

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

ARTEMIA GONZALEZ, Applicant

vs.

**HOPE BY THE SEA; STATE COMPENSATION
INSURANCE FUND, *Defendants***

**Adjudication Number: SAU8991355 (MF)
Van Nuys District Office**

***Real Parties in Interest:*
Lien Claimants Griffin Medical Group and Alan Ivar**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted a petition for reconsideration filed by lien claimants Alan Ivar and Griffin Medical Group (lien claimants) in order to study further the legal and factual issues raised therein. This is our Opinion and Decision after Reconsideration.

Lien claimants seek reconsideration of the First Amended Findings of Fact and Order issued on April 16, 2019 (F&O) by a workers' compensation administrative law judge (WCJ).¹ The WCJ found that the Labor Code section 139.21(g) presumption applies to all liens of Griffin Medical Group (Griffin), and therefore, all liens of Griffin are presumed to arise from the conduct giving rise to the suspension of Alan Ivar pursuant to section 139.21(a)(1)(A). The WCJ found that Mr. Ivar failed to rebut the section 139.21(g) presumption, and that payment is not due and should not be made on the liens of Griffin because they arise from criminal, fraudulent or abusive conduct or activity. The WCJ granted the parties' respective requests for judicial notice (see Lien Claimant's Exh. A-G and Def. Exh. 1-4). The WCJ ordered all Griffin liens dismissed with prejudice.

Lien claimants contend that none of the liens at issue relate to care rendered by Dr. Ivar, or to patients referred to a "Drobot facility," and therefore, the liens could not be connected to Dr. Ivar's "wrongdoing." Lien claimants also contend that Dr. Ivar's single criminal conviction

¹ The WCJ simultaneously issued an Opinion on Decision (Opinion on Decision).

for conspiracy to commit an offense or to defraud the United States through a conspiracy to “misuse the United States Postal Service” does not fall within the offenses enumerated in section 139.21; that he did not appeal the suspension because at the time he was suspended, section 139.21 had not yet been amended to add the “entity” provisions and because he was dealing with a “serious permanent medical condition;” and, therefore, his conviction cannot affect the liens of his colleagues at Griffin.

The Anti-Fraud Unit of the Department of Industrial Relations (AFU) filed an “Answer to Lien Claimants’ First Amended Petition for Reconsideration of Findings of Fact and Order” (Answer), and the joint carriers filed a joinder to AFU’s Answer. The WCJ filed a First Amended Report and Recommendation on Petition for Reconsideration (Report), wherein the WCJ recommends that the Petition for Reconsideration be denied.

We have reviewed the record in this matter and considered the allegations of the Petition for Reconsideration, AFU’s Answer, and the contents of the Report. Based on our review of the record, and for the reasons set forth in the Report and in the Opinion on Decision, both of which are adopted and incorporated herein, as well as for the reasons set forth herein, it is our decision after reconsideration to affirm the WCJ’s decision, except that we amend the F&O to clarify the dates of Alan Ivar’s criminal conduct, and hence the liens arising from that criminal conduct.

We note that this consolidated case can be distinguished in both law and fact to the panel decision issued on January 21, 2021 in the consolidated matter of *Yolanda Sablan v. County of Los Angeles, et al. (Real Parties in Interest Marisa Schermbeck Nelson, et al.)*, SAU2545427 (*Sablan*). The panel in *Sablan* considered the current version of Labor Code section 139.21, which came into effect on January 1, 2018. Based on that version of section 139.21, the panel in *Sablan* determined that the Workers’ Compensation Appeals Board (WCAB) lacked jurisdiction to join various lien claimant entities into Labor Code section 139.21 special lien proceedings brought against Marisa Schermbeck Nelson. As a result, it was determined that the WCAB violated those entities’ right to due process.

The above captioned matter was consolidated pursuant to the version of section 139.21 in effect on April 14, 2017, the date that the Chief Judge of the Department of Workers’ Compensation issued the Order of Consolidation, designation of Master File, Order Staying Liens, and Notice of Hearing in this case. In 2017, section 139.21 did *not* include the current subdivision (a), paragraph (1), subparagraph (D), which authorizes the Administrative Director of the

Department of Workers' Compensation to seek suspension of an entity lien claimant, thereby subjecting the entity to special lien proceedings if it "is controlled by an individual who has been convicted of a felony or misdemeanor" as defined in the statute. (Lab. Code, § 139.21(a)(1)(D).) Instead, former section 139.21, subdivision (e), authorized section 139.21 special lien proceedings against "any liens filed by or on behalf of the [suspended] physician, practitioner, or provider **or any clinic, group or corporation in which the suspended physician, practitioner, or provider has an ownership interest.**" (Former Lab. Code, § 139.21(e).)

There is no dispute that Alan Ivar was suspended pursuant to an Order of Suspension issued on March 24, 2017 by then acting Administrative Director of the Division of Workers' Compensation. (OD Anti-Fraud Unit Exh. 2, Order of Suspension 3/24/17.)² It also cannot be disputed that Alan Ivar gave sworn testimony during criminal proceedings before the United States District Court, Central District of California, Southern Division at Santa Ana, on February 19, 2016, while represented by counsel. (OD Anti-Fraud Unit Exh. 1, Reporter's Transcript of Proceedings, February 19, 2016.) During those proceedings, Alan Ivar admitted that he owned Griffin between 2000 and 2013, the years for which he plead guilty to criminal conspiracy involving surgical and other medical service referrals to Pacific Hospital of Long Beach, owned and/or operated by Michael D. Drobot, in exchange for illegal kickbacks. (*Id.*, pp. 29-30, 36-37.) We concur with the WCJ that Alan Ivar's sworn testimony, which was made in court while represented by counsel, is substantial evidence that he had "an ownership interest" in Griffin during the years of his criminal conduct, i.e., 2000 to 2013.

Consequently, pursuant to former section 139.21, subdivision (e), all liens filed on or behalf of Alan Ivar and/or Griffin between January 1, 2000 and December 31, 2013 are subject to these special lien proceedings, and thus subject to "a presumption affecting the burden of proof" that they "arise from the conduct subjecting the physician, practitioner, or provider to suspension..." (Former Lab. Code, § 139.21 (g).) Pursuant to the reasons set forth in the Report and Opinion on

² We note, as does the WCJ, that Alan Ivar failed to appeal his suspension, and thus, his suspension based on a conviction for one of the crimes enumerated in section 139.21(a)(1)(A) is not in dispute. The WCJ explains further that: "This court does not have jurisdiction to make a finding of criminal guilt, but Ivar testified he agreed to commit Mail Fraud, and Honest Services Mail Fraud, a violation of Title 18 USCS §§ 1341 and 1346, Engage in Interstate Travel in Aid of a Racketeering Enterprise, Title 18 USCS § 1952(a)(3), and Engage in Monetary Transactions in Property Derived from Specified Unlawful Activity, Title 18 USCS § 1957, and all involved acts occurring within or against the workers' compensation system. For purposes of the application of LC § 139.21 (a) (1) (A), this court finds Ivar's conviction for conspiracy is a crime involving fraud or abuse of the workers' compensation system." (Opinion on Decision, p. 2.)

Decision, which we have adopted and incorporated herein, the WCJ found that Alan Ivar failed to rebut this presumption. (F&O, Findings of Fact no. 3.)

Ivar argues that none of the liens in this case relate to care rendered by Ivar, the liens are “his colleague’s liens”, were not related to referrals to a Drobot facility, thus not connected to wrong doing, and that enforcement of the liens is not by, for, or for the benefit of Ivar. In the Opinion on Decision this court pointed out that none of the liens were filed by anyone other than Griffin, which Ivar said he owned. All liens were filed in the name of Griffin, and all of the bills submitted to the carriers reference only Griffin. None of the lien documentation previously filed by Griffin in the cases in chief reference anyone else having an ownership interest in the liens. It is only in this Special Lien Proceeding that Ivar has argued that the liens are actually his colleagues’ liens, (Pet. For Recon P4 L27) and that the liens are filed only in the name of Griffin Medical, and that the other providers billed through Griffin Medical. (Pet. For Recon. P5 L2-L7).

Ivar specifically argues none of the liens at issue relate to care provided by Ivar, and that no finding was made that any of the liens at issue relate to care provided by Ivar.³ Ivar also argues the evidence demonstrates the treatment was provided by other physicians at Griffin. This court found the evidence submitted by Ivar to prove these facts were not credible, was produced only in preparation for litigation, and was admissible solely because of the informal nature of the workers’ compensation proceedings. With this in mind the court’s opinion of the evidence, and the declaration of Deborah Ivar submitted by Ivar has not changed. Both lack credibility and have little if any value to prove the facts Ivar claims. (Report, pp. 2-3; see Opinion on Decision, pp. 7-12.)

In addition to finding that lien claimants’ evidence, i.e., the Declaration of Deborah Ivar (Lien Claimants Exh. G), was questionable hearsay prepared specifically for litigation, the WCJ determined that both Alan Ivar and Deborah Ivar lacked credibility. (Opinion on Decision, pp. 7-12.) In sum, the WCJ states,

Both Ivar and Deborah Ivar have not been entirely truthful in their arguments made to this court as to the amount of control they had over Griffin Medical. Noting the corporate roles of Deborah Ivar and Ivar shown in the evidence and contrasted against the corporate roles as described in Deborah Ivar’s declaration, coupled with any financial interest they may have, the credibility of Deborah Ivar is in doubt, including the veracity of the evidence she created which is suspect and not entirely accepted by the court as truthful. Ivar unquestionably controlled the corporation, both within LC 139.21 (a) (3) and as a factual matter, while Deborah Ivar exerted significant control over Griffin Medical greater than

³ We note that this would be unnecessary given the presumption that all liens arose from Alan Ivar’s criminal conduct. (Lab. Code, § 139.21(g).)

that of an office administrator. All of this casts the facts presented in Exhibit G and Ivar's brief into doubt." (Opinion on Decision, p. 8.)

We give great deference to the credibility determinations of the WCJ because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500, 504-505]; also see *Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140-141.) Only evidence of considerable substantiality would warrant rejecting a WCJ's credibility determination. (*Garza, supra*, 3 Cal.3d at 318-319.) We find no such evidence in the record of this case.

We note, however, that the WCJ did not identify the years of Alan Ivar's conduct for purposes of identifying the liens arising from Alan Ivar's criminal conduct. Therefore, we will amend the F&O to clarify the years of Alan Ivar's criminal conduct.

Accordingly, it is our decision after reconsideration to affirm the decision of the WCJ, except that we will amend the F&O to reflect that liens filed on or behalf of Alan Ivar and/or Griffin for services rendered between January 1, 2000 and December 31, 2013 are dismissed with prejudice.

For the foregoing reasons,

IT IS ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the First Amended Findings of Fact and Order issued on April 16, 2019 by a workers' compensation administrative law judge is **AFFIRMED** except that it is **AMENDED** as follows:

...

Findings of Fact

1. Alan Ivar owned Griffin Medical Group between 2000 and 2013. The presumption affecting the burden of proof in former Labor Code section 139.21, subdivision (g), thereby applies to all liens filed by or behalf of Alan Ivar and/or Griffin Medical Group for services rendered between January 1, 2000 and December 31, 2013.
2. It is a presumption affecting the burden of proof (Lab. Code, §139.21(g)) that all liens filed by or behalf of Alan Ivar and/or Griffin Medical Group for services rendered between January 1, 2000 and December 31, 2013, arise from the conduct giving rise to the suspension of Alan Ivar pursuant to former Labor Code section 139.21, subdivision (a), paragraph (1), subparagraph (A).
3. Alan Ivar failed to meet his burden of proof to rebut the presumption set forth in Labor Code section 139.21, subdivision (g).
4. Pursuant to former Labor Code section 139.21, subdivision (g), payment is therefore not due, and should not be made on any lien filed by or behalf of Alan Ivar and/or Griffin Medical Group for services rendered between January 1, 2000 and December 31, 2013 because such liens arise from the conduct subjecting Alan Ivar to suspension.

Order

IT IS HEREBY ORDERED that all liens filed by or behalf of Alan Ivar and/or Griffin Medical Group for services rendered between January 1, 2000 and December 31, 2013 are dismissed with prejudice.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 18, 2021

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

**GRIFFIN MEDICAL GROUP
ALAN IVAR
BRISSMAN & NEMAT
STATE OF CALIFORNIA, OFFICE OF THE DIRECTOR, ANTI-FRAUD UNIT
MOKRI, VANIS & JONES, LLP, LIAISON COUNSEL**

AJF/abs

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

**FIRST AMENDED
REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

Lien Claimant, Alan Ivar, has filed a timely and verified Petition for Reconsideration of the Findings of Fact and Order issued on May 1, 2018.

Lien Claimant contends they are aggrieved by the Findings of Fact and Order and Petitions for Reconsideration on the following grounds:

1. That the evidence does not justify the Findings of Fact; and
2. That by the Order, made and filed by the WCALJ, the WCAB acted in excess of its power in that it improperly applied Section 139.21 to Petitioner's liens.

It is recommended that defendant's Petition for Reconsideration be denied.

FACTS

On 02/19/2016, Lien Claimant, Alan Ivar (hereinafter "Ivar") pleaded guilty to a violation of 18 uses § 371, Conspiracy to Commit Mail fraud, Engage in Interstate travel in Aid of Racketeering Enterprise and Engage in Monetary transactions and Property Derived from Specified Unlawful Activities. Ivar was Subsequently suspended from participation in the Workers' Compensation system, and all liens of Griffin medical Group, (owned by Ivar), were consolidated, stayed and adjudicated in a Special Lien proceeding pursuant to LC § 139.21.

A Findings of Fact and Order was issued on 05/01/2018, in which it was found Ivar had failed to rebut the presumption that all liens of Griffin Medical Group (hereinafter "Griffin") arose from the conduct giving rise to the suspension and were not payable. All Griffin liens were thus dismissed. Ivar has now filed this Petition for Reconsideration of the Findings of Fact and Order.

DISCUSSION

Ivar claims he became aware of the unscrupulous business practices of others and the resulting indictments while he was a minority shareholder of Griffin. As a result of this, he proactively approached the US Attorney's office, which resulted in his agreement to enter a plea of guilty to a federal crime. Ivar also claims he pled guilty to avoid the burden of defending the criminal charges, and the subsequent enactment of LC § 139.21 resulted in the unexpected and unreasonable consequence of stripping his innocent colleagues of their right to enforce their liens. Ivar primarily claims that LC§ 139.21 doesn't apply to his criminal conviction, the liens are liens of his innocent colleagues, and that the law was improperly applied retroactively.

The picture Ivar paints of the facts is not entirely accurate, and at times reflects a misunderstanding of the court's decision. At the outset, it must also be pointed out that the argument made by Ivar that it was improper for the court to rely on the plea agreement for the facts

is a misreading of the court's decision. The court wholly relied on the testimony of Ivar given in federal court, under oath, with counsel. (Exh. 1) The only mention of the Plea Agreement, (Exh. E), in the Opinion on Decision is in P 8, in a sentence with two scribal errors. The Opinion on Decision, should be amended to reflect that the reference is to Exh. 1, P 30, L12-14, and Exh. 1, P 36, L23 and not to Exh. E or Exh. 2. The reference refers to Pages 30 and 36, and is a scribal error as neither page exists in Exh. E, and the reference to Exh. 2 should also be corrected to Exh 1. This court did not rely on the plea agreement, but on Ivar's own statement made in federal court under oath, with counsel. (Exh. 1, P4L 15-P5 LU).

Ivar argues that none of the liens in this case relate to care rendered by Ivar, the liens are "his colleague's liens", were not related to referrals to a Drobot facility, thus not connected to wrong doing, and that enforcement of the liens is not by, for, or for the benefit of Ivar. In the Opinion on Decision this court pointed out that none of the liens were filed by anyone other than Griffin, which Ivar said he owned. All liens were filed in the name of Griffin, and all of the bills submitted to the carriers reference only Griffin. None of the lien documentation previously filed by Griffin in the cases in chief reference anyone else having an ownership interest in the liens. It is only in this Special Lien Proceeding that Ivar has argued that the liens are actually his colleagues' liens, (Pet. For Recon P4 L27) and that the liens are filed only in the name of Griffin Medical, and that the other providers billed through Griffin Medical. (Pet. For Recon. P5 L2-L7).

Ivar specifically argues none of the liens at issue relate to care provided by Ivar, and that no finding was made that any of the liens at issue relate to care provided by Ivar. Ivar also argues the evidence demonstrates the treatment was provided by other physicians at Griffin. This court found the evidence submitted by Ivar to prove these facts were not credible, was produced only in preparation for litigation, and was admissible solely because of the informal nature of the workers' compensation proceedings. With this in mind the court's opinion of the evidence, and the declaration of Deborah Ivar submitted by Ivar has not changed. Both lack credibility and have little if any value to prove the facts Ivar claims.

More importantly, Ivar argues "the demonstrable 'innocence' of his colleagues and their liens" (Pet. For Recon. P4 L16-17), and claims the "enforcement of those liens are NOT by, for, or for the benefit of Dr. Ivar".

As pointed out in the decision, none of the liens were filed by Ivar's innocent colleagues. There is no credible evidence as to who provided the treatment at Griffin, but there is evidence of who was seeking payment for the liens, and that was Griffin, owned by Ivar. Ivar argues again he was a minority shareholder, but the evidence doesn't indicate this. The opinion on Decision discusses the facts of Ivar's position regarding Griffin, and the Court has not changed its opinion from that previously described below:

"Ivar now claims that he was only a "minorityshareholder " of griffin Medical Prior to late 2014, and only became a 50% shareholder after 08/15/2015, (Lien Claimant's Opening Brief, P2 L11-14 referring to Ex.1) [Identified by the court as Exh. D in the Amended Findings of Fact and Order] Other than the assertion in the Opening Brief there is no evidence of the shareholder's interests. Instead we have Ivar's statement to the federal court that he was the owner. We also

have Ivar's statements admitting his involvement with the management of Griffin medical through entering into numerous agreements and acceptance of payments for referrals made through Griffin Medical. Ivar was the Chief Executive Officer, Secretary and a Director of Griffin medical Group Inc., as of 01/17/2004. (Ex 3) The restated Articles of Incorporation, state that Ivar was the President and Secretary of griffin Medical Group Inc., as of 08/15/2015. (Ex D) Ivar was also the Chief Executive Officer, Chief Financial Officer, and a Director of griffin medical group Inc. as of 06/16/2016, (Ex 4). Contrary to the argument made in Ivar's Opening Brief, The Restated Articles of Incorporation do not indicate that Ivar is a minority shareholder, the document merely states how many shares may be issued by the corporation, the number of outstanding shares, and the number of shares that voted regarding the changes to the Articles of Incorporation. There is no indication in any of the submitted exhibits that Ivar was ever a minority shareholder. The evidence leads to the conclusion that Ivar had a greater interest in Griffin Medical than merely that of a minor shareholder. Regardless of the argument made that he was a minority shareholder, Ivar had an ownership interest in Griffin, and controlled Griffin Medical for Purposes of LC§ 139.21(e)."

Ivar makes the same argument previously made, that he was a minor person caught up in the unscrupulous acts of others, but this is not the case. He owned Griffin, managed Griffin, and made the deals that resulted in his criminal indictment and guilty plea. Any changes to the ownership of Griffin as alleged by Ivar all postdate his conviction (Exh. 4 file date 06/01/2016) (Exh. D, 08/15/2015) and don't indicate he is a minority shareholder.

Ivar makes an argument, (Pet. For Recon. PS L24-P6 L6), referencing Exhibits A and B, based on the previously submitted evidence which was found not credible, and presents no argument to rebut the decision made by the court on the credibility of the evidence. Even if we were to ignore the credibility problems and accept the evidence Ivar provided, we still have liens filed by Griffin and not by innocent colleagues. Any payment made on these liens would be made to Griffin, and therefore enforcement of these liens is by, and for, the benefit of Ivar the owner of Griffin.

Ivar argues a conviction for conspiracy under 18 USCS § 371 is not a crime described in LC § 139.21(a) (1) (A). Ivar didn't appeal the suspension from the workers' compensation system as provided in LC § 139.21(a)(1)(A), and may not now challenge the finding that the suspension was for a criminal conviction as described in LC § 139.21(a)(1)(A).

With that said, this court described in detail in the Opinion why the conviction for conspiracy under 18 USCS § 371 is for a crime described in the LC § 139.21(a)(1)(A) description of offenses giving rise to a suspension and special lien proceeding. Reconsidering this decision, as Ivar requested, leads this court to have an even stronger opinion that the conviction is within the LC § 139.21(a)(1)(A) description.

Ivar pleaded guilty to a violation on 18 USCS § 371, which is conspiracy, and argues the crime is a crime to misuse the United States Postal Service and only covers conspiracies to defraud the United States, because the federal conspiracy charge could not have been grounded on a conspiracy to defraud or abuse the California state workers' compensation system. Ivar makes an interesting argument, but it lacks merit. Violation of, or a conspiracy to violate 18 USCS § 1341, is a federal health care offense, if the violation or conspiracy relates to a healthcare benefit program. (18 USCS § 24) The term "health care benefit program" is defined in the statute in subsection (b), (*ibid.*), and "means any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract."

In *U.S. v. Sharp*, 400 Fed. Appx. 741, 751, the court found that the West Virginia Workers' Compensation Program was within the definition of a "healthcare benefit program". As such the California workers' compensation system would also be a "health care benefit program", so a conviction for conspiracy is more than a bare crime against the United States. The actions of Ivar, as Ivar himself describes in Exh. A, clearly relate to the California workers' compensation system. Because of this, Ivar's conviction for a violation of 18 USC § 371 is a health care offense related to a health care benefit program, the California workers' compensation system. Thus, the conviction for conspiracy is an offense described in LC § 139.21(a)(1)(A)(i) because it is a felony conviction for a crime involving abuse of the workers' compensation system.

Ivar's conviction relates to the conduct of the medical practice, because Ivar admitted that he knew if the patients at his clinics had been aware of the kickbacks they would have sought treatment elsewhere. It is also a financial crime, as it was a conspiracy to engage in monetary transactions derived from unlawful activity. It is also substantially related to the qualifications, functions or duties of a provider. Ivar had a duty to see that his patients received his honest opinions, rather than opinions tainted by the desire to use the patients as a vehicle to generate and receive illegal kickbacks. Ivar's conviction comes within the definition of LC § 139.21 (a)(1)(A)(i-iv).

Ivar argues the WCAB exceeded its' authority in relying on the testimony in the plea agreement. This assertion misreads and misinterprets the Opinion. As pointed out above the court relied on the transcript of Ivar's testimony given under oath in Exh. 1, and didn't rely on the plea agreement for the facts given in the Opinion. Ivar's argument that the court exceeded its authority by using testimony in the plea agreement is without merit.

Ivar also argues the factual assertions given in a guilty plea may be contested or explained in subsequent proceedings by the party affected. Perhaps this is true, but Ivar didn't contest or explain anything. He didn't contest the suspension from the workers' compensation system and hasn't submitted any testimony or other reliable evidence to challenge or rebut the facts. Ivar submitted exhibits found by the court to lack credibility, thus the submitted evidence doesn't explain or challenge anything.

Ivar argues LC § 139.21 is not triggered in this instance, and a special lien proceeding is improper as it is "premising a special lien proceeding on a conviction not related to healthcare", and thus not contemplated by LC § 139.21. This is not the case. The conviction is a "healthcare offense" and does relate to healthcare. Ivar was convicted of a crime described in LC § 139.21(a)(1) (A), thus the special lien proceeding is appropriate under LC § 139.21 (e)

Ivar argues LC § 139.21 was not intended by the legislature to apply retroactively, and makes two main arguments to that issue. The first is that the law results in an "additional punishment upon him, (not to mention his innocent colleagues)". The reference to innocent colleagues is again not accurate, as all liens are Ivar's as he is the owner of Griffin. The objection to the application of LC § 139.21 as an additional punishment due to Ivar's suspension from the workers' compensation system and disposition of liens through the special lien proceeding also lacks merit. A workers' compensation lien is a statutory construct and any right of action, such as a lien, based on a workers' compensation statute exists only so far as the legislature may declare. The liens are not a vested right and not a property interest. The legislature has plenary authority to regulate and enact limitations upon workers' compensation matters, including the disposition of liens, (See e.g. *Angelotti Chiropractic Inc. V. Baker*, (9th Cir. 2015) 791 F. 3d 1075; *Chorn V. Workers' Comp. Appeals Board*, (2016) 245 Cal. App. 4th 1370, 1389), as such, the special lien proceeding is not a deprivation of a property interest preventing retroactive application of the statute. Ivar also participated in the workers' compensation system by choice, not by right, and the suspension of his ability to participate in the workers' compensation system is within the plenary power of the legislature. Ivar does not have a fundamental or vested interest in participating in the workers' compensation system. It should also be noted the suspension did not strip Ivar, as a medical provider, of his livelihood as it does not prevent Ivar from otherwise practicing chiropractic, nor does it prevent Ivar from requesting the suspension be removed in the future.

Ivar also references the legislative analysis of AB 1244 in the Petition for Reconsideration, and notes the specific reference to wrong doing by medical providers that preceded the bill. Ivar doesn't point out that the legislative analysis specifically discusses the Pacific Hospital of Long Beach (hereinafter PHLB) referral scheme as one of the instances of wrong doing requiring introduction of AB 1244, and that resulted in the enactment of LC § 139.21. Ivar testified to his involvement with the PHLB scheme, and there is no reason AB 1244 wasn't intended to apply to his actions. The language in the legislative analysis indicates the Legislature intended LC§ 139.21 to have a retroactive application.

The plain language of LC § 139.21(a) (I) (A) directing the administrative director to suspend any medical provider who "has been" convicted can be interpreted as a reference to an action that occurred in the past. Coupled with the legislative analysis, there is a clear indication the statute was intended to have retroactive application. A statute may apply retroactively if it contains express language of retroactivity or if other sources provide a clear indication that the legislature intended retroactive application. (*Myers V. Phillip Morris Companies, Inc.* (2002) 28 Cal. 4th 828, 844).

Ivar also argues the application of LC § 139.21 to the Griffin Liens is unconstitutionally retroactive as the relevant facts arose long before the effective date of the statute. That determination is not within the scope of this court's jurisdiction. Therefore, whether or not the retroactive application of LC § 139.21 is unconstitutional is not an issue this court will address.

It is recommended the petition for reconsideration be denied.

Date: 05/14/2019

WILLIAM E. GUNN
Presiding Workers' Compensation Administrative Law Judge

Opinion

A.

The presumption of Labor Code Section 139.21(g) applies to the liens of Griffin Medical

On 2/19/16, Alan Ivar pled guilty to Conspiracy to Commit Mail Fraud (Title 18, United States Code, Sections 1341 and 1346), Engage in Interstate Travel in Aid of a Racketeering Enterprise (Title 18, United States Code, section I 952(a)(3)), and Engage in Monetary Transactions and Property Derived from Specified Unlawful Activity (Title 18, United States Code, Section 1957), in violation of Title 18 U.S.C., § 371. (Exhibit 1, P 38 L3-5)

On 2/22/17 the Acting Administrative Director served notice by mail to Ivar that he would be suspended from the workers compensation system to be effective in 30 days, and that he had a right to a hearing, provided a request for hearing was made within 10 days of service of the notice of suspension. The Notice of Suspension indicated that the basis for the suspension was that Ivar had been convicted of a crime that came within LC 139.21(a) (1) (A). Ivar failed to make a timely request for a hearing and an Order of Suspension from the Acting Administrative Director was served by mail on Ivar on 3/24/17. An appeal of the suspension by writ to superior court as allowed by Title 8 Ca. Code of Reg. § 9788.2(b) was not pursued and the decision of the Acting Administrative Director became final. (Exhibit 2)

The Notice of Suspension indicates the basis for the suspension was because Ivar had been convicted of a crime described in LC § 139.21 (a) (1) (A). The Notice of Suspension became final and Ivar did not appeal. Ivar now argues the crime he was convicted of does not fall within the criteria enumerated by LC § 139.21 (a) (1) (A) and he should never have been suspended, therefore LC § 139.21(g) and the presumption contained therein do not apply.

Ivar is precluded from arguing the suspension pursuant to LC § 139.21(a) (1) (A) is improper, an appeal not having been pursued it is now a final decision and not subject to review. The suspension decision necessarily includes the determination that the criteria for suspension as described in LC § 139.21 (a) (1) (A) have been met. Ivar was given notice that the basis for the suspension was that he had been convicted of one of crimes described in Labor Code § 139.21 (a) (1) (A). A timely objection to this notice was not made, nor was an appeal of the Notice of Suspension pursued. The suspension of Ivar for being convicted of a crime as described in LC 139.21(a) (1) (A) is final and conclusive. Assuming for purposes of argument that the issue could be addressed, Ivar argues a conviction of conspiracy pursuant to Title 18 uses § 371 is not within the criteria enumerated within LC § 139.21(a) (1) (A). Ivar argues that the only thing he was convicted of is a bare conspiracy to commit a crime against, or to defraud the United States. (Lien Claimants' Opening Brief Regarding Labor Code 139.21, P 3 L 7-17) This court disagrees with Ivar's assertion that Conspiracy, in violation of Title 18 USCS § 371, is not a crime within LC § 139.21 (a)(1)(A). A conviction of Conspiracy to Commit Mail Fraud (Title 18, United States Code, Sections 1341 and 1346), Engage in Interstate Travel in Aid of a Racketeering Enterprise (Title 18, United States Code, section I 952(a)(3)), and Engage in Monetary Transactions and

Property Derived from Specified Unlawful Activity (Title 18, United States Code, Section 1957), in violation of 18 U.S.C., § 371, under the facts of this case is a crime within the description given in LC § 139.21 § (a)(1)(A). Conspiracy to commit a crime against, or to defraud the United States, may be the bare crime Ivar was convicted of, but the argument made flies in the face of Ivar's testimony that he agreed to commit, and did commit, various other acts in furtherance of the conspiracy over a 13 year period, all of which he knew were illegal and were crimes involving fraud or abuse of the workers' compensation system. To argue his actions giving rise to the conviction for Conspiracy did not involve the worker's compensation system is absurd. This court does not have jurisdiction to make a finding of criminal guilt, but Ivar testified he agreed to commit Mail Fraud, and Honest Services Mail Fraud, a violation of Title 18 uses §§ 1341 and 1346, Engage in Interstate Travel in Aid of a Racketeering Enterprise, Title 18 USCS § 1952(a)(3), and Engage in Monetary Transactions in Property Derived from Specified Unlawful Activity, Title 18 uses § 1957, and all involved acts occurring within or against the workers' compensation system. For purposes of the application of LC § 139.21 (a) (1) (A), this court finds Ivar's conviction for conspiracy is a crime involving fraud or abuse of the workers' compensation system.

B.

It is presumed that all liens of Griffin Medical and all underlying bills for service and claims for compensation arise from the conduct giving rise to the suspension of Ivar pursuant to LC § 139.21(a)(1HA) and are not payable.

Ivar admitted in federal court that he "owned" Griffin Medical, PMC, and South Coast during the period of time that he was committing a conspiracy, from 2000 to 2013. (Exhibit 1, P 30 L13-16) Ivar owned and controlled Griffin Medical, therefore the liens of Griffin Medical are liens filed by or on behalf of a suspended physician, practitioner, or provider, as required by LC § 139.21(e). Because Ivar was convicted of a crime as described in LC § 139.21(a) (1).(A) and suspended from the Workers' Compensation system, all the liens of Griffin Medical are to be adjudicated according to LC § 139.21 (e). Since the liens of Griffin Medical were not disposed of pursuant to LC § 139.21 (e) (1), they are thus properly before the court under LC § 139.21(e) (2).

LC § 139.21 (e) states:

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

(1) If the disposition of the criminal proceeding provides for or requires, whether by plea agreement or by judgment, dismissal of liens and forfeiture of sums claimed therein, as specified in the criminal disposition, all of those liens shall be deemed dismissed with prejudice by operation of law as of the effective date of the final disposition in the criminal proceeding, and orders notifying of those dismissals shall be entered by workers' compensation judges.

(2) All liens that have not been dismissed in accordance with paragraph (1) and remain pending in any workers' compensation case in any district office within the state shall be consolidated and adjudicated in a special lien proceeding as described in subdivisions (f) to (i), inclusive."

Ivar now claims that he was only a "minority shareholder" of Griffin Medical prior to late 2014, and only became a 50% shareholder after 8/15/2015. (Lien Claimants' Opening Brief Regarding Labor 139.21, P 2 L 11-14)¹ Other than the assertion in the Opening Brief there is no evidence of the shareholder's interests. Instead we have Ivar's statement to the federal court that he was the owner. We also have Ivar's statements admitting his involvement with the management of Griffin Medical through entering into numerous agreements and acceptance of payments for referrals made through Griffin Medical. Ivar was the Chief Executive Officer, Secretary and a Director of Griffin Medical Group Inc., as of 1/17/2004. (Exhibit 3) The Restated Articles of Incorporation state that Ivar was the President and Secretary of Griffin Medical Group Inc., as of 8/15/2015. (Exhibit D) Ivar was also the Chief Executive Officer, Chief Financial Officer and a Director of Griffin Medical Group Inc. as of 6/1/16, (Exhibit 4). Contrary to the argument made in Ivar's Opening Brief, the Restated Articles of Incorporation do not indicate that Ivar is a minority shareholder, the document merely states how many shares may be issued by the corporation, the number of outstanding shares, and the number of shares that voted regarding the changes to the Articles of Incorporation. There is no indication in any of the submitted exhibits that Ivar was ever a minority shareholder. The evidence leads to the conclusion that Ivar had a much greater interest in Griffin Medical than merely that of a minor shareholder. Regardless of the argument made that he was a minority shareholder, Ivar had an ownership interest in Griffin, and controlled Griffin Medical for purposes of LC§ 139.21 (e).

The presumption found in LC § 139.21(g) applies to the liens of Griffin. All liens and bills of Griffin Medical are presumed to have arisen from the conduct subjecting Ivar to suspension, and payment is not due, and should not be made because the liens are presumed to arise from, or are connected to, criminal, fraudulent, or abusive activity. In order for the liens to be payable this presumption must be rebutted by a preponderance of the evidence.

C.

The presumption affecting the burden of proof that the liens, bills for service, and claims for compensation of Griffin Medical arise from, or are connected to, criminal, fraudulent, or abusive conduct or activity has not been rebutted

LC§ 139.21(g) states:

"It shall be a presumption affecting the burden of proof that all liens to be adjudicated in the special lien proceeding, and all underlying bills for service and

¹ Ivar refers to Exhibit in the Request for Judicial Notice. This exhibit has been admitted and identified by the court as Exhibit D.

claims for compensation asserted therein, arise from the conduct subjecting the physician, practitioner, or provider to suspension, and that payment is not due and should not be made on those liens because they arise from, or are connected to, criminal, fraudulent, or abusive conduct or activity. A lien claimant shall not have the right to payment unless he or she rebuts that presumption by a preponderance of the evidence."

Ivar has offered the declaration of Deborah Ivar, (Ex G) with attached exhibits as evidence that the presumption of LC § 139.21 (e) has been rebutted. The declaration is a statement made by Deborah Ivar, that she was the office administrator at Griffin Medical and prepared a spreadsheet based upon her review of the data in the internal management system at Griffin. Deborah Ivar states the spreadsheet indicates which providers have outstanding balances due for which patients. She also removed any providers and any balances of any providers that were on the DIR list of criminally charged providers, including balances from Ivar, from the lists she prepared. She further stated she had reviewed the billing statements of the liens at issue and determined there were no charges for services identified in the plea agreement, or for any Drobot related entity.

Attached to the Declaration are Exhibits A, B and C. Exhibit A is the spreadsheet created by Deborah Ivar to identify which providers have outstanding balances for which patients. Exhibit B is the screenshots created by Deborah Ivar to identify which doctor had provided services for each patient. Exhibit C is the billing statements for each file at issue.

DIR has objected to the declaration and exhibits on a number of grounds: DIR summarized their objection in their Final Brief in footnote 3:

" 3 To Summarize: (1) Griffin Medical's Records are inadmissible because Mrs. Ivar does not authenticate these records and the trustworthiness of these records are neither asserted, nor can be provided. There is no evidence whatsoever of when or how Griffin Medical's Records were created or maintained or whether the person who created them had any business duty to do so, what documents previously existed, if any, whether the documents are complete or had companion documents, and under what circumstances or criteria documents were kept or destroyed. The trustworthiness of these records are neither asserted, nor can be proven. (2) "Spread Sheet" and "Screen Shots" constitute double hearsay. DIR has objected to the underlying evidence (computer hardware and software used to create, store, and extract the screen shots) as inaccurate or unreliable in total absence of evidence supporting their accuracy and reliability. Further, there is no evidence that these documents are the accurate representation of the existence and content of the computer information or computer program that they purport to represent. Documents consisting of multiple layers of hearsay is inadmissible to prove its truth unless each layer, analyzed independently, falls within an established hearsay exception. (3) Mrs. Ivar's Declaration does not contain any facts affirmatively establishing the basis for the declarant's personal knowledge. Moreover, Mrs. Ivar is a biased, interested, and motivated stakeholder in the outcome of these proceedings. She is married to Ivar and a corporate officer

and owner of Griffin Medical. (RJN, at Exh D)² She has undisputed financial stake in the outcome of the liens and a motive, prejudice, and interest to "protect" Ivar and the Griffin Medical liens from dismissal. (*See* Cal. Evid. Code, § 780, subd. (f) [governing admissibility of biased evidence].)"

The special lien proceedings shall be governed by the same laws, regulations, and procedures that govern all other matters before the appeals board (LC § 139.21(h)). The WCAB is not bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division. (LC § 5708) No order, decision, award, or rule shall be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure. (LC § 5709) With the above in mind it also must be remembered the WCAB is not totally free of evidentiary rules. *National Convenience Stores et al., Petitioners, v. WCAB and Irving B. Kesser, Respondents* (2nd DCA, 1981) 46 Cal. Comp. Cases 783.

Balancing the direction to make inquiry in the manner best calculated to ascertain the substantial rights of the parties with the objection by DIR leads this court to overrule the objection by DIR and allow the evidence from Ivar to be admitted. This is to ascertain the substantial rights of Ivar and carry out justly the spirit and provisions of the law. Exhibits A, B and Care admitted into evidence and the objections of DIR are overruled.

Nevertheless, the weight given to the evidence submitted by Ivar must be ascertained and DIR has made several objections to the evidence that appear to have merit. The objections do highlight the fact that little weight, if any, should be given to the declaration and the supporting documents submitted by Ivar. The credibility of Deborah Ivar, the submitted declaration, and the included supporting documents are all suspect.

Deborah Ivar says she is the "Office Administrator", and created Exhibits A, B and C, from the Griffin Medical records. She is also married to Ivar. (DIR Opposition To Line Claimants' Opening Brief, P 12 L4) The Statement of Information from the Secretary of State indicates that Deborah Ivar is both the Corporate Secretary and a Director of the corporation, much more than her self-described role as an office administrator. (Exhibit 4) As a result she has a financial interest in this litigation. Ivar testified he was the owner of Griffin Medical. (Exhibit E, P30, L12-14, Exhibit 2, P 36 L23) The argument made by Ivar in his Opening brief that he was a 50% shareholder is not borne up by the documents. Exhibit 4 indicates he is the President and Secretary of the corporation, but does not say he is a 50% shareholder, contrary to his assertion. Exhibit 4 indicates Ivar is the Chief Executive Officer, the Chief Financial Officer, and a Director of the corporation. The argument made by Ivar as to his minimal involvement with the corporation based on being a minority shareholder, is contradicted by Exhibit 4 that indicates he exerted significant control over the corporation, and which he testified to owning in federal court. Deborah Ivar also had significant involvement with Griffin Medical as a Corporate Secretary and Director. The description of Ivar's activities with Griffin Medical that he gave in Exhibit

² Exhibit D in the DIR Request for Judicial Notice has been identified by the court as Exhibit 4.

1, along with these facts are in stark contrast to the minimal role argued by Ivar in his Brief, and the role portrayed by both Ivar and Deborah Ivar in Exhibit G. Both Ivar and Deborah Ivar have not been entirely truthful in their arguments made to this court as to the amount of control they had over Griffin Medical. Noting the corporate roles of Deborah Ivar and Ivar shown in the evidence and contrasted against the corporate roles as described in Deborah Ivar's declaration, coupled with any financial interest they may have, the credibility of Deborah Ivar is in doubt, including the veracity of the evidence she created which is suspect and not entirely accepted by the court as truthful. Ivar unquestionably controlled the corporation, both within LC 139.21 (a) (3) and as a factual matter, while Deborah Ivar exerted significant control over Griffin Medical greater than that of an office administrator. All of this casts the facts presented in Exhibit G and Ivar's brief into doubt.

As to the contents of the evidence in Exhibits A, B, C, Ivar argues the exhibits identify the doctors based upon an internal numbering system which was used to internally identify the doctors that provided treatment to each patient. A spreadsheet identifying the doctors with each patient was then created by Deborah Ivar. In addition, outstanding billings from Griffin Medical were submitted for each patient on the list of liens. Deborah Ivar states she removed any physicians, including Ivar or any Drobot entities, who were on the DIR list of indicted providers from the list of providers that had provided treatment to the patients and their respective bills from the prepared billing statements and summary.

The truthfulness of this evidence is at issue. The court accepts as a foundational issue that the documents submitted had no errors in content introduced in the course of printing the images and accompanying data, and that the computer's print function has worked properly as discussed in *People v Goldsmith*, (2014) 59 Cal 4th 258, and are thus admissible on these grounds, but the contents of the data is also at issue and is another story.

The court in *Skip Fordyce v. Workers' Comp. Appeals Bd.*, (4th DCA, 1983) 149 Cal. App. 3d 915, 48 Cal. Comp: Cases 904, discussed hearsay in worker's compensation proceedings and stated at page 926:

"Hearsay evidence is admissible in workers' compensation proceedings. (*Lab. Code*, § 5708; *Pacific Emp. Ins. Co. v. Ind. Acc. Com.* (1941) 47 Cal.App.2d 494, 499) The admissibility of hearsay evidence, however, is limited to situations "when it is best calculated to ascertain the substantial rights of the parties [citation]. A material finding based entirely upon hearsay testimony of an incompetent witness is insufficient. It has no probative force and is not calculated to ascertain the substantial rights of the parties[para.] '...[Any] award made must have for its basis a firm foundation of fact.' (*Berzin v. Industrial Acc. Com.*, 125 Cal.App. 522, 526 [14 Pac. (2d) 97]; [***20] *London Guar. & Acc. Co., Ltd. v. Industrial Acc. Com.*, 202 Cal. 239 [259 Pac. 1096, 54 A.L.R. 1392].) The weight to be given hearsay evidence is to be determined by the commission. If it carries conviction with the commission, it may be sufficient to uphold an award [citation], but it must be evidence of a substantial character from which the commission may deduce a reasonable inference." (*Pacific Emp. Ins. Co.*, *supra*, 47 Cal.App.2d 494, 499-500.) Or, stated otherwise, the [*927] administrative body "should receive as evidence and consider only the kind of relevant matter upon which responsible persons customarily rely in the conduct of serious affairs." (*Pick v. Santa Ana-*

TustinCommunity Hospital (1982) 130 Cal.App.3d 970, 980 [182 Cal.Rptr. 85].)"

As discussed above this court has serious reservations regarding the credibility of Deborah Ivar and the evidence she created and submitted. She testified she removed from the records the names of physicians and their "balances" that were outstanding. So at a minimum, by Deborah Ivar's own statements the evidence she created was not created in the usual course of business, but in preparation for litigation. To meet the business record exception to the hearsay rule EC § 1271 states:

"Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

- (a) The writing was made in the regular course of a business;
- (b) The writing was made at or near the time of the act, condition, or event;
- (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and
- (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

Here the records, or writing, offered by Ivar was not created in the regular course of business, it was created in the course of litigation and for litigation, as a persuasive document, not a factual business record. The writing was not made at or near the time of the act, condition or event, which would have been at the time the treatment was provided, and perhaps at the time the bills were created for submission to an insurance carrier. Ivar did not testify she was the custodian of the records, but she did state her role in Griffin Medical, as an "office administrator" which as previously pointed out is suspect. She didn't elaborate on her required duties in this capacity. The source of the information contained in the writings and the time of preparation of the writings were not such as to indicate trustworthiness. In contrast the screenshots were created as persuasive evidence for litigation by an interested party whose credibility is at issue. With this in mind, but for this being an administrative tribunal the exhibits submitted by Ivar would probably not be admissible. Regardless, the court will admit the exhibits into evidence, but notes the evidence is not entirely that which reasonable persons would customarily rely on in the conduct of serious affairs due to the credibility problems associated with the evidence. While admitted, the evidence cannot be relied upon by the court as persuasive to rebut the presumption found in LC 139.21 § (e).

Ivar argues all services in the submitted medical billings were performed by providers affiliated with Griffin Medical and on behalf of Griffin Medical and that this rebuts the presumption of LC §139.21(e).

The court reviewed the Griffin Medical lien documents filed in a number of cases in EAMS. The documents reviewed included the Griffin Medical liens and associated documents including the supporting bills, when attached, the LC § 10770.9 and LC § 4903.05(c) declarations, and any accompanying proofs of service. The cases reviewed were selected at random from the list of cases at issue and are:

Refugio Adame,
ADJ9227231 Bonnie
Castaneda, ADJ8463369
Gilbert Gonzalez,
ADJ416920 Luvia Iemus,
ADJ644921
Lauren Nachreiner,
ADJ1556013 James
Nguyen, ADJ6963408
Edward Nunez,
ADJ2478890 Elias
Santos, ADJ6709866
Janis Schofield,
ADJ3406989 Everine
Weimer, ADJ8323235

All liens filed in EAMS in the above cases are in the name of Griffin Medical, as is all other supporting documentation. There are no indications that payment was ever sought by, or for, any entity other than Griffin Medical. The court reviewed the bills submitted by Ivar in Exhibits C in their entirety. The court saw no medical bills from anyone other than Griffin Medical. Nor do the medical bills indicate the physician that provide care to the patient. Payments were documented as made by insurance companies on many of the cases listed by Ivar in the billings, but all bills were in the name of Griffin Medical, contained the Griffin Medical Tax ID# in the letterhead, and payment can only be assumed to have been made by the carriers to Griffin Medical. In the cases in which a LC§ 4903.05(c) declaration has been filed, each contains a statement made under penalty of perjury that "the Lien Claimant is a provider or proper assignee of the provider". Thus the documents filed by Griffin Medical state under penalty of perjury that Griffin Medical was the medical provider. Ivar has not argued Griffin Medical is the assignee of the other providers, and as shown above, the liens of Griffin Medical have been filed by, or on behalf of Ivar, as he owned and controlled Griffin Medical. Nowhere in the bills submitted by Ivar is there any indication that an entity or person other than Griffin Medical is seeking payment, or due payment. The only evidence of this is in Exhibits A and B, neither of which is credible.

The amounts due are for the liens and bills of Griffin Medical. The argument made that treatment was provided by other physicians who are due payment and therefore the liens are not from treatment arising from the conduct giving rise to Ivar's suspension is not shown by credible evidence, as the only evidence of this is found in the evidence created for litigation by Deborah Ivar.

The problem with the argument made by Ivar to rebut the presumption is shown by the description of the evidence submitted. It required removal of questionable physicians and treatment modalities from each case. Deborah Ivar testified to this in her declaration. What this shows is that the criminal activity of Ivar, while far from being unrelated to the liens at issue here, was intertwined with the treatment provided in every

case. Ivar was convicted of conspiracy, and as DIR points out, the conspiracy is the heart of the matter. Ivar's testimony in the plea agreement documents more than a decade long history of conduct he says he knew was illegal, (Exhibit 1) This conduct formed the basis for the management of Griffin Medical which included the treatment recommendations, prescriptions ordered and other medical issues such as referrals, requests for diagnostics or durable medical equipment. In other words the decisions made at Griffin Medical regarding patient treatment arose from the intent to engage in activities in the furtherance of the conspiracy that Ivar pled guilty to. Even Ivar admits, that if his patients had known of the illegal conduct they would have sought treatment elsewhere, (Exhibit 1, P34 L21-25) Ivar's conduct, as he testified to Exhibit A, gives rise to the impression that Griffin Medical was managed to use the patients to create medical bills, liens, and referral fees, as part of an ongoing conspiracy. As such the presumption that the liens of Griffin Medical and the underlying bills for treatment are not payable has not been rebutted.

The objection by Ivar to the participation by the other carriers in this matter is deferred and is not addressed.

DATE:

4/16/2019

WILLIAM E. GUNN

Workers' Compensation Administrative Law Judge