

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

**FRANCISCO REBOLLEDO, *Applicant***

**vs.**

**NEW CURE, INC.;;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ9641796  
Pomona District Office**

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

WSPT Network<sup>1</sup> seeks reconsideration of the Findings and Order (F&O) issued by a workers' compensation administrative law judge on August 11, 2021. The WCJ found that WSPT Network is not the original provider of service for which a lien can be filed under Labor Code section 4809, subdivision (b); and, that an assignment is required pursuant to section 3903.8. The WCJ ordered that WSPT Network take nothing by way of its lien claim in this matter given that the conditions of section 4903.8 were not met.

WSPT Network contends that it is the lien owner<sup>2</sup> as defined by section 4903.8, subdivision (a)(1), based on its contractual authority to seek payment on the lien for services rendered by Lo Acupuncture, Inc., i.e., licensed acupuncturist, Josephine Phung-Hoa Chau (Lo Acupuncture).<sup>3</sup> Thus, WSPT Network contends there was no requirement that it enter into an assignment to seek payment on the lien.

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<sup>1</sup> WSPT Network is a dba of corporation Advanced Physician Management, Inc., and is a billing and marketing service provider for medical providers in the network. The services billed for in this lien were performed by licensed acupuncturist, Josephine Phung-Hoa Chau (Lien Claimant Exhs. 1, 14), who is incorporated as Lo Acupuncture, Inc. (Lien Claimant Exh. 15).

<sup>2</sup> "Lien owner" is defined by section 4903.8 as "the person who was entitled to payment for the expenses as provided in subdivision (b) of Section 4903 at the time the expenses were incurred..." (Lab. Code, § 4903.8(a)(1).)

<sup>3</sup> "Person" is defined by section 3210 as "an individual, firm, voluntary association, or a public, quasi public, or private corporation." (Lab. Code, § 3210.)

Defendant filed an Answer on behalf of State Compensation Insurance Fund to Petition for Reconsideration (Answer), contending that only the “provider of service” is entitled to payment on a lien for those services, regardless of whether another person had the authority to *file* the lien; and, that section 4903.8 was enacted to disallow liens such as that involved in this matter (citing *Chorn v. Workers’ Comp. Appeals Bd.* (2016) 245 Cal.App.4th 1370, 1384 [81 Cal.Comp.Cases 332] (*Chorn*.)

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), and recommended that the Petition for Reconsideration be denied given the holding in *Chorn* that section 4903.8 was enacted to prohibit the WCAB “from ordering or awarding lien payments to anyone other than the medical provider who incurred the expense.” (*Id.*, at p. 1379.) Thus, given that WSPT Network is a billing and collection service, and not the original provider of services, the only way it could seek payment on the lien it filed in this case was to file an assignment (Lab. Code, § 4903.8(a)(1)).<sup>4</sup>

We have reviewed the record in this matter, and have considered the allegations in the Petition for Reconsideration and the Answer, as well as the contents of the Report. Based on the reasons set forth below, we grant the Petition for Reconsideration. It is our decision after reconsideration to rescind the F&O and return this matter to the trial level for further proceedings consistent with this decision.

## DISCUSSION

Section 4903.8 identifies those subject to an order or award for payment on a lien for services provided pursuant to section 4903:

(a)

*(1) Any order or award for payment of a lien filed pursuant to subdivision (b) of Section 4903 shall be made for payment only to the person who was entitled to payment for the expenses as provided in subdivision (b) of Section 4903 at the time the expenses were incurred, who is the lien owner, and not to an assignee unless the person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee.*

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<sup>4</sup> We note that an assignment of lien rights under section 4903.8, subdivision (a)(1), would only have been proper if the original lien owner has “ceased doing business in the capacity held at the time the expenses were incurred.” (Lab. Code, § 4903.8(a)(1).)

(2) All liens filed pursuant to subdivision (b) of Section 4903 shall be filed in the name of the lien owner only, and no payment shall be made to any lien claimant without evidence that he or she is the owner of that lien.

(3) Paragraph (1) does not apply to an assignment that was completed prior to January 1, 2013, or that was required by a contract that became enforceable and irrevocable prior to January 1, 2013. This paragraph is declarative of existing law.

(4) For liens filed after January 1, 2017, the lien shall not be assigned unless the person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee. The assignment of a lien, in violation of this paragraph is invalid by operation of law. (Lab. Code, § 4903.8(a), emphasis added.)<sup>5</sup>

Here, there is no dispute that WSPT Network filed a Notice and Request for Allowance of Lien (Lien) on October 18, 2018, alleging that it was the lien claimant, and that the lien was for physical therapy services provided under section 4903, subdivision (b), by a licensed provider. (Lien, October 18, 2018, pp. 7, 10.) Original billing statements were filed with the Lien for acupuncture services provided by Josephine Chau, and identifying Ms. Chau's license number. (Original Bill, October 18, 2018; see Lien Claimant Exh. 1, Itemized Statement dated 1/13/2021 (6/27/15-4/22/17).)

WSPT Network contends that due to the agreements between Lo Acupuncture and itself, it is the contractual owner of the Lien, and is therefore entitled to payment on the lien.

WSPT Network is a DBA of Advanced Physicians Management, Inc., established in 1994 as a general corporation to engage in any lawful act or activity under the Corporation Law of California. Lien Claimant asserts nothing in the Business and Profession Code prohibits a professional corporation from entering into an agreement with a general corporation to do business for their mutual benefits. WSPT Network serve as the Management Service Organization for its network providers.

WSPT Network as part of their Management Service provides specialized service such as: ...

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<sup>5</sup> "The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i). If more than one lien is allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens that may be allowed hereunder are as follows: . . . (b) *The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Section 4600), and to the extent the employee is entitled to reimbursement under Section 4621, medical-legal expenses as provided by Article 2.5 (commencing with Section 4620) of Chapter 2 of Part 2, except those disputes subject to independent medical review or independent bill review.*" (Lab. Code, § 4903, emphasis added.)

d. Enter into liens for acupuncture services to be performed by its network providers.

...

The Legislature recognized [in Bus. & Prof. Code, § 16770] that individual providers or purchasers, whether, professional, or otherwise, were not efficient-sized bargaining units for these contracts, and that the formation of groups and combination of institutional and professional providers and purchasing groups for the purpose of creating efficient-sized contracting units represented a meaningful addition to the health care marketplace. It then further permitted negotiations for alternative rate contracts between purchasers or payers of health care services, and institutional and professional providers, or through a person or entity acting for, or on behalf of, a purchaser, payer, or provider.

...

The President of Advanced Physicians Management, Hussain Umar, is a duly licensed physical therapist and is therefore permitted under BPC 13401 and 16770 to enter into agreements with licensed professionals to form a network with more bargaining power and more strength to hire experienced, well-trained individuals to market, bill, collect and negotiate contracts and liens on their behalf. Nothing in the Physical Therapy Act or the Acupuncture Act prohibit such relationship. (Petition for Reconsideration, pp. 6-7.)

The relevant legal question in this matter is *not* whether the Business and Professions Code permits an agreement between WSPT Network and Lo Acupuncture authorizing WSPT Network to pursue liens on behalf of Lo Acupuncture. The relevant legal question in this matter is whether a medical provider's billing service provider can be a "lien owner" under section 4903.8, and thereby entitled to payment on a workers' compensation section 4903 lien. In this case, the answer to this question is no.

First, the Legislature exercised its plenary power when enacting section 4903.8 to define and limit who may receive payment on a section 4903 lien. "Any order or award for payment of a lien filed pursuant to subdivision (b) of Section 4903 shall be made for payment only to the person who was entitled to payment for the expenses as provided in subdivision (b) of Section 4903 at the time the expenses were incurred..." (Lab. Code, § 4903.8(a).) The Court in *Chorn* concluded that, "[t]he effect of section 4903.8 is to prohibit WCAB from ordering or awarding lien payments to anyone other than the *medical provider* who incurred the expense." (*Chorn, supra*, 245 Cal.App.4th at p. 1389, emphasis added.)<sup>6</sup> There is no dispute that WSPT Network is not a medical

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<sup>6</sup> We also note that "section 4903.8 does not unconstitutionally impair the obligation of contracts." (*Chorn, supra*, 245 Cal.App.4th at pp. 1392-1393.)

provider, but a marketing and billing service. Lo Acupuncture is the medical provider who incurred the expense of providing acupuncture services to applicant. (Lien, Original Bill; see Lien Claimant Exh. 1, Itemized Statement dated 1/13/2021 (6/27/15-4/22/17).) Lo Acupuncture is the owner of the Lien, and is thus the only person entitled to payment on the Lien.

Next, section 4903.8, subdivision (a), also permits a valid assignee to file and receive payment on a section 4903 lien. However, there is no dispute in this matter that WSPT Network is not an assignee of Lo Acupuncture, and there is no evidence in the record that it could be a proper assignee under section 4903.7, subdivision (a)(4), i.e., that Lo Acupuncture has ceased to do business.

On the other hand, lien claimants may utilize the services of a non-attorney representative to file and seek payment on a lien. (Cal. Code Regs., tit. 8, § 10401(a).)<sup>7</sup> Thus, there is nothing in the Labor Code or the WCAB Rules to prevent Lo Acupuncture from authorizing WSPT Network to *file* and adjudicate the Lien on its behalf, and there does not appear to be any dispute that this authorization was in-fact, made. There is no notice of representation, but the opening documents, i.e., the Lien and the Original Bill, include the information required by WCAB Rule 10401, subdivision (c)(2).<sup>8</sup> The name, address, and phone number of WSPT Network were included in the Lien and accompanying documents, as was the identity of Lo Acupuncture as the medical provider of services to applicant. (Lien; Original Bill, October 18, 2018.) Under these circumstances, WSPT Network may proceed as the non-attorney representative of Lo Acupuncture.

We note that in order to ensure that any future order or award of payment on the Lien can be issued in favor of the section 4903.8 owner of the Lien, the WCJ will need to issue a notice to join Lo Acupuncture, Inc. and Josephine Phung-Hoa Chau as necessary parties in these

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<sup>7</sup>“(a) Except as prohibited by rule 10445, a non-attorney representative may act on behalf of a party in proceedings before the Workers’ Compensation Appeals Board if the party has been informed that the non-attorney representative is not licensed to practice law by the State of California.” (Cal. Code Regs., tit. 8, § 10401(a).)

<sup>8</sup>“(c) A non-attorney representative shall file and serve a notice of representation before filing a document or appearing on behalf of a party *unless the information required to be included in the notice of representation is set forth on an opening document.*” (Cal. Code Regs., tit. 8, § 10401(c).) “(2) If a non-attorney representative is appearing as an individual pursuant to an agreement between the non-attorney representative and a party, *the notice of representation shall include the name of the represented party and the non-attorney representative’s name, address and telephone number.*” (Cal. Code Regs., tit. 8, § 10401(a), (c)(2), emphasis added.)

proceedings. (See *Coldiron v. Compuware Corporation* (2002) 67 Cal. Comp. Cases 289 (Appeals Bd. en banc).)

Finally, defendant contends that the Court in *Chorn* held that the Legislature enacted section 4903.8 to disallow liens such as that involved in this matter. We disagree. The court in *Chorn* identified the problem liens targeted by the Legislature:

Here, the Senate Rules Committee's analysis of Senate Bill 863 states that the lien system was "out of control" and could be reined in by "re-enact[ing] a lien filing fee, so that potential filers of frivolous liens have a disincentive to file." (Sen. Rules Com., Off. of Sen. Floor Analyses, Unfinished Business Analysis of Sen. Bill 863, *supra*, as amended Aug. 30, 2012, p. 16.) **It further states that "lien abuse" commonly was perpetrated by "third parties [who] purchase old receivables from providers, who often billed at (higher) usual and customary rates but were properly paid according to established fee schedules. These third parties then file liens in an effort to leverage settlements."** (*Ibid.*) This legislative history shows that the Legislature enacted sections 4903.05 and 4903.8 to "provide a disincentive to file frivolous liens" that overcrowd the workers' compensation court system and delay the resolution of workers' cases. (Sen. Rules Com., Off. of Sen. Floor Analyses, Unfinished Business Analysis of Sen. Bill 863, *supra*, as amended Aug. 30, 2012, p. 17.) "[F]ar from conflicting with Section 4's mandate to provide substantial justice," the lien reforms implemented in sections 4903.05 and 4903.8 advance this goal by taking aim at problem liens that impede the functioning of the workers' compensation system. (*Stevens, supra*, 241 Cal.App.4th at p. 1096.) "It is not our place under the state Constitution to 'second-guess the wisdom of the Legislature' in making these determinations. (*Facundo-Guerrero v. Workers' Comp. Appeals Bd., supra*, 163 Cal.App.4th at p. 651 ... .)" (*Ibid.*) (*Chorn, supra*, 245 Cal.App.4th at pp. 1384-1385, emphasis added.)

Here, WSPT Network is an authorized billing agent of Lo Acupuncture, and is not a third party who purchased the receivables of Lo Acupuncture. There is no evidence in the record that the Lien is a "problem lien" of the type targeted by the Legislature by section 4903.8.

Accordingly, WSPT Network is not the owner of the Lien under section 4903.8, but is in fact the non-attorney representative of Lo Acupuncture. Under the circumstances presented by the record in this matter, the Lien is allowed, and WSPT Network may continue to represent and adjudicate the Lien on behalf of Lo Acupuncture. Finally, there are no assignment issues raised by the record in this matter. We therefore grant the Petition for Reconsideration in order to rescind the F&O in its entirety, and to return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that WSPT Network's Petition for Reconsideration of the Findings and Order issued by a workers' compensation administrative law judge on August 11, 2021 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision after Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued by a workers' compensation administrative law judge on August 11, 2021 is **RESCINDED** and this matter is **RETURNED** to the trial court for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**OCTOBER 29, 2021**

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

**FRANCISCO REBOLLEDO  
WSPT NETWORK  
STATE COMPENSATION INSURANCE FUND**

**AJF/abs**

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

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