

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

**BALTAZAR GARIBAY CARDENAS (Deceased), *Applicant***

**vs.**

**PITMAN FAMILY FARMS, Permissibly Self-Insured; administered by RISICO  
CLAIMS, *Defendants***

**Adjudication Number: ADJ11075172  
Fresno District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, except for the recommendation that we dismiss defendant's petition, we will deny reconsideration.

For the foregoing reasons,

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

**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**

**APRIL 25, 2022**

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

**RODRIGO GARIBAY  
BERRY, SMITH & BARTELL  
YRULEGUI & ROBERTS**

***PAG/pc***

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

**REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

**I  
INTRODUCTION**

1.           Date of Injury:                               11/28/2016  
              Applicant's Occupation:                 Forklift Driver  
              Manner Injury Occurred:                Death
  
2.           Date of Issuance of Award/Order:        2/4/2016
  
3.           Identity of Petitioner:                     Defendant  
              Petition Dated:                           2/24/2016  
              Timeliness:                               The Petition is timely.  
              Verification:                             The Petition is verified.
  
4.           Answer:                                     No Answer was filed.
  
5.           Defendant (hereinafter Petitioner), contends  
(a)          By the Findings, Award, Order, the Court acted in excess of its powers; and  
(b)          The evidence does not justify the Findings of Fact.
  
6.           It is recommended the Petition be denied.

**II  
BACKGROUND**

**Facts**

Pitman Family Farms employed Decedent Baltazar Cardenas Garibay as forklift driver when he expired while sitting in his car in the employer's parking lot on 11/28/2016. Decedent's son, Applicant Rodrigo Garibay, filed an Application for Adjudication of Claim (Death Case), on behalf of Maura Garibay, Decedent's widow, Juana Garibay, Decedent's adult daughter, and Decedent's then minor sons, Modesto Garibay and Angel Garibay.

James Schmitz, M.D. serves as the Panel Qualified Medical Evaluator designated to evaluate whether Decedent's death was industrially related. The parties served Dr. Schmitz a copy of their respective cover letters, medical records and deposition transcript of Decedent's widow, dated 3/28/2018, and son dated 1/21/2018, prior to issuance of his initial report. (*Joint Ex 101, p. 2*) Dr. Schmitz incorporated information from Decedent's family deposition transcripts into his findings. Decedent's widow testified Decedent's worked 60 or more hours per week in the 2 year period from 2015-2016, with only 1 day off per week. (*Joint Ex 101, p. 6*) While Dr. Schmitz was not served with a copy

of the coroner's report, Petitioner's cover letter stated the report listed Decedent's cause of death as subarachnoid hemorrhage secondary to a ruptured cerebral blood vessel due to hypertensive atherosclerotic cardiovascular disease. (*Joint Ex 101, p. 1*) Dr. Schmitz also reviewed and summarized accompanying medical records, which revealed Decedent's history of hypertension and diabetes. (*Joint Ex 101, pp. 2, 7-20*) Dr. Schmitz reviewed journal articles which he referenced/cited in his report. (*Joint Ex 101, pp. 6 & 7*) Dr. Schmitz diagnostic impression included subarachnoid hemorrhage, hypertension, diabetes and coronary artery disease. (*Joint Ex 101, pp. 4-5*) Dr. Schmitz' initial report includes a discussion about hypertension being a major risk factor for subarachnoid hemorrhage and results from studies demonstrating relationship between strokes and long work hours. (*Joint Ex 101, p. 6*) Dr. Schmitz opined that within a reasonable degree of medical probability, Decedent's long work hours, while employed at Pitman Family Farms, contributed to his subarachnoid hemorrhage and death, concluding Decedent's subarachnoid hemorrhage injury and death, arose out of employment. (*Joint Ex 101, p. 5*)

On 5/16/2021, Petitioner served Dr. Schmitz copies of deposition transcripts of Decedent's two immediate supervisors (Marco Sanchez and Sergio Rodriguez) and another son, a job description and a report from a consultant, Thomas Allems, M.D. obtained independently by Petitioner. Dr. Schmitz issued a supplemental report wherein he amended his diagnostic impression to hypertension and subarachnoid hemorrhage, and explained he mistakenly left out the finding that Decedent's long hours contributed to his hypertension, which caused the subarachnoid hemorrhage in his initial report. (*Joint Ex 102, p. 2*) Dr. Schmitz reviewed additional journals articles. (*Joint Ex 102, pp. 5-7*) Dr. Schmitz indicated the fact of Decedent's long work hours were further substantiated by testimony from Mr. Sanchez. (*Joint Ex 102, p. 2*) Dr. Schmitz opined that within a reasonable degree of medical probability, Decedent's hypertension was caused or aggravated by long work hours while employed at Pitman Family Farms, and Decedent's industrial hypertension contributed to his subarachnoid hemorrhage and death and that Decedent's subarachnoid hemorrhage injury and death, arose out of employment. Dr. Schmitz concluded Decedent's hypertension, subarachnoid hemorrhage injury and death, arose out of employment.

The parties deposed Dr. Schmitz wherein he provided additional corroborating medical opinion. Decedent had anatomically thinned vessels, a consequence of long-standing high blood pressure, probably diabetes, and abnormalities in cholesterol. (*Joint Ex 103, p. 35, lines 18-24*) Decedent had an industrial condition that at least contributed in some part to sustaining hypertension. (*Joint Ex 103, p. 36, lines 6-8*) High blood pressure was contributing cause because Decedent's blood vessels were already damaged on pathologic exam. (*Joint Ex 103, p. 44, lines 18-20*) Decedent likely had an had an acute increase in his blood pressure as a consequence of an emotional situation precipitating his demise (news of daughter being transported to

emergency department due to seizures), however, Decedent had chronic systemic hypertension with the postmortem evaluation citing evidence of damage to the cerebral vessels. (*Joint Ex 103, p. 35, lines 11-17*) Regardless of the ultimate other contributing factors, high blood pressure was a contributing factor or condition. (*Joint Ex 103, p. 43, lines 18-20*) Even if Decedent was not compliant on medication, which could have contributed in some way to his stroke, that factor would not alter his opinion as to causation, because it would not take away the industrial contribution to Decedent's high blood pressure. (*Joint Ex 103, p. 39, line 21 – p. 40, line 17; lines p. 41, lines 1-17*) It would not be reasonable to conclude Decedent suffered a subarachnoid hemorrhage completely unrelated to work. (*Joint Ex 103, p. 35, lines 1-9*)

### **Findings, Award, Order**

On 2/4/2022, the undersigned issued a *Findings of Fact, Award, Order, and Opinion on Decision* (hereinafter *Findings and Award/Order*), finding in pertinent part that the medical opinions of Dr. Schmitz constitute substantial medical evidence, and that Decedent Baltazar Garibay Cardenas' death was industrial. On 2/24/2022, Petitioner filed the Petition for Reconsideration (hereinafter *Petition*). It is from this *Findings and Award/Order* that Petitioner seeks reconsideration. As of the writing of this Report, no answer to the *Petition* has been filed by Applicant.

### **CCR 10945**

All evidentiary statements must be supported by specific references to the record. (*Title 8, Cal. Code. of Regs. 10945*) Every petition and answer shall support its evidentiary statements by specific references to the record. (8 CCR 10945) Because 8 CCR 10945 requires citation of specific references "to the record," a party may not assert "factual statements" in a petition for reconsideration that are not part of the evidentiary record. (*Redden v. MJT Enterprise, Inc., dba Blue Ribbon Personnel, 2015 Cal. Wrk. Comp. P.D. LEXIS 263; Ruiz v. Wahoo's Fish Tacos, 2015 Cal. Wrk. Comp. P.D. LEXIS 266.* ) If the evidence cited is not contained in the record, it will not be considered and the party may be sanctioned for citing it. (*Deza v. The Home Depot, 2008 Cal. Wrk. Comp. P.D. LEXIS 228; Moore v. Jemico, LLC, 2017 Cal. Wrk. Comp. P.D. LEXIS 294*) And, a party also may be sanctioned for failing to refer to documents by their proper exhibit numbers or letters. (*Castaneda v. Pico Rivera Pallet, 2010 Cal. Wrk. Comp. P.D. LEXIS 524; Wallace v. Long Beach Unified School District, 2017 Cal. Wrk. Comp. P.D. LEXIS 524*)

The *Petition* references numerous documents admitted into evidence at trial, yet fails to properly identify to them as marked into the evidentiary record, for identification purposes. The *Petition* also includes numerous factual statements, again failing to cite to the evidentiary records for the fact finder to confirm the accuracy of the assertions. This Court finds it appropriate to

strongly encourage and/or caution diligent review the actual exhibits in the evidentiary record, before accepting the representations as set forth in the *Petition* as factually accurate. This Court attempted to provide specific citations, when ascertainable, for edification purposes.

### **III** **DISCUSSION**

#### **A. Medical and Familial History**

The *Petition* avers Dr. Schmitz' medical opinions are speculative, without reasonable explanation, alleging they are based on an inadequate understanding of Decedent's medical and familial history.

##### ***1. Familial History - Daughter Disability***

The *Petition* appears to intimate Dr. Schmitz' medical opinions should not be relied on because Dr. Schmitz did not know the full extent of the daughter's disability. When deposed, Petitioner inquired whether Dr. Schmitz knew the full extent of the daughter's disability, in which Dr. Schmitz responded in the negative. (*Joint Ex 103, p. 13, lines 11-13*) In support of this assertion, the *Petition* references the party's stipulation that the daughter is completely and entirely mentally and physically incapacitated. (*Petition, p. 7, lines 12-14*). However, the record demonstrates the parties stipulated the daughter is 100 percent disabled for the purpose of lifetime temporary disability benefit rate, and is physically and mentally incapable of performing work pursuant to Labor Code § 4703.5. (*MOHSE, p. 2, lines 20-22*) It is unclear how the party's stipulation that Decedent's daughter is 100 percent disabled for the purpose of lifetime temporary disability benefit rate demonstrates the "full extent" of the daughter's disability. It is similarly unclear how the party's stipulation that Decedent's daughter is physically and mentally incapable of performing work pursuant to Labor Code § 4703.5 demonstrates Dr. Schmitz opinions are inadequate familial history. In Dr. Schmitz' initial reports, he documents Decedent was at work on 11/28/2016 when he was notified by phone that his disabled daughter was being transported to the emergency room after suffering a convulsion which precipitated Decedent taking break to head to the hospital, and found unresponsive in the parking lot in his vehicle. (*Joint Ex 101 p. 3*) Dr. Schmitz reviewed and summarized the deposition transcript wherein Decedent's widow, sons and coworkers, wherein each testify about the severity of the daughter's disability. (*Joint Ex 102, p. 7-8, 10-11, 17*) Dr. Schmitz testified Decedent's daughter suffered from a seizure disorder, started convulsing and was taken to hospital the day of Decedent's demise. (*Joint Ex 103, p. 13, lines 7-10*) Dr. Schmitz acknowledged that at some point in his review of witness depositions he learned Decedent's daughter was totally disabled, unable to care for herself. (*Joint Ex 103, p. 13, line 24 – p. 14, line 4*) The evidence further demonstrates Dr. Schmitz had sufficient knowledge as to the daughter's disability.

## 2. *Medical History*

The *Petition* avers Dr. Schmitz' medical opinions should not be relied on alleging Dr. Schmitz had an inadequate understanding of Decedent's medical history. Dr. Schmitz documented his review of the records revealed Decedent's medical history included hypertension and diabetes. (*Joint Ex 101, p. 2-3, 10-11*) In fact, Dr. Schmitz specifically noting medical records from Decedent's primary care physician contemporaneous to the time of his demise were not initially provided to him for review to determine whether Decedent had been compliant with his medical regimen. (*Joint Ex 101, p. 4*) However, medical records of 1 The *Petition* fails to identify which conditions or specific aspects of Decedent's medical history Dr. Schmitz misunderstood.

### a. *Hypertension*

The *Petition* alleges Dr. Schmitz made it "clear throughout the deposition" that regardless of any other event occurring in Decedent's life, "it" was "solely" the long work hours that were contributing to Decedent's hypertension. (*Petition, p. 7, lines 26-28*) The *Petition's* assertion as to factual statements being part of the evidence, absent citation to record which supports the alleged factual representation. The *Petition* appears to allege Dr. Schmitz opined that Decedent's long work hours were the only contributing factor to hypertension. This argument not supported by the evidentiary record. Dr. Schmitz opined Decedent's hypertension was caused and/or aggravated by long work hours while employed at Pitman Family Farms. (*Joint Ex 102, p. 2*)

The *Petition* contends Dr. Schmitz has inadequately experienced to correctly understand Decedent's blood pressure readings notated in the medical records. In response to Petitioner's delineation to several instances the medical record revealed elevated blood pressure prior to the date Petitioner contends Decedent was hired, Dr. Schmitz clarified that except for the one reading, which was obtained during a regular routine office visit, the other delineated readings were obtained when Decedent was presenting to emergency rooms for acute painful situations and therefore, not reflective of Decedent's resting non-agonized blood pressure. (*Joint Ex 103, p. 19, lines 1-7*) While the *Petition* alleges there is no evidence of Decedent's physical state, and that Dr. Schmitz is assuming facts not in the evidence, Dr. Schmitz summary of record review in fact support his testimony: on 10/8/2007 Decedent presented to Community Medical Centers (CMC) Emergency Department (ED) for complaints of headache, on 3/1/10 Decedent presented to CMC ED for bilateral foot pain complaints, and on 9/9/12 Decedent presented to St Agnes Medical Center ED with complaints of epigastric abdominal. (*Joint Ex 101, p.p. 8-9*)

The *Petition* indicates Dr. Schmitz suggested Decedent's high blood pressure was a pre-existing condition. (*Petition, p. 8, lines 28 – p. 9, line 1*) While not germane, this is just another not factually accurate statement. The

evidentiary record demonstrates Dr. Schmitz inquired whether Petitioner was suggesting Decedent's high blood pressure was pre-existing condition. (*Joint Ex 103, p. 20, line 21 – p. 21, line 4*)

The Petition asserts Petitioner asked Dr. Schmitz why Decedent's high blood pressure is not entirely pre-existing. (*Joint Ex 103, p. 16, lines 10-14*) For clarification purposes, Petitioner actually posed the following compound question:

“Q. Well, first I'm asking if there's any difference between the high blood pressure readings from before he started work and go after he started working; so yeah, so that would be my question. So is his high blood pressure -- or why isn't his high blood pressure entirely preexisting?”

A. I can't answer that question without looking more carefully at the numbers, without backtracking and doing a one-on-one correlation to see if there was any aggravation of his blood pressure subsequent to his employment, and that would be evidenced by an intensification of his antihypertension regimen, but that said, I think -- that said, I can't divorce the fact that this man was working 60 hours a week, had fact that this man was working 60 hours a week, had high blood pressure that may have been preexisting, but for whatever reason, I opine with reasonable medical probability that the conditions of his employment would sustain the blood pressure, or at least in a way contributed to his ultimate stroke and demise...” (*Joint Ex 103, p. 21, lines 5-23*)

The *Petition* contends Dr. Schmitz response is speculative and should not be relied on. However, Dr. Schmitz rationally explained why further investigation was required before issuing an opinion in the affirmative. Therefore, contrary to the *Petition's* contention, the evidence demonstrates Dr. Schmitz declined to render a speculative opinion, explaining more detailed comparative analysis would be required before rendering a conclusive opinion.

*b. Diabetes*

It is undisputed Decedents medical history is positive for diabetes. Decedent's coroner's report lists cause of death as subarachnoid hemorrhage secondary to a ruptured cerebral blood vessel due to hypertensive atherosclerotic cardiovascular disease. (*Joint Ex 101, p. 1*) And, Dr. Schmitz acknowledged diabetes can cause atherosclerosis. (*Joint Ex 103, p. 22, lines 4-5*) Petitioner attempted to cross examine Dr. Schmitz about two of Decedent's blood sugar levels in 2012 and 2015. (*Joint Ex 103, p. 22 lines 8-13*) Dr. Schmitz queried Petitioner as to whether the readings were fasting blood sugar or post eating, facts Petitioner conceded lacking knowledge of and agreed to look into it. (*Joint*



*Ex 103, p. 22 lines 14-17*) The *Petition* now erroneously argues Dr. Schmitz failed to take Decedent's multiple blood sugar readings over the years into consideration. However, while it is likely, as a diabetic, Decedent's medical history demonstrates a multitude of blood sugar readings, Petitioner failed to present more than two to Dr. Schmitz for consideration. Moreover, as Dr. Schmitz' simple inquiry to Petitioner demonstrated, blood sugar levels in and of themselves may be quantitative, yet not sufficiently qualitative to render a medical opinion, and therefore were not relevant.

Dr. Schmitz further explained that he would not be able to parse out whether diabetes caused the stroke rather than blood pressure and that working 60 hours a week can make it difficult to control blood sugar. (*Joint Ex 103, p. 22 lines 18-24*) In response to Petitioner's specific inquiry of "How so Doctor" Dr. Schmitz explained correlation and effect of how working long hours when explicating blood sugar levels, testifying:

"A. Because if you're working 60 hours a week or 10 or 12 hours a day, six days a week or five days a week, it's pretty hard, No. 1. That is a physically demanding circumstance on any man, or woman for that matter, and emotionally and physically stressful situations make it very difficult to control blood sugar. (*Joint Ex 103, p. 23, lines 1-7*)

Dr. Schmitz further explained:

"Now, there's lots of stressful circumstances that occur for each and every one of us in each of our day-to-day activities, and what is stressful for one person may not be stressful for another person, but it's within a reasonable degree of medical probability that someone who's working 60 hours a week that they're excessively fatigued, that it's hard for them to eat at routine levels, and it's hard for them to track and monitor their blood pressure; so it's -- it is a physiologic and emotional strain for people to work more than eight hours a day." (*Joint Ex 103, p. 23, line 16 – p. 24, line 1*)

The *Petition's* assertion that Dr. Schmitz *assumed* because Decedent worked long hours, that Decedent was stressed, physically tired and incapable of monitoring his blood pressure, is not representative of Dr. Schmitz' testimony. (*Petition, p. 11, lines 18-20*) And, when Petitioner attempted to attribute misstatements as to Dr. Schmitz testimony pertaining to Decedent specifically, Dr. Schmitz testimony promptly rectified the record, correcting Petitioner's assertion by explaining he was speaking generalities from his experience as a cardiologist for 38 years and stating. (*Joint Ex 103, p. 24, lines 2-9*)

## **B. Job Duties**

The *Petition* repeatedly purports Dr. Schmitz refused to consider Decedent's actual job duties. (*PFR*, p. 8, line 2; p. 10, lines 26-27; p. 11, lines 20-21) However, the *Petition* fails to cite where this assertion is demonstrated in the evidentiary record. While Decedent served Dr. Schmitz a copy of Decedent's job description, which Dr. Schmitz reviewed, no evidence was proffered to demonstrate either party served Dr. Schmitz with a copy of either a written job analysis or visual video job analysis. (*Joint Ex 102*, p. 7) When inquired as to whether Dr. Schmitz reviewed either the written job analysis or video job analysis, he responded in the negative but acknowledged he reviewed deposition transcripts of Decedent's coworkers who explained Decedent's job. (*Joint Ex 103*, p. 24, lines 11-19) When inquired as to why he hadn't done so, Dr. Schmitz explained that he did not review the video job analysis because it would not impact his medical opinion, since he opined it is the amount of time Decedent worked which contributed to his high blood pressure, and ultimately the subarachnoid hemorrhage. (*Joint Ex 103*, p. 24, line 20- p. 25, line 3; p. 26, lines 4-12) The *Petition* fails to demonstrate probative value of the job analysis, when Dr. Schmitz has repeatedly and unequivocally testified that it is the extent and duration of time worked not the duties performed which have a contributing impact on hypertension.

### C. Scientific Studies

The *Petition* avers Dr. Schmitz medical opinions should not be relied on alleging Dr. Schmitz lacked an accurate understanding of conclusions of the studies he cited. Dr. Schmitz cited to 12 journal articles. The evidence demonstrates that during deposition, Petitioner commenced the cross examination about the articles, after conceding not reading them in their entirety "So I read a lot of it..." (*Joint Ex 103*, p. 27, line 23)

The *Petition* erroneously asserts Dr. Schmitz acknowledged he was entirely wrong. (*Petition*, p. 13, line 19) In fact, Dr. Schmitz expressed his disagreement with Petitioner's interpretations, in repetition. When Petitioner proffered its interpretation of the *Nakanishi* study, Dr. Schmitz responded "I don't think that's correct." (*Joint Ex 103*, p. 2, line 3) When Petitioner read two lines from the entire article and inquired whether Dr. Schmitz drew a different conclusion, Dr. Schmitz explained "There is....," and went on discussing a study in support of his conclusion, which Petitioner expressly acknowledged seeing, yet dismissed. (*Joint Ex 103*, p. 28, lines 12-18) When Petitioner argued that the articles do not support his conclusions, Dr. Schmitz responded "I would disagree with that completely". (*Joint Ex 103*, p. 30, lines 15-20) When Petitioner rendered its interpretation as to the *Fadel* study, seeking concurrence as to whether it was safe to state it wouldn't apply to Decedent's case, Dr. Schmitz dismissed that argument, responding "No, it's not safe to say,..." and went on to explain why it was applicable. (*Joint Ex 103*, p. 31, lines 5-25) When Petitioner conjectured that the article Dr. Schmitz cited do not necessarily reach Dr. Schmitz' conclusions, Dr. Schmitz responded "I would disagree with that

completely.” (*Joint Ex 103, p. 30, lines 15-20*) When Petitioner conjectured based on Yang article, it would be safe to say Decedent’s diabetes was uncontrolled, Dr. Schmitz disagreeing “No, it’s not safe to say that.” (*Joint Ex 103, p. 32, p. 24- p.33, line 2*) Dr. Schmitz went on to explain why that conclusion could not be automatically inferred based on contents of the article, applied to limited information Petitioner had as to the circumstances surrounding some of Decedent’s blood sugar levels. (*Joint Ex 103, p.33, lines 3-14*) At most, when Petitioner proffered a compound question as to the *Virtanen* and *Kivimaki* study and whether established correlation between long work hours and hypertension, or barley statistically significant association between long work hours an coronary artery disease and stroke, not hypertension, not having the articles during the deposition, Dr. Schmitz acquiesced “Maybe, I have not reviewed these for six months, and you’re up to date on these right now, so you may have a slight disadvantage.” (*Joint Ex 103, p. 29, lines 11-22*)

Dr. Schmitz testified it is well accepted the medical literature and in cardiology that prolonged work hours and/or duty hours are associated with increased incident of high blood pressure. (*Joint Ex 103, p. 28, lines 21-25*) The *Petition* erroneously asserts Dr. Schmitz acknowledged the studies do not say what he said. (*Petition, p. 28, lines 9-10*) Dr. Schmitz testified “Whether I made this point and substantiated it well enough with a bevy of research, you may have me on that, but I think it’s an accepted position that prolonged work hours and/or rotating shift hours is associated not only with higher instance of hypertension, but also a stroke.” His testimony speaks for itself and does not prove which the *Petition* purport it does. Dr. Schmitz was not acknowledging that the studies do not say what he said, rather proffered regardless of whether the articles he proffered proved his point, it’s an accepted position, that prolonged work hours is associated higher instance of hypertension and stroke. (*Joint Ex 103, p. 30, lines 9-14*) While there is clearly a dispute as to Dr. Schmitz’ conclusions from the articles content from Petitioner’s interpretations, the *Petition* fails to demonstrate Dr. Schmitz lacked an accurate understanding of the article, which were not offered into the evidentiary record.

#### **D. AOE/COE Definition**

The *Petition* avers Dr. Schmitz’ medical opinions should not be relied on alleging on Dr. Schmitz could not define proximate cause. (*Petition, p. 14, line 7-8*) Upon cross examination, Petitioner inquired:

Q. Again, just for the record, can you define to us what is your definition of proximate cause?

A. So medical/legally, I’m not sure that I’m enjoined to determine proximate cause because I believe that that is a legal definition, not a medical definition. The call of my job is to provide a medical opinion, and my opinion with regard to this case is that this man had

high blood pressure as a consequence, in part, of his employment, and specifically, the extended hours that he worked at this job, and that hypertension, systemic hypertension was a contributing factor in this man's ultimate subarachnoid hemorrhage and death.

Therefore, contrary to the *Petitions* supposition, the evidentiary record does not support the averment that Dr. Schmitz could not define the legal term “proximate cause” rather declined to do so. Even though an employee's underlying medical condition or disease was not caused by employment, the disability or death is compensable if such disease is aggravated or accelerated by work. (*Fogarty v. Department of Industrial Relations* (1928) 206 Cal. 102, 110; *G. L. Eastman Co. v. Industrial Acc. Com.* (1921) 186 Cal. 587, 594; *Lumbermen's Mut. Cas. Co. v. Industrial Acc. Com.* (1946) 29 Cal.2d 492, 496; *Smith v. Workmen's Comp. App. Bd.* (1969) 71 Cal.2d 588, 592.) Death attributable to both industrial and nonindustrial causes may support a death claim, and industrial causation has been shown in an array of scenarios where a work injury contributes to a subsequent nonindustrial injury. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291, 300.) Whether an industrial injury proximately causes a later injury or death within the meaning of section 3600 is a question of fact. (*Head Drilling Co. v. Industrial Acc. Com.* (1918) 177 Cal. 194, 197; *Smith v. Workers' Comp. Appeals Bd.* (1981) 123 Cal.App.3d 763, 773; *South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291, 302) Dr. Schmitz medical opinions demonstrate Decedent's injury (industrially aggravated high blood pressure) contributing to his resultant death by way of subarachnoid hemorrhage, was proximately caused by his employment, due to long work hours, totaling up to, and at times in excess of, 60 hours per week, leading up to the time of his demise.

#### IV RECOMMENDATION

Based on the *Petition's* failure to comply with 8 C.C.R. 10945, it is respectfully requested that the Petition for Reconsideration be DISMISSED. Alternatively, based on the opinions and evidence discussed above, it is respectfully requested that the Finding of Fact in this matter go undisturbed and the Petition for Reconsideration be DENIED.

DATE: March 3, 2022

Angelique Scott

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE