELEPHONE ☐ OTHER _____

POSITION OF OPPOSING PARTY

☐ AGREE

☐ OPPOSE

☐ UNREACHABLE

☐ UNKNOWN

REASON FOR REQUEST:

- ☒ FURTHER DISCOVERY: ☐ PANEL QME ☐ APP MED ☐ DEF MED
☐ AME ☐ CROSS-X ☐ DEPO ☐ OTHER _____
☐ CALENDAR CONFLICT: ☐ APPLICANT ☐ DEFENSE ☐ L.C.
☐ SETTLEMENT PENDING
☐ IMPROPER/INSUFFICIENT NOTICE BY PARTY
☐ IMPROPER DECLARATION OF READINESS/VALID OBJECTION
☐ NON APPEARANCE ☐ APP ☐ DEF ☐ LIEN CLAIMANT ☐ WITNESS
☐ APP ☐ DEF ☐ L.C. COUNSEL/REP ☐ VACATION ☐ ILLNESS
☐ UNAVAILABILITY OF WITNESSES ☐ APP ☐ DEFENSE
☐ DISPUTE RESOLVED BY AGREEMENT ☐ NO ISSUES PENDING
☐ JOINDER ☐ CONSOLIDATION ☐ VENUE ☐ NEW APPLICATION
☐ AUTO REASSIGN ☐ DISQUALIFY ☐ APP ☐ DEFENDANT
☐ APPLICANT NOW REPRESENTED ☐ REQUESTS
 REPRESENTATION
☐ CHANGE OF CIRCUMSTANCES

BOARD REASON:

- ☐ INSUFFICIENT TIME ☐ TO START ☐ TO FINISH
☐ REASSIGNMENT: ☐ REFUSED ☐ NOT AVAILABLE
☐ REPORTER ☐ INTERPRETER ☐ NOT AVAILABLE
☐ WCJ NOT AVAILABLE ☐ RECUSAL
☐ UEF ISSUES ☐ SERVICE DEFECTIVE ☐ BANKRUPTCY
 PENDING
☐ DEFECTIVE WCAB NOTICE
☐ ARBITRATION

OTHER/COMMENTS CROSS-REFERENCE
TO DECISION AFTER REMOVAL
(ADJ 9447000) INVOLVING
SAME PARTIES. STAY IS
LIFTED AS TO FIRST LINE
HEALTH AS TO INSTANT
CASE ONLY.

GOOD CAUSE APPEARING, IT IS ORDERED THAT THE REQUEST FOR ☒ CONT ☐ OTOC **IS** ☒ GRANTED ☐ DENIED

_____ DAYS FOR ☐ C&R ☐ STIPS ☐ OTHER _____, OTHERWISE: ☐ OTOC ☐ RESET _____

☐ OTOC ☐ C&R/STIPS SUBMITTED FOR APPROVAL ☐ C&R/STIPS APPROVED ☐ LIEN STIPS & ORDER APPROVED ☐ N.O.I. TO ALLOW/DISALLOW ISSUED
☐ SET FOR ☐ MSC ☐ STATUS CONF ☒ LIEN CONF ☐ TRIAL ☐ LIEN TRIAL ☐ CONTD TESTIMONY TIME ☐ 1/2 HR ☐ 1 HR ☐ 2 HRS ☐ 4 HRS ☐ _____ DAY

SET ON 11-14-17

AT 8:30

LOCATION Riv

☐ BEFORE JUDGE Robert Hill

SUPPLEMENTAL PAGES ATTACHED _____ PAGES

DATE 7/17/2017

CHRIS ELLEN WILLMON

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

NOTICE TO: DEFENDANT Pursuant to Rule 10500 you are designated to serve this/these document(s) on all parties as shown on the Official Address Record. Served on designated server with a copy of the Official Address Record.

Date _____ By _____ ☐ Served on parties and lien claimants present

MINUTES OF HEARING (cont.)

ADJ. AQ9734186
(Page 2)

APPEARANCES:

NAME:	REPRESENTING:
1. <u>JAVIER BERNAL</u>	<u>FIRSTLINE HEALTH</u>
2. <u>Michelle Matthews</u>	<u>Cedar Medical</u>
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____
13. _____	_____
14. _____	_____
15. _____	_____
16. _____	_____
17. _____	_____
18. _____	_____
19. _____	_____
20. _____	_____

EXHIBIT G

#917

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

PRE-TRIAL CONFERENCE STATEMENT

Leoel Gonzales

APPLICANT

v.

JMA Industries & SCIF

DEFENDANT(S).

CASE NO. ADJ

8586989

PRE-TRIAL CONFERENCE STATEMENT §5502 (d) (3)

☐ NOTICE OF HEARINGLOCATION: Anaheim DATE: 3/23/17 TIME: 8:30

SETTLEMENT CONFERENCE JUDGE: _____

APPEARANCES

☐ INJURED WORKER: _____☐ INJURED WORKER'S ATTORNEY: _____☐ ATTY ☐ HRG REP

(FIRM NAME AND PERSON APPEARING)

☒ DEFENDANT'S ATTORNEY:Golanta Uniejewski☐ ATTY ☒ HRG REP☐ ATTY ☐ HRG REP☐ ATTY ☐ HRG REP☐ ATTY ☐ HRG REP

(FIRM NAME AND PERSON APPEARING)

(DEFENDANT)

☐ OTHERS APPEARING:

(L.C., INTERPRETERS, ETC.)

POST SURGICAL REPAIR By Bill Leonard☐ ADDRESS RECORD CHANGES: _____

BOX BELOW TO BE COMPLETED ONLY BY WORKERS' COMPENSATION JUDGE

DISPOSITION: SET FOR REGULAR HEARING:

☐ 1 HOUR ☐ 2 HOURS ☐ 1/2 DAY ☒ ALL DAY☐ WCAB NOTICE☐ NOTICE WAIVED☐ BEFORE ANY WCJ ☒ BEFORE WCJ Nguyen☐ LIEN TRIAL☐ CASE(S) SET ON 3/23/17 AT 8:30 WCJ Nguyen☐ BEFORE ANY WCJ OTHER THANIN AHM

(DATE)

(TIME)

(LOCATION)

☒ OTHER DISPOSITION AND ORDERS:only issue is LC of Post Surg.
& whether LC is stayed.

SERVICE AS ORDERED ON PAGE 4

WORKERS' COMPENSATION JUDGE

#918

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

PRE-TRIAL CONFERENCE STATEMENT

CASE NO. ADJ 8586989

STIPULATIONS

THE FOLLOWING FACTS ARE ADMITTED:

1. Sevel Gonzalez, BORN 11/23/57WHILE ☐ EMPLOYED ☐ ALLEGEDLY EMPLOYED☒ ON 5/14/12☐ DURING THE PERIOD(S) _____AS A(N) Painter, OCCUPATIONAL GROUP NUMBER _____AT Pomona, CALIFORNIA,

BY _____

☒ SUSTAINED INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT TO neck, low back, left foot, left hip☒ CLAIMS TO HAVE SUSTAINED INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT TO psychic

2. AT THE TIME OF INJURY THE EMPLOYER'S WORKERS' COMPENSATION CARRIER WAS

SCIF☐ THE EMPLOYER WAS ☐ PERMISSIBLY SELF-INSURED ☐ UNINSURED ☐ LEGALLY UNINSURED3. AT THE TIME OF INJURY, THE EMPLOYEE'S EARNINGS WERE \$ _____ PER WEEK, WARRANTING INDEMNITY
RATES OF \$ _____ FOR TEMPORARY DISABILITY AND \$ _____ FOR PERMANENT DISABILITY.

4. THE CARRIER/EMPLOYER HAS PAID COMPENSATION AS FOLLOWS: (TD/PD/VRMA)

TYPE	WEEKLY RATE	PERIOD	TYPE	WEEKLY RATE	PERIOD

☐ THE EMPLOYEE HAS BEEN ADEQUATELY COMPENSATED FOR ALL PERIODS OF T/D CLAIMED THROUGH _____5. THE EMPLOYER HAS FURNISHED ☐ ALL ☐ SOME ☐ NO MEDICAL TREATMENT.THE PRIMARY TREATING PHYSICIAN IS N/A6. ☐ NO ATTORNEY FEES HAVE BEEN PAID AND NO ATTORNEY FEE ARRANGEMENTS HAVE BEEN MADE.7. ☐ OTHER STIPULATIONS _____

APPLICANT

DEFENDANT

LIEN CLAIMANT/OTHER

#919

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

PRE-TRIAL CONFERENCE STATEMENT

CASE NO. ADJ 8586989

ISSUES

- ☐ EMPLOYMENT: _____
- ☐ INSURANCE COVERAGE: _____
- ☐ INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT: _____
- ☐ PARTS OF BODY INJURED: _____
- ☐ EARNINGS: EMPLOYEE CLAIMS _____ PER WEEK, BASED ON _____
EMPLOYER/CARRIER CLAIMS _____ PER WEEK, BASED ON _____
- ☐ TEMPORARY DISABILITY, EMPLOYEE CLAIMING THE FOLLOWING PERIOD(S): _____
- _____
- ☐ PERMANENT AND STATIONARY DATE:
EMPLOYEE CLAIMS _____, BASED ON _____
EMPLOYER/CARRIER CLAIMS _____, BASED ON _____
- ☐ PERMANENT DISABILITY ☐ APPORTIONMENT
- ☐ OCCUPATION AND GROUP NUMBER CLAIMED: BY EMPLOYEE _____
BY EMPLOYER/CARRIER _____
- ☐ NEED FOR FURTHER MEDICAL TREATMENT: _____
- ☐ LIABILITY FOR SELF-PROCURED MEDICAL TREATMENT: _____

☐ LIENS:

LIEN CLAIMANT	TYPE OF LIEN	AMOUNT AND PERIODS PAID
<u>POST SURGICAL REHAB</u>	_____	<u>6,066.12</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

☐ ATTORNEY FEES

- ☒ OTHER ISSUES: The sole issue for this trial is whether or not the STAY against Steven Houser also applies to Post Surgical Rehab Specialists, Inc. Petition By Non Physician Post Surgical Rehab under ROS 6 (d) whether or not there is a stay in regards to Post Surgical Rehab which is NOT on Any STAY LIST Before Any Workers' Compensation Appeals Board. The document provided by SCIF is unsigned and was NOT SIGNED by Lien Claimant until today's Lien Conf. Whether or not SCIF has jurisdiction over this issue.

APPLICANT

DEFENDANT

LIEN CLAIMANT/OTHER

THIS IS 2nd Lien Conference AND Discovery was closed at
time of Lien Conf set 3/24/16

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

PRE-TRIAL CONFERENCE STATEMENT

CASE NO. ADJ 8586989

THIS PAGE FOR JUDGE'S USE ONLY

JUDGE'S CONFERENCE NOTES:

ORDERS

☒ IT IS ORDERED PURSUANT TO WCAB RULE 10500, THAT ☒ DEFENDANT ☐ APPLICANT ☐ LIEN CLAIMANT SERVE FORTHWITH THIS ☒ PRE-TRIAL CONFERENCE STATEMENT ☒ NOTICE OF HEARING ON ALL PARTIES OR THEIR REPRESENTATIVE SHOWN ON THE OFFICIAL ADDRESS RECORD AND ANY ADDITIONAL LIEN CLAIMANTS WHOSE LIENS ARE SHOWN UNDER ISSUES (PAGE 3).

☐ IT IS FURTHER ORDERED THAT ☐ DEFENDANT ☐ APPLICANT ☐ LIEN CLAIMANT SERVE TIMELY NOTICE OF THE TIME AND PLACE OF ALL REGULAR HEARING SESSIONS ON ALL LIEN CLAIMANTS WHOSE LIENS ARE SHOWN UNDER ISSUES, TOGETHER WITH THE FOLLOWING NOTICE: YOUR LIEN IS AT ISSUE AND WILL BE ADJUDICATED AT REGULAR HEARING.

IT IS FURTHER ORDERED THAT THE PROOF OF SERVICE ORDERED ABOVE BE FILED WITH THE WCAB ONLY ON REQUEST OF THE ASSIGNED WORKERS' COMPENSATION JUDGE.

OTHER DISPOSITION AND ORDERS:

SERVICE OF THIS DOCUMENT WAS MADE PERSONALLY UPON DY SCOT BY WCJ.

DATE 3-16-17

Januel S.
WORKERS' COMPENSATION JUDGE

CASE NO. ADJ 8586989

PAGE ____ OF ____

EXHIBITS

☐ APPLICANT
☐ DEFENDANT

☒ LIEN CLAIMANT *POST SURGICAL*
☐ APPEALS BOARD

DESCRIPTION

DATE

TRIM BRUSH LAND 20 days prior to TRIM

WITNESSES

STORER HOUSE

PARK POST SURGICAL REPAIRS
PARK Pinnacle Lien Services

ABOVE LISTINGS OF EXHIBITS AND WITNESSES REVIEWED BY ALL PARTIES.

APPLICANT

DEFENDANT

[Signature]
LIEN CLAIMANT/OTHER

PAGE _____ OF _____

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

LEOEL GONZALEZ

Applicant,

v.

JMA INDUSTRIES
SCIF

Defendants,

CASE NUMBER(s):

A05 0586989

MINUTES OF HEARING/ORDER/ORDER AND
DECISION ON REQUEST FOR CONTINUANCE/
ORDER TAKING OFF CALENDAR/
NOTICE OF HEARING☐ BEFORE ☐ AT
☐ TRIAL ☐ MSC
☐ CONF ☐ EXP HEARING ☒ LIEN
DATE OF HEARING 3/23/2017 REQUEST _____

APPEARANCES:

☐ APPLICANT☐ PRESENT☒ NOT PRESENT

APPLICANT REPRESENTED BY

☐ ATTORNEY☐ HEARING REP.

DEFENDANT REPRESENTED BY

☐ ATTORNEY☒ HEARING REP.

OTHERS APPEARING

☐ ATTORNEY☐ HEARING REP.

INTERPRETER

CERTIFICATION NO. _____

PARTY MAKING REQUEST

☐ JOINT☐ APPLICANT☐ DEFENDANT☒ OTHER lc

REQUEST FOR:

☐ CONTINUANCE☒ OTOC

REQUEST BY:

☐ LETTER☐ TELEPHONE

POSITION OF OPPOSING PARTY:

☐ AGREE☒ OPPOSE☐ UNREACHABLE☐ UNKNOWN

REASON FOR REQUEST

☐ FURTHER DISCOVERY: ☐ APP MED ☐ DEF MED ☐ AME ☐ DEPO☐ CALENDAR CONFLICT: ☐ APPLICANT ☐ DEFENSE ☐ L.C.☐ SETTLEMENT PENDING☐ IMPROPER/INSUFFICIENT NOTICE BY PARTY☐ IMPROPER DECLARATION OF READINESS/VALID OBJECTION☐ NON-APPEARANCE ☐ APP ☐ DEF ☐ LIEN CLAIMANT ☐ WITNESS☐ APPLICANT ☐ DEF COUNSEL ☐ VACATION ☐ ILLNESS☐ UNAVAILABILITY OF WITNESSES ☐ APP ☐ DEFENSE☐ DISPUTE RESOLVED BY AGREEMENT ☐ NO ISSUES PENDING☐ JOINDER ☐ CONSOLIDATION ☐ VENUE ☐ NEW APPLICATION☐ AUTO REASSIGN ☐ DISQUALIFY ☐ APP ☐ DEFENDANT☐ APPLICANT NOW REPRESENTED ☐ REQUESTS REPRESENTATION☐ CHANGE OF CIRCUMSTANCES

BOARD REASON

☐ INSUFFICIENT TIME ☐ TO START ☐ TO FINISH☐ REASSIGNMENT: ☐ REFUSED ☐ NOT AVAILABLE☐ REPORTER ☐ INTERPRETER ☐ NOT AVAILABLE☐ WCJ NOT AVAILABLE ☐ RECUSAL☐ UEF ISSUES ☐ SERVICE DEFECTIVE ☐ BANKRUPTCY
PENDING☐ DEFFECTIVE WCAB NOTICE☐ ARBITRATION

OTHER/COMMENTS

Only issue is whether
lc of Post Surg Rehab is
stayed.

GOOD CAUSE APPEARING, IT IS ORDERED THAT THE REQUEST FOR

☐ CONT☒ OTOC

IS

☐ GRANTED☒ DENIED

_____ DAYS FOR

☐ C & R☐ STIPS,

OTHERWISE:

☐ OTOC☐ RESET☐ OTOC☐ C & R/STIPS SUBMITTED FOR APPROVAL☐ C & R/STIPS APPROVED☐ LIEN STIPS AND ORDER APPROVED☐ N.O.I. TO ALLOW/DISALLOW ISSUED☒ SET FOR:☐ MSC ☐ CONF☒ TRIAL☐ LIEN TRIAL☐ CONT'D TESTIMONYTIME: ☐ 1 HR☐ 2 HRS☐ 4 HRS☒ all DAY

SET ON

5/11/17

AT

8:30

LOCATION

AHM

BEFORE JUDGE

Nguyen☐ SUPPLEMENTAL PAGES ATTACHED

_____ PAGES

DATE

3-23-17

NOTICE TO

Document on all parties as shown on the Official Address Record.

Date

3-23-17

By

☒ Served on parties and lien claimants present

Pursuant to Rule 10500 you are designated to serve this/these

Howard J. Emberg
HOWARD EMBERG
WORKERS' COMPENSATION JUDGE

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

LEUEL GONZALEZ

Applicant,

v.

JMA INDUSTRIES

Defendants,

CASE NUMBER(s):

ADJ 8586989

MINUTES OF HEARING/ORDER/ORDER AND
DECISION ON REQUEST FOR CONTINUANCE/
ORDER TAKING OFF CALENDAR/
NOTICE OF HEARING

☐ BEFORE ☐ AT
☒ TRIAL ☐ MSC
☐ CONF ☐ EXP HEARING ☒ LIEN
DATE OF HEARING 5/11/17 REQUEST _____

APPEARANCES:

APPLICANT

☐ PRESENT

☐ NOT PRESENT

APPLICANT REPRESENTED BY:

☐ ATTORNEY

☐ HEARING REP.

DEFENDANT REPRESENTED BY:

☒ ATTORNEY

☐ HEARING REP.

OTHERS APPEARING

☐ ATTORNEY

☐ HEARING REP.

INTERPRETER

CERTIFICATION NO. _____

PARTY MAKING REQUEST

☐ JOINT

☐ APPLICANT

☐ DEFENDANT

☐ OTHER _____

REQUEST FOR:

☐ CONTINUANCE

☐ OTOC

REQUEST BY:

☐ LETTER

☐ TELEPHONE

POSITION OF OPPOSING PARTY

☐ AGREE

☐ OPPOSE

☐ UNREACHABLE

☐ UNKNOWN

REASON FOR REQUEST

☐ FURTHER DISCOVERY: ☐ APP MED ☐ DEF MED ☐ AME ☐ DEPO
☐ CALENDAR CONFLICT: ☐ APPLICANT ☐ DEFENSE ☐ L.C.
☐ SETTLEMENT PENDING
☐ IMPROPER/INSUFFICIENT NOTICE BY PARTY
☐ IMPROPER DECLARATION OF READINESS/VALID OBJECTION
☐ NON-APPEARANCE ☐ APP ☐ DEF ☐ LIEN CLAIMANT ☐ WITNESS
☐ APPLICANT ☐ DEF COUNSEL ☐ VACATION ☐ ILLNESS
☐ UNAVAILABILITY OF WITNESSES ☐ APP ☐ DEFENSE
☐ DISPUTE RESOLVED BY AGREEMENT ☐ NO ISSUES PENDING
☐ JOINDER ☐ CONSOLIDATION ☐ VENUE ☐ NEW APPLICATION
☐ AUTO REASSIGN ☐ DISQUALIFY ☐ APP ☐ DEFENDANT
☐ APPLICANT NOW REPRESENTED ☐ REQUESTS REPRESENTATION
☐ CHANGE OF CIRCUMSTANCES

BOARD REASON

☒ INSUFFICIENT TIME ☒ TO START ☒ TO FINISH
☐ REASSIGNMENT: ☐ REFUSED ☐ NOT AVAILABLE
☐ REPORTER ☐ INTERPRETER ☐ NOT AVAILABLE
☐ WCJ NOT AVAILABLE ☐ RECUSAL
☐ UEF ISSUES ☐ SERVICE DEFFECTIVE ☐ BANKRUPTCY PENDING

☐ DEFFECTIVE WCAB NOTICE

☐ ARBITRATION

OTHER/COMMENTS

Parties are to file
trial briefs on/ before next
scheduled lim trial. The parties
may amend the PTCs & Exhibits and
circulate them no later than 20 days before
trial.

GOOD CAUSE APPEARING, IT IS ORDERED THAT THE REQUEST FOR ☒ CONT ☐ OTOC IS ☒ GRANTED ☐ DENIED

_____ DAYS FOR ☐ C & R ☐ STIPS, OTHERWISE: ☐ OTOC ☐ RESET _____

☐ OTOC ☐ C & R/STIPS SUBMITTED FOR APPROVAL ☐ C & R/STIPS APPROVED

☐ LIEN STIPS AND ORDER APPROVED ☐ N.O.I. TO ALLOW/DISALLOW ISSUED

☒ SET FOR: ☐ MSC ☐ CONF ☐ TRIAL ☒ LIEN TRIAL ☐ CONT'D TESTIMONY TIME: ☐ 1 HR ☐ 2 HRS ☐ 4 HRS ☒ All DAY

SET ON 7-25-17 AT 8:30 LOCATION ATM BEFORE JUDGE Nguyen

☐ SUPPLEMENTAL PAGES ATTACHED _____ PAGES

DATE 5/11/17

NOTICE TO _____
document(s) on all parties as shown on the Official Address Record. Served on designated server with a copy of the Official Address Record.

Date _____ By _____
☐ Served on parties and lien claimants present

Dim S. Nguyen
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

Pursuant to Rule 10500 you are designated to serve this/these

STATE OF CALIFORNIA #925A

DIVISION OF WORKERS' COMPENSATION

WORKERS' COMPENSATION APPEALS BOARD

LEOEL GONZALEZ 2
Applicant

vs.

JMA INDUSTRIES
Defendants.CASE NUMBER(s): ADJ 8546989
ADJ _____

MINUTES OF HEARING

☐ BEFORE HEARING ☐ AT HEARING ☐ MSC
☐ TRIAL ☐ EXP HEARING ☐ LIEN TRIAL
☐ PRIORITY CONF ☐ STATUS CONF ☐ LIEN CONF

DATE OF: HEARING 7/25/17 REQUEST _____

Please Print Clearly and Include Name and Law Firm

APPEARANCES APPLICANT ☐ PRESENT ☐ NOT PRESENT

APPLICANT REPRESENTED BY _____

DEFENDANT REPRESENTED BY Ashley Standermeier

☐ ATTY ☐ HRG. REP.
☐ ATTY ☐ HRG. REP.
☐ ATTY ☐ HRG. REP.
☐ ATTY ☐ HRG. REP.
☐ ATTY ☐ HRG. REP.

OTHERS APPEARING

OTHERS APPEARING POST SURGICAL REVIEW By Bill Lavan 114/309-9001

INTERPRETER _____

CERTIFICATION NO. _____

PARTY MAKING REQUEST: ☒ JOINT ☐ APPLICANT ☐ DEFENDANT ☐ OTHER _____REQUEST FOR: ☐ CONTINUANCE ☒ OTOC REQUEST BY: ☐ LETTER ☐ TELEPHONEPOSITION OF OPPOSING PARTY: ☒ AGREE ☐ OPPOSE ☐ UNREACHABLE ☐ UNKNOWN

REASON FOR REQUEST

☐ FURTHER DISCOVERY: ☐ PQME ☐ PTP ☐ AME ☐ DEPO
☐ CALENDAR CONFLICT: ☐ APPLICANT ☐ DEFENSE ☐ L.C.
☐ SETTLEMENT PENDING ☐ CHANGE OF CIRCUMSTANCES
☐ IMPROPER/INSUFFICIENT NOTICE BY ☐ PARTY ☐ WCAB
☐ IMPROPER DECLARATION OF READINESS/VALID OBJECTION
☐ NON APPEARANCE ☐ APP ☐ DEF ☐ LIEN CLAIMANT ☐ WITNESS
☐ APPLICANT COUNSEL ☐ DEF COUNSEL ☐ VACATION ☐ ILLNESS
☐ UNAVAILABILITY OF: ☐ WITNESSES ☒ APP ☐ DEFENSE
☐ DISPUTE RESOLVED BY AGREEMENT ☒ NO ISSUES PENDING
☐ JOINDER ☐ CONSOLIDATION ☐ VENUE ☐ NEW APPLICATION
☐ ARBITRATION ☐ UEBTF ☐ BANKRUPTCY ☐ DISQUALIFICATION
☐ APPLICANT NOW REPRESENTED ☐ REQUESTS REPRESENTATION

BOARD REASON

☐ INSUFFICIENT TIME: ☐ TO START ☐ TO FINISH
☐ REASSIGNMENT ☐ REFUSED ☐ NOT AVAILABLE
☐ REPORTER ☐ INTERPRETER ☐ NOT AVAILABLE
☐ WCJ NOT AVAILABLE ☐ CHALLENGE BY _____
☐ RECUSAL

OTHER/COMMENTS POST SURGICAL HAS
NOT FILED DECLARATION SO LIEN 9903.5
HAS BEEN DISMISSED BY OPERATION OF LAW

Post Surgical Rehab did not file declaration
under 9903.05 before 7/1/17.
It's been dismissed by the operation of law

GOOD CAUSE APPEARING, IT IS ORDERED THAT THE _____ REQUEST FOR ☐ CONT ☒ OTOC IS ☒ GRANTED ☐ DENIED

☒ OTOC ☐ C&R/STIPS SUBMITTED FOR APPROVAL ☐ C&R/STIPS APPROVED ☐ ORDER SUSPENDING ACTION
 _____ DAYS FOR C&R/STIPS ☐ LIEN STIPS AND ORDER APPROVED ☐ NO/ORDER TO DISMISS LIEN ISSUED

☐ SET FOR ☐ MSC ☐ STATUS CONF ☐ LIEN CONF ☐ TRIAL ☐ LIEN TRIAL ☐ CONT'D TESTIMONY TRIAL TIME _____

☐ SET ON _____ AT _____ LOCATION _____ BEFORE JUDGE _____

☐ SUPPLEMENTAL PAGES ATTACHED _____ PAGES

DATE: 7/25/17

WORKERS' COMPENSATION JUDGE

NOTICE TO: 24 Pursuant to Rule 10500, you are designated to serve this/these document(s) on all parties as shown on the

Official Address Record. Date 7/25/17 By US
☐ Served on parties and lien claimants present

Page 1 of _____

EXHIBIT H

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ8945010

**CARMEN GARCIA DE
HERRERA**

-vs.-

**MICRO SOLUTIONS
ENTERPRISE;
ZURICH LOS ANGELES;**

**WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:**

BOLYNDA SCHULTZ

DATE OF INJURY:

2/19/2012 - 2/19/2013

OPINION ON DECISION

IS LABOR CODE §4615 APPLICABLE TO LIENS RELATED TO A STAYED PROVIDER?

The Court is tasked with determining whether an administrative stay applied to a provider, pursuant to Labor Code §4615, is applicable to related lien claimants of record. Labor Code §4615 (a) states:

Any lien filed by or on behalf of a physician or provider of medical treatment services under Section 4600 or medical-legal services under Section 4621, and any accrual of interest related to the lien, shall be automatically stayed upon the filing of criminal charges against that physician or provider for an offense involving fraud against the workers' compensation system, medical billing fraud, insurance fraud, or fraud against the Medicare or Medi-Cal programs. The stay shall be in effect from the time of the filing of the charges until the disposition of the criminal proceedings. The administrative director may promulgate rules for the implementation of this section.

The stayed provider is Dr. Craig Michael Chanin. He has been indicted in the case of *People v. Craig Michael Chanin, Orange County Superior Court, Docket Number 16CF1347*. Defendant asserts not only should Dr. Chanin's lien be stayed, but the doctrine of "fruit of the poisonous tree" extends the stay to third party liens for consults, treatment, interpreting, diagnostics, prescriptions, etc. incurred at the request of the stayed provider. The referred liens at issue are Independent Interpreting, Progressive Interpreting, and Bio Med Brea. The entities provided interpreting services and diagnostics at the request of Dr. Chanin.

The "fruit of the poisonous tree" doctrine holds that evidence gathered with the assistance of illegally obtained information must be excluded from trial, and is an extension of the exclusionary rule established in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920). The idea behind this doctrine is that a party cannot be enriched by their own bad acts. It is commonly applied in criminal law cases, precluding law enforcement agencies from introducing evidence obtained illegally. Essentially, if the search is bad, so is the evidence; if the tree is poisonous, so is its fruit.

In the workers' compensation system, the "fruit of the poisonous tree" doctrine is not applicable; however, the validity of one lien can affect the validity of another. For example, a MRI requested by a non-MPN physician may or may not be compensable, depending on the issues raised and evidence presented at a Lien Trial. The question of whether the charges are compensable differs, however, from the service provider's right to file a lien and their due process rights to litigate the lien on its merits.

Labor Code §4615 (a) outlines that a physician's lien shall be "stayed upon the filing of criminal charges against that physician or provider for an offense involving fraud..." and clearly indicates an administrative stay is appropriate for the entity being charged with a crime. If the legislature intended the tentacles of Labor Code §4615 to encompass related liens, they would have indicated such. A strict reading of Labor Code §4615(a) leads this Court to find that related liens are not included in the administrative stay; however, under 8CCR §9795.3(a)(2), litigation of related liens may not be practical:

A comprehensive med-legal evaluation as defined in Subdivision (c) of Section 9793, a follow up med-legal evaluation is defined in Subdivision (f) of Section 9793 or a supplemental med-legal evaluation as defined in Subdivision (k) of Section 9793; provided, however, that the payment for interpreter's fees by the claims administrator should not be required under this paragraph **unless a medical report to which the services apply is compensable** in accordance with Article 5.6. Nothing in this paragraph however shall be construed to relieve the party who retains an interpreter from liability to pay the interpreter's fees in the event the claims administrator is not liable." [emphasis added].

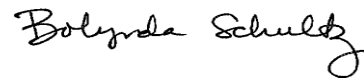
The parties chose to narrow the Lien Trial to a single issue. Hypothetically, if they sought to entertain a full Lien Trial on all issues, the Court would have determined whether defendant established a foundation for the referral, and whether all dates of service were related thereto. If so, the Court may have applied the logic of 8CCR §9795.3(a)(2), and deferred decision until compensability of the underlying medical report was decided. Deferring the issue would essentially "stay" the related lien, but it would be as a matter of practicality rather than in accordance with LC §4615(a). If defendant had established a financial relationship between the stayed provider and the related lien, such as the provider being a shareholder or substantial stakeholder, that may have affected the Court's decision. In this case, the lien claimant asserted there was no financial relationship, and defendant provided no contradictory evidence.

///

///

///

As the Court is tasked singularly, it interprets a strict reading of Labor Code §4615(a), and finds that liens related by referral are not included in the administrative stay.



DATE: July 20, 2017

Bolynda Schultz
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

BIO MED BREA, US Mail
BRADFORD BARTHEL ANAHEIM, Email
FIRST CHOICE HEALTHCARE MEDICAL GROUP, US Mail
INDEPENDENT INTERPRETING, US Mail
PROGRESSIVE INTERPRETING, US Mail
QBC LOS ANGELES, Email

EXHIBIT I

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

CASILLAS, ROSA

APPLICANT

v.

Colorbok, Inc.,
The Hartford

DEFENDANTS

CASE NUMBER(S) ADJ7432990

**MINUTES OF HEARING/ORDER/ORDER AND
DECISION ON REQUEST FOR CONTINUANCE/
ORDER TAKING OFF CALENDAR/
NOTICE OF HEARING**

☐ BEFORE ☒ AT
☒ TRIAL ☐ MSC
☐ CONF ☐ EXP HEARING ☒ LIEN

DATE OF HEARING: 5/2/2017 REQUEST _____

APPEARANCESAPPLICANT ☐ PRESENT ☐ NOT PRESENT

APPLICANT REPRESENTED BY

☐ ATTORNEY☐ HEARING REP.

DEFENDANT REPRESENTED BY

☒ ATTORNEY☐ HEARING REP.

OTHERS APPEARING

☐ ATTORNEY☐ HEARING REP.

INTERPRETER

CERTIFICATION NO. _____

PARTY MAKING REQUEST

☐ JOINT☐ APPLICANT☐ DEFENDANT☐ OTHER _____REQUEST FOR: ☐ CONTINUANCE☐ OTOCREQUEST BY: ☐ LETTER☐ TELEPHONE**POSITION OF OPPOSING PARTY**☐ AGREE☐ OPPOSE☐ UNREACHABLE☐ UNKNOWN**REASON FOR REQUEST****BOARD REASON**☐ FURTHER DISCOVERY: ☐ APP MED ☐ DEF MED ☐ AME ☐ DEPO☐ INSUFFICIENT TIME☐ TO START☐ TO FINISH☐ CALENDAR CONFLICT: ☐ APPLICANT ☐ DEFENSE ☐ L.C.☐ REASSIGNMENT:☐ REFUSED☐ NOT AVAILABLE☐ SETTLEMENT PENDING☐ REPORTER ☐ INTERPRETER ☐ NOT AVAILABLE☐ IMPROPER/INSUFFICIENT NOTICE BY PARTY☐ WCJ NOT AVAILABLE☐ RECUSAL☐ IMPROPER DECLARATION OF READINESS/VALID OBJECTION☐ UEF ISSUES ☐ SERVICE DEFECTIVE ☐ BANKRUPTCY PENDING☐ NON APPEARANCE ☐ APP ☐ DEF ☐ LIEN CLAIMANT ☐ WITNESS☐ DEFECTIVE WCAB NOTICE☐ APPLICANT ☐ DEF COUNSEL ☐ VACATION ☐ ILLNESS☐ ARBITRATION☐ UNAVAILABILITY OF WITNESSES ☐ APP ☐ DEFENSEOTHER/COMMENTS Upon review of Δ Petition,☐ DISPUTE RESOLVED BY AGREEMENT ☐ NO ISSUES PENDINGdated 2/14/17 to stay liens of☐ JOINDER ☐ CONSOLIDATION ☐ VENUE ☐ NEW APPLICATIONPrime Medical Resources, Mesa Pharmacy☐ AUTO REASSIGN ☐ DISQUALIFY ☐ APP ☐ DEFENDANTand Dr. Rahil Khan, and the objection☐ APPLICANT NOW REPRESENTED ☐ REQUESTSdated 3-7-17 filed by PMR, as well as additional

REPRESENTATION

supporting Document filed by Δ "Deferred☐ CHANGE OF CIRCUMSTANCESProsecution Agreement..." dated 12-8-16, it is

(The lien of Phoenix Med. Grp. has been
disputed per Order dated 4/12/17)

GOOD CAUSE APPEARING, IT IS ORDERED THAT THE REQUEST FOR

☐ CONT ☐ OTOC IS ☐ GRANTED ☐ DENIED_____ DAYS FOR ☐ C&R ☐ STIPS, OTHERWISE: ☐ OTOC ☐ RESET☒ OTOC☐ C&R/STIPS SUBMITTED FOR APPROVAL☐ C&R/STIPS APPROVED☐ LIEN STIPS AND ORDER APPROVED☐ N.O.I. TO ALLOW/DISALLOW ISSUED☐ SET FOR ☐ MSC ☐ CONF ☐ TRIAL ☐ LIEN TRIAL ☐ CONTD TESTIMONYTIME ☐ 1 HR ☐ 2 HRS ☐ 4 HRS ☐ _____ DAY

SET ON _____ AT _____ LOCATION _____

BEFORE JUDGE _____

☐ SUPPLEMENTAL PAGES ATTACHED _____ PAGESDATE 5/2/2017

RALPH ZAMUDIO

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

NOTICE TO DIA
document(s) on all parties as shown on the Official Address Record. Served on designated server with a copy of the Official Address Record.

Date _____ By _____

☐ Served on parties and lien claimants present

Pursuant to Rule 10500 you are designated to serve this/these

EXHIBIT J

#933

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

PRE-TRIAL CONFERENCE STATEMENT

BLANCA TORRES

APPLICANT

V.

ABILITY PATHWAYS C/O ZURICH

DEFENDANT(S).

CASE NO. ADJ 9703451

PRE-TRIAL CONFERENCE STATEMENT §5502 (d) (3)

☐ NOTICE OF HEARINGLOCATION: ATH DATE: 7/13/17 TIME: _____SETTLEMENT CONFERENCE JUDGE: Deweese

APPEARANCES

☐ INJURED WORKER: _____☐ INJURED WORKER'S ATTORNEY: _____☐ ATTY ☐ HRG REP☒ DEFENDANT'S ATTORNEY: _____

(FIRM NAME AND PERSON APPEARING)

Elizabeth Pilcher/Medical Cost Review

☐ ATTY ☒ HRG REP☐ ATTY ☐ HRG REP☐ ATTY ☐ HRG REP☐ ATTY ☐ HRG REP

(FIRM NAME AND PERSON APPEARING)

(DEFENDANT)

☒ OTHERS APPEARING:

(L.C., INTERPRETERS, ETC.)

LEONARD ACUARO FOR LUSHKATH MEDICAL GROUP
Kris Bird for Rudolph Multi-Spec. Med. Group☐ ADDRESS RECORD CHANGES: _____

BOX BELOW TO BE COMPLETED ONLY BY WORKERS' COMPENSATION JUDGE

DISPOSITION: SET FOR REGULAR HEARING:

☐ 1 HOUR ☐ 2 HOURS ☐ 1/2 DAY ☐ ALL DAY☐ WCAB NOTICE☒ NOTICE WAIVED☐ BEFORE ANY WCJ ☒ BEFORE WCJ Lemberg ☐ BEFORE ANY WCJ OTHER THAN☐ CASE(S) SET ON 8/30/17 AT 8:30 WCJ Lemberg IN ATH

(DATE)

(TIME)

(LOCATION)

☐ OTHER DISPOSITION AND ORDERS: _____

SERVICE AS ORDERED ON PAGE 4

Paul Deweese

WORKERS' COMPENSATION JUDGE

#934

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

PRE-TRIAL CONFERENCE STATEMENT

CASE NO. ADJ9703451

STIPULATIONS

THE FOLLOWING FACTS ARE ADMITTED:

1. BLANCA TORRES, BORN 05/08/1955WHILE ☒ EMPLOYED ☐ ALLEGEDLY EMPLOYED☒ ON 02/11/2014☐ DURING THE PERIOD(S) _____AS A(N) CERTIFIED NURSING ASSISTANT, OCCUPATIONAL GROUP NUMBER _____AT UPLAND, CALIFORNIA,BY ABILITY PATHWAYS☒ SUSTAINED INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT TO LEFT FOOT AND ANKLE☐ CLAIMS TO HAVE SUSTAINED INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT TO _____2. AT THE TIME OF INJURY THE EMPLOYER'S WORKERS' COMPENSATION CARRIER WAS
ZURICH NORTH AMERICAN COMMERCIAL INSURANCE ADMINISTERED BY PATRIOT RISK☐ THE EMPLOYER WAS ☐ PERMISSIBLY SELF-INSURED ☐ UNINSURED ☐ LEGALLY UNINSURED3. AT THE TIME OF INJURY, THE EMPLOYEE'S EARNINGS WERE \$ _____ PER WEEK, WARRANTING INDEMNITY
RATES OF \$ _____ FOR TEMPORARY DISABILITY AND \$ _____ FOR PERMANENT DISABILITY.

4. THE CARRIER/EMPLOYER HAS PAID COMPENSATION AS FOLLOWS: (TD/PD/VRMA)

TYPE	WEEKLY RATE	PERIOD	TYPE	WEEKLY RATE	PERIOD
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

☐ THE EMPLOYEE HAS BEEN ADEQUATELY COMPENSATED FOR ALL PERIODS OF T/D CLAIMED THROUGH _____5. THE EMPLOYER HAS FURNISHED ☐ ALL ☐ SOME ☐ NO MEDICAL TREATMENT.THE PRIMARY TREATING PHYSICIAN IS IN DISPUTE6. ☐ NO ATTORNEY FEES HAVE BEEN PAID AND NO ATTORNEY FEE ARRANGEMENTS HAVE BEEN MADE.7. ☒ OTHER STIPULATIONS _____

Parties to serve exhibits no later than 25 days before Trial

APPLICANT

DEFENDANT

LIEN CLAIMANT/OTHER

#935

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

PRE-TRIAL CONFERENCE STATEMENT

CASE NO. ADJ9703451

ISSUES

- ☐ EMPLOYMENT: _____
- ☐ INSURANCE COVERAGE _____
- ☐ INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT. _____
- ☐ PARTS OF BODY INJURED: _____
- ☐ EARNINGS: EMPLOYEE CLAIMS _____ PER WEEK, BASED ON _____
EMPLOYER/CARRIER CLAIMS _____ PER WEEK, BASED ON _____
- ☐ TEMPORARY DISABILITY, EMPLOYEE CLAIMING THE FOLLOWING PERIOD(S): _____
- _____
- ☐ PERMANENT AND STATIONARY DATE:
EMPLOYEE CLAIMS _____, BASED ON _____
EMPLOYER/CARRIER CLAIMS _____, BASED ON _____
- ☐ PERMANENT DISABILITY ☐ APPORTIONMENT
- ☐ OCCUPATION AND GROUP NUMBER CLAIMED: BY EMPLOYEE _____
BY EMPLOYER/CARRIER _____
- ☐ NEED FOR FURTHER MEDICAL TREATMENT: _____
- ☒ LIABILITY FOR SELF-PROCURED MEDICAL TREATMENT: _____

☐ LIENS:

LIEN CLAIMANT	TYPE OF LIEN	AMOUNT AND PERIODS PAID
RESHEATH MEDICAL GROUP	FX	\$ 2752.93 RP
Rudolph Multi-Spec. Med.	TX	\$ 6344.77 / paid \$ 112.85
_____	_____	_____
_____	_____	_____

- ☐ ATTORNEY FEES whether Dr. Rudolph is stayed per LC 4615
- ☒ OTHER ISSUES: MPN, VALUE OF SERVICES, REASONABLENESS & NECESSITY, FAILURE TO COMPLY WITH

MTUS, ACOEM & ODG GUIDELINES PER LC 4604.5, FAILURE TO COMPLY WITH RFA/UR/IMR PER LC 4610 & CCR 9792.6-10.06, FAILURE TO REQUEST 2ND BILL REVIEW WITHIN 90 DAYS OF EOR, ADMISSIBILITY OF EVIDENCE/WITNESS NOT TIMELY SERVED OR PROPERLY IDENTIFIED ON PTCS, IMPROPER LIEN FILING PER 4903.05 & 4903.8, STATUTE OF LIMITATIONS, LICENSURE

L.C. RMSES PUT'S NO OBJECTIONS, NO DONALS TO TREATMENT.
NO UR RMSES
Does A have a valid MPN or exercise 5502(b) expedited hearing, transfer of case, person OR dispute any body parts, properly designate

APPLICANT MPN PT P DEFENDANT Off LIEN CLAIMANT/OTHER [Signature]

#936

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

PRE-TRIAL CONFERENCE STATEMENT

CASE NO. ADJ9703451

THIS PAGE FOR JUDGE'S USE ONLY

JUDGE'S CONFERENCE NOTES: _____

ORDERS

☒ IT IS ORDERED PURSUANT TO WCAB RULE 10500, THAT ☒ DEFENDANT ☐ APPLICANT ☐ LIEN CLAIMANT SERVE FORTHWITH THIS ☒ PRE-TRIAL CONFERENCE STATEMENT ☒ NOTICE OF HEARING ON ALL PARTIES OR THEIR REPRESENTATIVE SHOWN ON THE OFFICIAL ADDRESS RECORD AND ANY ADDITIONAL LIEN CLAIMANTS WHOSE LIENS ARE SHOWN UNDER **ISSUES** (PAGE 3).

☐ IT IS FURTHER ORDERED THAT ☐ DEFENDANT ☐ APPLICANT ☐ LIEN CLAIMANT SERVE TIMELY NOTICE OF THE TIME AND PLACE OF ALL REGULAR HEARING SESSIONS ON ALL LIEN CLAIMANTS WHOSE LIENS ARE SHOWN UNDER ISSUES, TOGETHER WITH THE FOLLOWING NOTICE: YOUR LIEN IS AT ISSUE AND WILL BE ADJUDICATED AT REGULAR HEARING.

IT IS FURTHER ORDERED THAT THE PROOF OF SERVICE ORDERED ABOVE BE FILED WITH THE WCAB ONLY ON REQUEST OF THE ASSIGNED WORKERS' COMPENSATION JUDGE.

OTHER DISPOSITION AND ORDERS:

SERVICE OF THIS DOCUMENT WAS MADE PERSONALLY UPON Defendant BY WCJ.

DATE

7/13/17Paul DeWitt
WORKERS' COMPENSATION JUDGE

#937

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

PRE-TRIAL CONFERENCE STATEMENT

CASE NO. ADJ9703451

EXHIBITS

- ☐ APPLICANT
☒ DEFENDANT
☐ LIEN CLAIMANT
☐ APPEALS BOARD

DESCRIPTION

DATE

BILL REVIEWS

07/11/2017; 7/17

PATRIOT ACCEPTANCE LETTER

02/11/2014

PATRIOT MPN NOTICE

02/19/2014

PATRIOT MPN NOTICE

12/12/2014

KEPLAR SOS BUSINESS LICENSE- RESHEALTH

07/10/2014

WITNESSES

TEDY NOROHIAN

LISA MEADOWS

ELIZABETH PILCHER

KIM MCKAY

BROOKE IRVIN

DONALD HODGE

TY GAFFNEY

ABOVE LISTINGS OF EXHIBITS AND WITNESSES REVIEWED BY ALL PARTIES.

APPLICANT

DEFENDANT

LIEN CLAIMANT/OTHER

#938

LIEN CLAIMANTS' EXHIBIT LIST
BLANCA TORRES

CASE NO.: ADJ9703451

EXHIBITSDATED**RUDOLPH MULTI SPECIALTY**

- | | |
|---|-----------------------|
| 1. Itemized Billing | 05/22/2017 |
| 2. DFR & Attachments - Justin Long D.C | 11/10/2014 |
| 3. Complex Comprehensive Med Legal Report - Justin Long D.C | 11/10/2014 |
| 4. PTP Supplemental Report - RE: MPN - Justin Long D.C | 11/10/2014 |
| 5. PTP PR2 - Justin Long D.C | 03/05/2015 |
| 6. PTP PR2 Justin Long D.C | 04/02/2015 |
| 7. PTP PR2 - Justin Long D.C | 05/28/2015 |
| 8. PTP PR2 - Justin Long D.C | 06/18/2015 |
| 9. Physical Therapy Notes - Eric McGann P.T. | 03/07/2015-04/01/2015 |
| 10. Medical Consultative Report - Michael Rudolph M.D. | 04/02/2015 |
| 11. PR2 Report- Michael Rudolph M.D. | 04/30/2015 |
| 12. Medical Consultative Report - Michael Rudolph M.D. | 05/28/2015 |
| 13. Medical Consultative Report - Michael Rudolph M.D. | 06/25/2015 |
| 14. Electrodiagnostic Studies Report- Kevin Do M.D. | 12/05/2014 |

15. 4600 letter for Justin Long DC

16. Michael Alan Rudolph, MD letter

17. EAMS printout 7/13/17 showing no stay

18. Michael Alan Rudolph med board cert. & #

19. Rudolph W-9

20. Goodrich chapter 11 trustee Defendant

21. letter of rep. 7/5/17 6/27/17

WITNESSES:

Applicant- Blanca Torres

Bill Review Expert TBD



Lien Claimant

All lien claimants reserve the right to amend the exhibit and witness list at any time up to trial.

Additionally, Lien claimant reserves right to incorporate board file, Lien claimants exhibits & exhibits.

APPLICANT Blanca Torres Amended AHM
ADJ CASE No.'s ADJ 9703451 47410

EXHIBITS \$ 2752.93
RESHEALTH MEDICAL GROUP HERMOSA BEACH

APPLICANT DEFENDANT ☒ LIEN CLAIMANT APPEALS BOARD

DESCRIPTION

DATE

1. Current Billing Statement
2. Original Lien/Bill/Proof of Service
3. Declaration of Zain Vally, M.D.
4. Fee Schedule/Review
5. Referral
6. Demands for Settlement
7. CCR 10550
8. ResHealth medical Letter of Representation
9. Notices of Representation
10. Medical Reports:

05.22.17

10-17-16

09/09/16

04.06.15

01/06/17

01/06/17

5-24-17

04.02.15

04.24.15

Zain Vally, Mohamed, M.D.
Simpson Simon Kohn, M.D.

11. Any or all other Lien Claimants, Defendant and applicant exhibits submitted in EAMS
12. Proof of Service for Exhibits

5-23-17

ABOVE LISTINGS OF EXHIBITS REVIEWED BY ALL PARTIES

APPLICANT

[Signature]

DEFENDANT

[Signature]

LIEN CLAIMANT/OTHER

WITNESSES

Applicant

Applicant attorney

Current Adjuster

All defense-listed witnesses

#940
STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

BLANCA TORRES

Applicant,

v.

ABILITY PATHWAYS, INC.

Defendants,

CASE NUMBER(s):

A059703451

MINUTES OF HEARING/ORDER/ORDER AND
DECISION ON REQUEST FOR CONTINUANCE/

ORDER TAKING OFF CALENDAR/

NOTICE OF HEARING

☐ BEFORE ☒ AT☐ TRIAL ☐ MSC☒ CONF ☐ EXP HEARING ☒ LIEN

DATE OF HEARING 7/13/17 REQUEST

APPEARANCES:

☐ APPLICANT☐ PRESENT☐ NOT PRESENT

APPLICANT REPRESENTED BY

☐ ATTORNEY☐ HEARING REP.

DEFENDANT REPRESENTED BY

☐ ATTORNEY☒ HEARING REP.

OTHERS APPEARING

☐ ATTORNEY☐ HEARING REP.

INTERPRETER

CERTIFICATION NO.

PARTY MAKING REQUEST

☐ JOINT☐ APPLICANT☐ DEFENDANT☐ OTHER

REQUEST FOR:

☐ CONTINUANCE☐ OTOC

REQUEST BY:

☐ LETTER☐ TELEPHONE

POSITION OF OPPOSING PARTY:

☐ AGREE☐ OPPOSE☐ UNREACHABLE☐ UNKNOWN

REASON FOR REQUEST

BOARD REASON

☐ FURTHER DISCOVERY: ☐ APP MED ☐ DEF MED ☐ AME ☐ DEPO☐ INSUFFICIENT TIME ☐ TO START ☐ TO FINISH☐ CALENDAR CONFLICT: ☐ APPLICANT ☐ DEFENSE ☐ L.C.☐ REASSIGNMENT: ☐ REFUSED ☐ NOT AVAILABLE☐ SETTLEMENT PENDING☐ REPORTER ☐ INTERPRETER ☐ NOT AVAILABLE☐ IMPROPER/INSUFFICIENT NOTICE BY PARTY☐ WCJ NOT AVAILABLE ☐ RECUSAL☐ IMPROPER DECLARATION OF READINESS/VALID OBJECTION☐ UEF ISSUES ☐ SERVICE DEFECTIVE ☐ BANKRUPTCY
PENDING☐ NON-APPEARANCE ☐ APP ☐ DEF ☐ LIEN CLAIMANT ☐ WITNESS☐ DEFECTIVE WCAB NOTICE☐ APPLICANT ☐ DEF COUNSEL ☐ VACATION ☐ ILLNESS☐ ARBITRATION☐ UNAVAILABILITY OF WITNESSES ☐ APP ☐ DEFENSE☐ DISPUTE RESOLVED BY AGREEMENT ☐ NO ISSUES PENDING

OTHER/COMMENTS

☐ JOINDER ☐ CONSOLIDATION ☐ VENUE ☐ NEW APPLICATION☐ AUTO REASSIGN ☐ DISQUALIFY ☐ APP ☐ DEFENDANT☐ APPLICANT NOW REPRESENTED ☐ REQUESTS REPRESENTATION☐ CHANGE OF CIRCUMSTANCESGOOD CAUSE APPEARING, IT IS ORDERED THAT THE REQUEST FOR ☐ CONT ☐ OTOC IS ☐ GRANTED ☐ DENIED_____ DAYS FOR ☐ C & R ☐ STIPS, OTHERWISE: ☐ OTOC ☐ RESET _____☐ OTOC ☐ C & R/STIPS SUBMITTED FOR APPROVAL ☐ C & R/STIPS APPROVED☐ LIEN STIPS AND ORDER APPROVED ☐ N.O.I. TO ALLOW/DISALLOW ISSUED☒ SET FOR: ☐ MSC ☐ CONF ☐ TRIAL ☒ LIEN TRIAL ☐ CONT'D TESTIMONY TIME: ☐ 1 HR ☐ 2 HRS ☐ 4 HRS ☐ _____ DAY

SET ON 8/30/17 AT 8:30 LOCATION AHM BEFORE JUDGE Lemberg

☐ SUPPLEMENTAL PAGES ATTACHED _____ PAGES

DATE 7/13/17

WORKERS' COMPENSATION JUDGE

NOTICE TO Δ
Document on all parties as shown on the Official Address Record.

Pursuant to Rule 10500 you are designated to serve this/these

Date _____ By _____

☐ Served on parties and lien claimants present

EXHIBIT K

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

CASE NUMBER(s):

MINUTES OF HEARING/ORDER/ORDER AND
DECISION ON REQUEST FOR CONTINUANCE/
ORDER TAKING OFF CALENDAR/
NOTICE OF HEARING☐ BEFORE ☐ AT☐ TRIAL ☐ MSC☐ CONF ☐ EXP HEARING ☐ LITEN

DATE OF HEARING: 5/9/17 REQUEST 8:30

Adelita Perez
Illan Sports.
AM Trust
Applicant,
Defendants,APPEARANCES: APPLICANT ☐ PRESENT ☐ NOT PRESENTAPPLICANT REPRESENTED BY ☐ ATTORNEY ☐ HEARING REP.DEFENDANT REPRESENTED BY GILSON DARB By DAVID PERMUTER ☐ ATTORNEY ☐ HEARING REP.OTHERS APPEARING Guyson main for mid Valley ☐ ATTORNEY ☐ HEARING REP.

California Med Legal Int. by multiple Sours

Annamonte Bluck for (D) & (A) for main J. App. Max Med for
SPECIALTY CASE CHINE INTERPRETERPARTY MAKING REQUEST CERTIFICATION NO. 81812221
REQUEST FOR: ☐ CONTINUANCE ☐ OTOC ☐ APPLICANT ☐ DEFENDANT ☐ OTHERREQUEST BY: ☐ LETTER ☐ TELEPHONEPOSITION OF OPPOSING PARTY ☐ AGREE ☐ OPPOSE ☐ UNREACHABLE ☐ UNKNOWN

REASON FOR REQUEST

☐ FURTHER DISCOVERY: ☐ APP MED ☐ DEF MED ☐ AME ☐ DEPO☐ CALENDAR CONFLICT: ☐ APPLICANT ☐ DEFENSE ☐ L.C.☐ SETTLEMENT PENDING☐ IMPROPER/INSUFFICIENT NOTICE BY PARTY☐ IMPROPER DECLARATION OF READINESS/VALID OBJECTION☐ NON-APPEARANCE ☐ APP ☐ DEF ☐ LIEN CLAIMANT ☐ WITNESS☐ APPLICANT ☐ DEF COUNSEL ☐ VACATION ☐ ILLNESS☐ UNAVAILABILITY OF WITNESSES ☐ APP ☐ DEFENSE☐ DISPUTE RESOLVED BY AGREEMENT ☐ NO ISSUES PENDING☐ JOINDER ☐ CONSOLIDATION ☐ VENUE ☐ NEW APPLICATION☐ AUTO REASSIGN ☐ DISQUALIFY ☐ APP ☐ DEFENDANT☐ APPLICANT NOW REPRESENTED ☐ REQUESTS REPRESENTATION☐ CHANGE OF CIRCUMSTANCES

BOARD REASON

☐ INSUFFICIENT TIME ☐ TO START ☐ TO FINISH☐ REASSIGNMENT: ☐ REFUSED ☐ NOT AVAILABLE☐ REPORTER ☐ INTERPRETER ☐ NOT AVAILABLE☐ WCJ NOT AVAILABLE ☐ RECUSAL☐ UEF ISSUES ☐ SERVICE DEFECTIVE ☐ BANKRUPTCY PENDING

Challenge Waived:

☐ DEFECTIVE WCAB NOTICE☐ ARBITRATION

OTHER/COMMENTS

Based on the filing of
Crim. Charges vs. John Garbino,
former director of Trax sun Corp,
parent Co. of Mesa Rx - 17th
delivered/stayed per CC 54615(a) +
134.21GOOD CAUSE APPEARING, IT IS ORDERED THAT THE REQUEST FOR ☐ CONF ☐ OTOC IS ☐ GRANTED ☐ DENIED☐ OTOC ☐ C & R/STIPS SUBMITTED FOR APPROVAL ☐ C & R/STIPS APPROVED☐ LIEN STIPS AND ORDER APPROVED ☐ N.O.I TO ALLOW/DISALLOW ISSUEDSET FOR: ☐ MSC ☐ CONF ☐ TRIAL ☐ LIEN TRIAL ☐ CONT'D TESTIMONY TIME: ☐ 1 HR ☐ 2 HRS ☐ 4 HRS ☐ DAY

SET ON 9/20/17 AT 830 LOCATION OXN BEFORE JUDGE Mays

☐ SUPPLEMENTAL PAGES ATTACHED PAGES

DATE 5/9/17

NOTICE TO Gilson Darb

document(s) on all parties as shown on the Official Address Record. Served on designated server with a copy of the Official Address Record.

Date By

☐ Served on parties and lien claimants present

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

Pursuant to Rule 10500 you are designated to serve this/these

document(s) on all parties as shown on the Official Address Record. Served on designated server with a copy of the Official Address Record.

Date By

☐ Served on parties and lien claimants present

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

SUPPLEMENT TO MINUTES OF HEARING

CASE TITLE

Adulita Perry

CASE NUMBER(S)

d/19544397
Ilan Sports Inc

HEARING DATE

05/09/2017

PLEASE PRINT CLEARLY

ADDITIONAL CASE NUMBERS

ADDITIONAL APPEARANCES:

FOR

Joyce Altman

BY

Amolur

☐ DEF☒ L.C.☐ ATTY / HRG REP

FOR

BY

☐ DEF☐ L.C.☐ ATTY / HRG REP

FOR

BY

☐ DEF☐ L.C.☐ ATTY / HRG REP

FOR

BY

☐ DEF☐ L.C.☐ ATTY / HRG REP

FOR

BY

☐ DEF☐ L.C.☐ ATTY / HRG REP

FOR

BY

☐ DEF☐ L.C.☐ ATTY / HRG REP

COMMENT/DISCUSSION/MOTION

Claimant Joyce Altman, Interpretive Services & Medical Treatment appointments for applicant's work is continuing. The case was accepted and the nature of dispute is MPN validity. Claimant requests order from the court authorizing disclosure/service of MPN information & medical records for dates of services - 7/24/2014 - 3/31/2015 & Any AME reports.

ORDER(S)

Finding of relevancy

Order granting Motion for med info to be served by Sep w/ 20 days hereof: Treatment reports of various doctors per list of 11/14/16, reports of PQME, MPN notices & treatment records, if any.

ATTACHMENTS:

P. Edelberg

Page 2 of 2 Pages

DATE

5/9/17

WCAB Form 20.1 (Revised 2013)

WORKERS' COMPENSATION JUDGE

1 MAXIMUM MEDICAL INC
18011 MITCHELL SOUTH STE A
2 IRVINE, CALIFORNIA 92614
3 (844) 295-4840

4 **BEFORE THE WORKERS' COMPENSATION APPEALS BOARD**
5 **STATE OF CALIFORNIA**

6
7 Adelita Perez
Applicant,

Case No.(s): ADJ9544397

8 vs.

Petition for Removal

9
10 Illah Sports Inc; Amtrust San Diego.
Defendant,

11
12
13 TO ALL PARTIES AND TO THEIR ATTORNEYS OR REPRESENTATIVES OF
14 RECORD:

15 COMES NOW Maximum Medical Inc. ("Maximum"), representatives for Mesa
16 Pharmacy ("Mesa") and Javlin Three LLC ("Javlin") (Mesa and Javlin are collectively referred
17 to herein as "Petitioners") and file this Petition for Removal because of the interlocutory order
18 staying and/or deferring Mesa's liens pursuant to Labor Code Sections 4615 and 139.21 because
19 of the indictment of John Garbino (the "Order") is improper. The challenged Order was issued
20 on May 9, 2017.

21 Petitioners recognize that removal is an extraordinary remedy and that removal will only
22 be granted if Petitioners show that significant prejudice or irreparable harm will result if removal
23 is not granted. (8 CCR 10843(a).) Moreover, Petitions must also show that reconsideration will
24 not be an adequate remedy. (*Ibid.*)

25 **1. The Administrative Law Judge Exceeded The Scope Of His Authority.**

26 At issue in this Petition is Mesa's lien. This lien is not, and never was, owned, let alone
27 filed, by or on behalf of Mr. Garbino. It is not subject to Labor Code 4615. It is not subject to
28 Labor Code 139.21. Mr. Garbino has no ownership interest or any other relationship with

1 Mesa. (See attached Declaration of Greg Sundem.) Mr. Garbino was never a part of Mesa's
2 board of directors. (Ibid.) Mr. Garbino was never involved with or participated in the day to
3 day operations of Mesa. (Ibid.) Mr. Garbino was never an employee of Mesa. (Ibid.) Mr.
4 Garbino is not a physician. (Ibid.) Mr. Garbino is not a provider. (Ibid.) Finally, the allegations
5 in the indictment against Mr. Garbino have nothing to do with Mesa. (Ibid.) Despite all this,
6 Mesa's lien has been indefinitely stayed because the Court erred in (1) accepting defendants'
7 contentions the Court is capable of, and should, stay the lien and (2) reading the clear language
8 of Labor Codes 4615 and 139.21. The Court does not have authority under either of these
9 statutes to stay any liens.

10 **2. Labor Code 139.21 Is Inapplicable.**

11 Assuming without conceding that a credible line could be drawn between Mr. Garbino's
12 indictment and the lien at issue in this case, Labor Code 139.21 would still not apply to the lien
13 at issue. Labor Code 139.21 provides that if a provider has been *convicted* of certain crimes,
14 then that provider can be suspended from participating in California Workers Compensation. If
15 a provider is so suspended, then the *administrative director* shall issue an order consolidating all
16 liens of that provider and hold a special hearing as to whether such liens should be dismissed.
17 Labor Code 139.21 grants no power or authority whatsoever to the administrative law judge to
18 make any such determination unilaterally in a specific case. Moreover, it is the administrative
19 director who is authorized and required to issue the consolidation order and that is only for
20 providers who have been *convicted* (not merely charged) and have gone through a special
21 suspension proceeding. Again, none of this applies to Mesa since neither Mesa or any of its
22 physicians, let alone anyone affiliated with Mesa, has been *charged* with any crimes in the first
23 instance, much less *convicted* as required by Labor Code 139.21. No one affiliated with Mesa
24 appears on the list of suspended providers promulgated by the administrative director¹. Nor
25
26
27

28 ¹ https://www.dir.ca.gov/Fraud_Prevention/Suspension-List.htm

1 does any such person appear on the list of practitioners or providers who have been issued a
2 suspension notice².

3 **3. No Stay Can Be Imposed Pursuant To Labor Code 4615.**

4 Labor Code 4615's language is clear; it imposes an automatic stay only on liens "filed by
5 or on behalf of a physician or provider ...upon the filing of criminal charges against that
6 physician or provider." Labor Code 4615 authorizes the administrative director to promulgate
7 rules of implementation and requires the administrative director to maintain a website with the
8 names of any physician or provider whose liens are stayed pursuant to Labor Code 4615.
9 Section 4615 unequivocally makes clear that the imposition of a stay on filed liens is limited to
10 liens filed *by or on behalf of a physician or provider of medical services under Section 4600*.
11 The automatic stay provision of Labor Code 4615 does not, in any way grant authority to an
12 administrative law judge to unilaterally stay liens without any due process as a result of mere
13 and wholly irrelevant allegations by the defense. Moreover, the power to stay liens of a provider
14 or physician under this section belongs to the administrative director and not individual judges,
15 perhaps exactly to prevent the situation that has now arisen.

16 No one affiliated with Mesa appears on the list promulgated by the administrative director
17 pursuant to Labor Code 4615³. While Mr. Garbino appears on this list, that appearance is
18 irrelevant to the lien at issue in this case. As stated above, the lien at issue was not filed by or on
19 behalf of Mr. Garbino nor did Mr. Garbino have any interest in Mesa. Labor Code 4615 is
20 simply not implicated.

21 **4. Petitioners Will Suffer Significant Prejudice And Irreparable Harm And**
22 **Reconsideration Will Not Be An Adequate Remedy.**

23 If removal is not granted, Petitioners will suffer significant prejudice in that other liens
24 of Petitioner that are similarly situated will likewise be stayed indefinitely– not only by the
25 issuing judge, but other judges at the same board office and at other board offices. This is a
26

27 ² https://www.dir.ca.gov/Fraud_Prevention/Notice-of-Suspension.htm

28 ³ https://www.dir.ca.gov/Fraud_Prevention/List-of-Criminally-Charged-Providers.pdf

1 significant denial of due process for Petitioners' lien which absolutely does not fall within the
2 express meaning or penumbra of either Labor Code 4615 or Labor Code 139.21. Petitioners
3 have done nothing wrong, have no charges pending against them and have not been convicted
4 of anything whatsoever. Accordingly, Petitioners are currently being, and will continue to be,
5 significantly prejudiced by the Order with no discernable means to file a petition for
6 reconsideration in the near (or far) future.

7 Petitioners are and will continue to be irreparably harmed by the Order. Labor Code
8 4615 states that no interest shall accrue during the pendency of the stay. The length of the stay
9 is unknown, and perhaps unknowable. An indefinite stay, for reasons wholly unrelated to
10 Petitioners' lien, without any accrual of interest, serves only to irreparably harm Petitioners in
11 terms of lost revenue and interest. Moreover, Petitioners will incur costs associated with
12 litigation despite the inability to move the matter forward to a speedy resolution. All this will
13 happen even though Petitioners' lien is not subject to either Labor Code 4615 or Labor Code
14 139.21 and even though Petitioners have done nothing that warrant the Court's stay of its lien.

15 A Petition for Reconsideration after the fact will not be an adequate remedy. Petitioners
16 will have lost revenue, suffered the stigma of having their lien(s) stayed (making negotiations
17 significantly more challenging), will not be able to earn any interest and will not be
18 compensated in any other way for the damages suffered. Additionally, it is unknown when the
19 court will even lift the stay – after Mr. Garbino's suspension hearing, upon the issuance of
20 consolidation order, upon the issuance of an order related to his liens or at some other point in
21 time. It cannot even be known how long this process will take since not one provider has
22 completed the entire process yet.

23 While it is true that administrative law judge has discretion to conduct proceedings
24 before him in a manner he sees fit, judicial discretion must be "guided and controlled in its
25 exercise by fixed legal principles. It is not a mental discretion, to be exercised *ex gratia*, but a
26 legal discretion to be exercised in conformity with the spirit of the law and in a manner to
27 subserve, not to impede or defeat, the ends of justice." (*Benjamin v. Dalmo Mfg. Co.* (1948) 31
28 Cal. 2d 523, 526 (internal citation omitted).) Here, the Court's exercise of discretion to stay

1 Petitioners' lien and to defer all further proceedings indefinitely for no valid reason whatsoever
2 was not guided or controlled by fixed legal principals. No reconsideration after the fact can
3 remedy this miscarriage of justice, making reconsideration an inadequate remedy.

4 **5. Conclusion.**

5 There is no law, regulation or rule that authorizes (or grants discretion to) an
6 administrative law judge to unilaterally stay all further lien proceedings related to Petitioners'
7 lien indefinitely because the defense simply raised an unfounded and certainly unsupported
8 allegation. None. Accordingly, the administrative law judge far exceeded his authority in
9 staying all further proceedings.

10 WHEREFORE, for the reasons stated herein, Petitioners respectfully requests that this Petition
11 for Removal be granted.

12
13
14 DATED: June 2, 2017

MAXIMUM MEDICAL INC

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17 _____
18 JOHN LEWIS
19 LITIGATION MANAGER
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VERIFICATION (C.C.P. § 446)

I, John Lewis, am the litigation manager for Maximum Medical, Inc. I hereby verify that I have read the entire contents of the Petition for Removal, and that the contents are true of my own knowledge, except as to the matters which are herein stated based on information and belief, or upon the declaration of another, and as to those matters, I believe them to be true. This verification is being made by me because the facts are within my knowledge. I make this verification under penalty of perjury under the laws of the State of California.

DATED: June 2, 2017

MAXIMUM MEDICAL INC



JOHN LEWIS
LITIGATION MANAGER




March 3, 2017

To Whom It May Concern:

Below are a few critical facts explaining the relationship (or lack thereof) between Mr. John Garbino and Mesa Pharmacy, Inc., a California corporation ("Mesa").

- LC 4615 states that a lien filed by or on behalf of a physician or provider for medical treatment services...shall be stayed upon the filing of criminal charges against that physician or provider for an offense involving fraud against the workers' compensation system, medical billing fraud, insurance fraud, or fraud against the Medicare or Medi-Cal programs.
 - Mr. Garbino is not a physician.
 - Mr. Garbino is not a provider – Mesa is, and Mr. Garbino has no ownership interest in Mesa Pharmacy. Mr. Garbino has no relationship whatsoever with Mesa.
 - The charges against Mr. Garbino do not relate to workers' compensation system, medical billing fraud, insurance fraud, or fraud against the Medicare or Medi-Cal programs.
- Mr. Garbino was a director on the board of directors of Praxsyn Corporation, a Nevada corporation ("Praxsyn"), which is the holding company for Mesa.
- Mesa has a board of directors separate and apart from Praxsyn. Mr. Garbino was never a part of Mesa's board of directors.
- Mr. Garbino was never involved with or participated in the day to day operations of Mesa.
- Mr. Garbino was never an employee of Mesa.
- Praxsyn is a publicly traded company.
- Mr. Garbino was a director on the Praxsyn board from March 31, 2014 to February 23, 2015.
- The allegations in the indictment against Mr. Garbino relate solely to activities undertaken by Mr. Garbino after he resigned from Praxsyn board of directors. They relate to a wholly unaffiliated entity named Sano Medical Consultants, LLC, which Mr. Garbino created after resigning from Praxsyn.

I declare under the penalty of perjury pursuant to the laws of the state of California that the foregoing is true and correct.



Greg Sundem, President

MAXIMUM MEDICAL IRVINE (10236934)
JESSE TREJO
(844) 295-4840
JTREJO@MAXIMUMMEDICALINC.COM

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is 18011 Mitchell South, Ste B. Irvine, California 92614.

On this date, I served the foregoing lien claimants (MESA PHARMACY INC IRVINE) PETITION FOR REMOVAL: AMTRUST (CL: 1266962) on all parties to this action addressed as stated on the attached service list:

☒ **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

☐ **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service.

☐ **REGULAR U.S. MAIL:** Each such envelope was deposited with the U.S. Postal Service at Irvine, California, with first class postage thereon fully prepaid.

☐ **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Irvine, California, with Express Mail postage paid.


☐ **PERSONAL SERVICE:** I personally delivered each such envelope by hand to the office of the addressee.

☐ **FAX (BY AGREEMENT ONLY):** By transmitting the document by facsimile transmission at the time shown on the attached transmission report. The transmission was reported as complete and without error, and the attached transmission report was properly issued by the transmitting fax machine.

☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ **(Federal)** I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made.

Executed on June 2, 2017 at Irvine, California.


Christina Ruiz
Assistant Account Manager

MAILING LIST

THE HONORABLE ROBERT M. MAYS WCJ (E-FILED VIA EAMS)
WORKERS COMPENSATION APPEALS BOARD
1901 N. RICE AVE., # 200
OXNARD, CA 93030

ILLAH SPORTS, INC.
1500 BEACON PL
OXNARD, CA 93033

AMTRUST SAN DIEGO
3517 CAMINO DEL RIO SOUTH STE. 200
SAN DIEGO, CA 92108

GILSON DAUB DANA POINT
24270 PACIFIC COAST HWY STE. A
DANA POINT, CA 92629

EXHIBIT L

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

JULIO ACEVEDO,

Applicant,

vs.

**SUPER KING MARKET; COMPANION PROPERTY &
CASUALTY INSURANCE COMPANY administered by
INTERCARE HOLDINGS INSURANCE SERVICES,
INC.,**

Defendants.

Case No. ADJ 8706980
Anaheim District Office

FINDINGS and ORDERS
RE: LIEN OF
PRIME MEDICAL
RESOURCES, INC.

The above-captioned matter having been settled by way of Compromise and Release approved on January 15, 2015, the lien of Prime Medical Resources, Inc. was submitted for decision. Having reviewed the evidence, the Honorable Paul DeWeese, Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1. The lien of Prime Medical Resources, Inc. is not stayed pursuant to Labor Code section 4615.
2. Lien claimant Prime Medical Resources, Inc. did not adequately comply with Labor Code section 4903.8(d).
3. All other issues are moot.
4. None of the exhibits offered by lien claimant (marked for identification only as Lien Claimant's Exhibits 1 through 11) is admissible.

ORDERS

- A. The lien of Prime Medical Resources, Inc. is disallowed.
- B. Lien Claimant's Exhibits 1 through 11 are excluded from evidence.

DATE: July 31, 2017



PAUL DeWEESE
WORKERS' COMPENSATION JUDGE

SERVICE:

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RONDEAU LAW EL SEGUNDO , 400 CONTINENTAL BLVD FL 6 EL SEGUNDO CA 90245,
CHARLES@RONDEAUFIRM.COM

ON: 7/31/2017

BY:  _____

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ 8706980

**JULIO ACEVEDO;
PRIME MEDICAL
RESOURCES (Lien
Claimant)**

-vs.-

**SUPER KING MARKET;
COMPANION P&C c/o
INTERCARE**

**WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE: Hon. PAUL DeWEESE**

DATE: July 31, 2017

OPINION ON DECISION

1. LABOR CODE SECTION 4615

Labor Code section 4615(a) provides that all liens filed by or on behalf of a provider of medical services shall be automatically stayed upon the filing of criminal charges against that provider for specified offenses. The stay shall remain in effect "until the disposition of the criminal proceedings." Section 4615(b) requires the DWC to post the names of any stayed providers on the DWC's web site.

Although Prime Medical Resources, Inc. (PMR) has never been charged with one of the offenses specified in section 4615 and has never been listed as a stayed provider by the DWC or by EAMS, defendant asserted that PMR's lien should nevertheless be stayed pursuant to section 4615 because defendant alleged that PMR is or was owned (at least in part) by Fermin Iglesias, an individual who was indicted for offenses specified in section 4615.

However, there has already been a "disposition of the criminal proceedings" against Mr. Iglesias. He pled guilty to at least some of the charges against him. At the time of the instant trial, suspension proceedings pursuant to Labor Code section 139.21 had begun but were not yet complete. Although Mr. Iglesias was at one time listed as a stayed provider on the DWC web site, he is no longer so listed because the criminal proceedings against him are complete. Even if section 4615 were applicable to PMR at one time through Mr. Iglesias, it would not be applicable now by the express terms of the statute. Therefore, it was found that the lien of Prime Medical Resources, Inc. is not stayed pursuant to Labor Code section 4615.

Although the court is not expressly deciding the question of whether section 4615 ever

applied to PMR because the question is currently moot, this judge will offer some thoughts in the hope that the analysis will assist in future cases. These thoughts are, of course, dicta and are not binding on anyone or anything.

First, defendant alleged that Fermin Iglesias has or had an ownership interest in PMR. However, the only evidence defendant offered on this point was a “Statement of Information” filed with the California Secretary of State on December 22, 2015, which revealed that on that date, Fermin Iglesias was the CEO, Secretary, CFO, and apparently sole Director of Prime Medical Resources, Inc. Although that information gives rise to a strong suspicion that Mr. Iglesias may have had an ownership interest in PMR, the fact that Mr. Iglesias held the corporate officer positions does not, in and of itself, constitute substantial evidence of ownership in the corporation. The court would also note that a subsequent Statement of Information filed with the California Secretary of State on April 14, 2016 (which the court takes judicial notice of as a public government record), three days after PMR’s lien was filed in this case, names another person as holding all of the officer positions within PMR and makes no mention whatsoever of Mr. Iglesias.

Second, even if it were established that Fermin Iglesias had some ownership interest in PMR at the time the services were rendered in this case and/or when the lien was filed, section 4615 does not mention ownership interests. If the lien had been filed by or on behalf of Mr. Iglesias, it would clearly have been stayed until the criminal proceedings against him were concluded. But the lien was filed by Prime Medical Resources, Inc. A corporation is a separate legal entity from its individual shareholders, and PMR was never charged with anything as far as this court is aware. Defendant offered no evidence at all regarding whether the corporation was an “alter ego” of Mr. Iglesias such that the corporation itself should be held responsible for Mr. Iglesias’ actions, and it was defendant’s burden to do so.

Finally, the court notes that Labor Code section 139.21(e), regarding the adjudication of liens filed by a provider suspended pursuant to section 139.21, expressly applies to “any liens filed by or on behalf of [the suspended provider] **OR** any clinic, group or corporation in which the suspended provider has an ownership interest.” (emphasis added). Section 139.21 clearly differentiates between liens filed by or on behalf of a medical provider, and liens filed by a company in which that provider has an ownership interest. Section 139.21(e) applies to both, while section 4615 only applies to the first. The Legislature presumably knows the difference, having enacted specific language regarding the two in section 139.21, and if the Legislature wanted section 4615 to apply to both as well, it would have enacted the same language there.

2. LABOR CODE SECTION 4903.8(d)

Defendant contended that PMR’s lien was not validly filed and/or served. That contention includes an assertion that lien claimant did not properly comply with Labor Code section 4903.8(d) and as a result, its lien was not recoverable as a matter of law.

Section 4903.8(d) requires a lien filed on or after January 1, 2013 (the lien in this case was filed on April 11, 2016) to be accompanied by a declaration under penalty of perjury that

the services described in the itemized billing were actually provided to the injured worker, and that the billing statement accurately describes the services provided. The declaration is to be made by “a natural person or persons competent to testify to the facts stated.”

The declaration filed with the lien of Prime Medical Resources, Inc. was “signed” by Yanira Santos. PMR’s representative at trial, Carlos Cortez, advised defendant that Ms. Santos is or was an employee of PMR’s representative of record, Anthesis Global, Inc. Under these circumstances, the court does not believe that Ms. Santos is competent to testify to the facts stated in the declaration. She does not work for PMR and was presumably not present when treatment was rendered. She would not have independent knowledge of the truth of the declarations and would have relied on hearsay information from the provider’s office.

Because the declaration was not made by a natural person competent to testify to the facts stated therein, it was found that lien claimant Prime Medical Resources, Inc. did not adequately comply with Labor Code section 4903.8(d).

3. OTHER ISSUES

Because section 4903.8(e) provides that a lien filed on or after January 1, 2013 that does not comply with the requirements of section 4903.8 “shall be deemed to be invalid,” it was found that all other issues are moot and the lien of Prime Medical Resources, Inc. was disallowed.

4. ADMISSIBILITY OF EVIDENCE

Defendant objected to the admissibility of all of lien claimant’s exhibits on the ground that none of the exhibits was served on defendant prior to the day of trial. Defendant lodged additional specific objections against some individual exhibits that were not persuasive. However, the objection based on failure to serve was found to have merit, since PMR’s representative was unable to produce any evidence of service at all except for an undated and unsigned “proof of service” that is not proof of anything. Therefore, it was found that none of the exhibits offered by lien claimant is admissible, and Lien Claimant’s Exhibits 1 through 11 were excluded from evidence.

However, the court did take judicial notice of PMR’s lien that was electronically filed on April 11, 2016, along with the declarations and proof of service filed concurrently with the lien.

DATE: July 31, 2017



PAUL DeWEESE
WORKERS' COMPENSATION JUDGE

SERVICE:

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PRIMEM530@YAHOO.COM
RONDEAU LAW EL SEGUNDO , 400 CONTINENTAL BLVD FL 6 EL SEGUNDO CA 90245,
CHARLES@RONDEAUFIRM.COM

ON: 7/31/2017

BY: 

EXHIBIT M

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ8618080

BEATRIZ LINARES

-vs.-

**VOCAL INC;
ILLINOIS MIDWEST INS.
CO.**

**WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:**

WILLIAM M. CARERO

DATE:

06/23/2017

OPINION ON DECISION

The sole issue for adjudication is “sanctions for Pinnacle filing multiple DORs where lien is stayed.”

There is no stay on First Choice Medical Group. There is a stay on First Choice Healthcare Medical Group

Pinnacle represents First Choice Medical Group herein. This entity may or may not be identical to First Choice Healthcare Medical Group. The former name is set forth on the lien itself of 02/18/2014 (EAMS Doc. ID No. 1170270) and the latter is set forth on the declaration of readiness to proceed of the same date (EAMS Doc ID. No. 1171247). Both pre-date the stay on First Choice Healthcare Medical Group.

Defendant argues that “In this instant case, First Choice Medical Group filed its lien *purposely excluding the “Healthcare”* portion of its name out (Emphasis added) thus preventing

the Electronic Adjudication Management System (EAMS) to flag the lien as provider that should be on the “Stay” List. (sic.).”

Since the filing of the lien and all three declarations of readiness filed by Pinnacle pre-dated the enactment of Senate Bill 1160 on 01/01/2017 as cited by defendant petitioner, there is no basis to conclude that Pinnacle was trying to evade a stay. Further, listing the name with “Healthcare” on the first DOR could not be construed as an attempt to hide the name. Last, it is noted that both the names “First Choice Medical Group” and “First Choice Healthcare Medical Group appear in the EAMS system, and no evidence was adduced to demonstrate that this lien belonged to one *versus* another.


Regardless, due process requires that even a stayed lien claimant be afforded notice and opportunity to be heard on the issue of whether a particular lien should be stayed pursuant to Labor Code Section 4615.

Accordingly, it is found that there is no good cause to impose a sanction on either First Choice Medical Group or First Choice Healthcare Medical Group for asserting that due process right.

Defendant’s 06/21/2017 petition for costs and sanctions is denied

DATED AT OXNARD, CALIFORNIA

DATE: 06/23/2017


WILLIAM M. CARERO
WORKERS’ COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:

FIRST CHOICE MEDICAL GROUP, US Mail

FLOYD SKEREN PASADENA, Email

PINNACLE LIEN CORONA, US Mail

Served on above parties by preferred method of service shown
above at addresses shown on Proof of Service:

ON: 7/11/2017

BY: *Jill Contreras*
Jill Contreras

**PROOF OF SERVICE
FINDINGS AND ORDER
AND OPINION ON DECISION
JULY 11, 2017**

Case Number: ADJ8618080

FIRST CHOICE
MEDICAL GROUP

Lien Claimant - Other

FLOYD SKEREN
PASADENA

Law Firm, 215 N MARENGO AVE STE 201 PASADENA CA 91101, pas-
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PINNACLE LIEN
CORONA

Law Firm, 331 CORPORATE TERRACE CIR CORONA CA 92879

EXHIBIT N

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

MARIA RADILLA ROMAN,)
)
Applicant,) CASE NO. ADJ8912696
)
vs.) CONSOLIDATION MINUTES
) OF STATUS CONFERENCE
) (FURTHER)
BERKSHIRE HATHAWAY HOMESTATE) AND
COMPANIES,) ORDER
)
Defendant(s).)
)
FIRST CHOICE HEALTHCARE,)
)
Lien Claimant(s).)

DISTRICT OFFICE: Van Nuys
LOCATION: Van Nuys, California
DATE AND TIME: June 19, 2017; 2:07 p.m. to 2:15 p.m.

JUDGE: The Honorable WILLIAM GUNN
REPORTER: Mary Welsh, Hearing Reporter

APPEARANCES: Applicant not present

MOKRI, VANIS & JONES, LLP
By: ERIC J. DANOWITZ
Attorneys for Defendant Berkshire
Hathaway Homestate Companies

ARENT FOX
By: COLLIN SEALS
Attorneys for Lien Claimant First
Choice Healthcare Medical Group

DISPOSITION: The matter is continued to August 16, 2017
at 1:30 p.m.

(3 pgs. est.)

1 LET THE MINUTES REFLECT THAT this is a consolidated
2 lien case, which previously had been handled by Judge Devine
and has been reassigned to me, at least for purposes of the
3 First Choice/Fred Khalili liens. Today is a status conference.

4 LET THE MINUTES FURTHER REFLECT THAT this matter is
5 continued to a noticed status conference on August 16, 2017, at
6 1:30 p.m.

7 * * * * *

8 In the interim, the Court makes the following order:

9 O R D E R

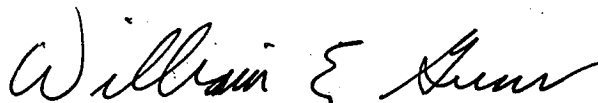
10 All liens of First Choice are consolidated and stayed,
11 pending a resolution of the issue of whether those liens are in
12 fact within the automatic stay of Labor Code Section 4616,
13 criminal charges being filed against Fred Khalili.

14 At the August 16th hearing it will be determined whether
15 the parties think there is further discovery that needs to be
16 done or whether this matter could proceed to resolution via
17 hearing.

18 Prior to August 16th, both parties are ordered to meet and
19 confer and discuss a plan of discovery or litigation that they
20 wish to pursue, and if there are issues that the Court needs to
21 decide whether the parties shall agree on, we can raise that at
the August 16th hearing.

22 The Court will attempt to obtain a list of all liens from
23 First Choice that are in EAMS and provide a copy of that to
24 both parties. Once that has been provided, Lien Claimant here,
25 Mr. Seals, is ordered to provide notice to the parties in that
list of the hearing on August 16, 2017.

* * * * *

26 

27 HON. WILLIAM GUNN
28 Workers' Compensation Judge

29 Completed and returned to Judge: JUNE 20, 2017
30 By: Mary Welsh, Hearing Reporter

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

06-20-2017

PROOF OF SERVICE

Case Number: ADJ8912696

ARENT FOX LOS
ANGELES

Law Firm, 555 W FIFTH ST FL 48 LOS ANGELES CA 90013,
bowers.terree@arentfox.com

MOKRI VANIS
NEWPORT BEACH

Law Firm, 4100 NEWPORT PL STE 840 NEWPORT BEACH CA 92660,
edanowitz@mvjllp.com

6/19/17 Consolidation Minutes of Status Conference & Order

Served via US Mail or e-mail on counsel and parties above.

Date: 6/20/17

By: Mary Welsh

