

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

JOSE SAENS, *Applicant*

vs.

**RG FACILITY SERVICES, INC.;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ10282543
Long Beach District Office**

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted defendant State Compensation Insurance Fund's Petition for Reconsideration on January 19, 2022 in order to further study the legal and factual issues raised therein, and to enable us to reach a just and reasoned decision. This is our Opinion and Decision after Reconsideration.

State Compensation Insurance Fund (SCIF) seeks reconsideration of the Findings and Award (F&A) issued on November 3, 2021 by a workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that lien claimant WSPT Network is not barred, as a general corporation for billings and collections, from entering into a joint venture with a medical provider pursuant to Corporations Code section 207; and, that WSPT Network does not need to be registered as an acupuncturist or to obtain an assignment of the billings in order to collect since it is un rebutted that it was part of a joint venture with the provider, Dr. Soung Bieng, as authorized by Corporations Code Section 207 and further encouraged by Corporations Code Section 16770. The WCJ awarded WSPT Network payment on the lien in question.

SCIF contends that WSPT Network cannot be awarded payment on the lien for Dr. Bieng's services because the lien does not comply with Labor Code¹ section 4903.8 as it is neither the medical provider who provided treatment to the injured worker, nor the valid assignee of Dr. Bieng. SCIF also contends that WSPT Network cannot be awarded payment on the lien because there is no evidence of a joint venture between WSPT Network and Dr. Bieng.

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

We have reviewed the record in the above captioned case, and have considered the allegations of the Petition for Reconsideration. For the reasons set forth below, it is our decision after reconsideration to rescind the F&A and return this matter to the trial level for further proceedings consistent with this decision.

I.

Section 4903.8 identifies those entitled to an order or award of payment on a lien for services provided pursuant to section 4903, subdivision (b):²

(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.

(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.

...

(e) A lien submitted for filing on or after January 1, 2013, for expenses provided in subdivision (b) of Section 4903, that does not comply with the requirements

² “**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)...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.)

of this section shall be deemed to be invalid, whether or not accepted for filing by the appeals board, and shall not operate to preserve or extend any time limit for filing of the lien.

(Lab. Code, § 4903.8(a), emphasis added.)

Here, there is no dispute that WSPT Network timely filed a Notice and Request for Allowance of Lien (Lien) on February 21, 2019, for services rendered to applicant in 2017 by Soung Ho Bien, P.T., L.Ac., Ph.D.³ (Lien, Original Billing, filed February 21, 2019; see Lien Claimant Exh. 1, Itemized statement of WSPT Network.) The lien was for physical therapy services provided under section 4903, subdivision (b), by a licensed provider. (Lien Claimant Exh. 2, WSPT Network initial evaluation.) Original billing statements were filed with the Lien for services provided by Dr. Bien, and identifying Dr. Bien’s license number. (Lien, Original Billing, filed February 21, 2019; see Lien Claimant Exh. 1, Itemized statement of WSPT Network.)

Section 4903.8, subdivision (a), 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 Dr. Bien 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 Dr. Bien has ceased to do business.

WSPT Network contends that pursuant to its contract⁴ and/or joint venture⁵ with Dr. Bien it is the “owner of the lien” as defined by section 4903.8, subdivision (a)(1). In other words, WSPT Network claims that pursuant to contract, it was “entitled to payment for the expenses as provided in subdivision (b) of Section 4903 at the time the expenses were incurred...,” and is therefore, the “owner of the lien” entitled to payment of the lien. (Lab. Code, § 4903.8(a)(1)-(2).)

³ “A lien claim for expenses as provided in subdivision (b) of Section 4903 shall not be filed after three years from the date the services were provided, nor more than 18 months after the date the services were provided, if the services were provided on or after July 1, 2013.” (Lab. Code, § 4903.5(a).)

⁴ We note that Business & Professions Code Section 650, subdivision (b), permits contracts between physicians and non-physicians for management services including billing and collections. (*Epic Medical Management, LLC v. Paquette* (2015) 244 Cal.App.4th 504, 516.)

⁵ “‘A joint venture ... is an undertaking by two or more persons jointly to carry out a single business enterprise for profit.’ (*Nelson v. Abraham* (1947) 29 Cal.2d 745, 749 [177 P.2d 931].) ‘There are three basic elements of a joint venture: the members must have joint control over the venture (even though they may delegate it), they must share the profits of the undertaking, and the members must each have an ownership interest in the enterprise.’ (*Orosco v. Sun-Diamond Corp.* (1997) 51 Cal.App.4th 1659, 1666 [60 Cal. Rptr. 2d 179].) Where a joint venture is established, the parties to the venture are vicariously liable for the torts of the other in furtherance of the venture. (*Dixon v. City of Livermore* (2005) 127 Cal.App.4th 32, 42 [25 Cal. Rptr. 3d 50].) A joint venture, however, does not obliterate the distinct identity of the parties to the venture.” (*Cochrum v. Costa Victoria Healthcare, LLC* (2018) 25 Cal.App.5th 1034, 1053.)

California Legislature in Article 4 of the Business and Professions Code, Section 16770 declares that it is in the public interest to enhance the ability of California purchasers, providers, and payers to form efficient-sized bargaining units for the purpose of contracting for the delivery of health care services. The Legislature recognized 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. Section 16770(g) states: “It is the intent of the Legislature, therefore, that the formation of groups *and combinations of providers and purchasing groups for the purpose of creating efficient-sized contracting units be recognized as the creation of a new product within the health care marketplace, and be subject, therefore, only to those antitrust prohibitions applicable to the conduct of other presumptively legitimate enterprises*”

WSPT Network is able to procure better contracts for its providers as there is strength in numbers. 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 professional 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 agreement between WSPT Network and its providers involves the purchase or sale of receivables or an assignment for collection. It is a joint venture towards a common goal, to free the licensed professional from administrative and management duties in order to focus on the delivery of adequate health care to their patients.

Lien Claimant has brought to defendant’s attention the fact that their contracted vendor, Healthsystems, is an LLC Florida corporation, owned by a pharmacist and just like WSPT Network, it enters into network agreements with physical therapists and acupuncturists and just like WSPT Network, it bills the carriers for the services provided by their network providers and subsequently reimburses the providers according to their agreement. Healthsystems is a cost containment organization benefiting defendants whereas, WSPT Network works to strengthen and support its providers. It must be deemed that defendant’s argument against WSPT Network is based on supposition rather than fact.

WSPT Network asserts it is the original owner of the lien and nothing in the general corporation laws of California precludes it from making such assertion

as shown above. (WSPT Network Trial Brief, pp. 5-6, italics in the original, bold added.)

Thus, the relevant legal question in this matter is whether a medical provider's billing service provider can be the "owner of the lien" under section 4903.8, subdivision (a)(1), and thereby entitled to payment on a workers' compensation section 4903 lien under section 4903.8, subdivision (a)(2). We agree with WSPT Network that it *may* be the "owner of the lien" as defined by section 4903.8, subdivision (a)(1), and therefore "entitled to payment for the expenses as provided in subdivision (b) of Section 4903." (*Ibid.*)

We acknowledge that the Court in *Chorn* summarily 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.) However, the clear language of section 4903.8, subdivision (a)(1), states that the "owner of the lien" is "*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), emphasis added.)⁶ There is no language in the statute to support the Court's conclusion in *Chorn* that the "owner of the lien" could only be "*the medical provider who incurred the expense.*" (*Chorn, supra*, 245 Cal.App.4th at p. 1389, emphasis added.) The *Chorn* Court did not discuss how it reached such a conclusion in light of the clear language of section 4903.8.

Next, the Court's summary conclusion was unnecessary to the decision being made in *Chorn*, i.e., whether the section 4903.05 filing fee and/or the anti-assignment provision of section 4903.8 violated various California constitutional rights. The issues raised and determined by the Court in *Chorn* were as follows:

These requests are based on claims that sections 4903.05 and 4903.8 violate the California Constitution. Petitioners claim that both provisions violate the constitutional mandate that workers' compensation laws "accomplish substantial justice in all cases expeditiously, inexpensively, and without any incumbrance of any character." (Cal. Const., art. XIV, § 4.) They also challenge each provision individually. They contend that the fee provisions of section 4903.05 deprive them of due process (Cal. Const., art. I, § 7) and equal protection (Cal. Const., art. I, § 9) and infringe their right to petition for the redress of grievances (Cal. Const., art. I, § 3). With respect to section 4903.8,

⁶ "Person" is defined by section 3210 as "an individual, firm, voluntary association, or a public, quasi public, or private corporation." (Lab. Code, § 3210.)

they argue that it substantially impairs their constitutional right to contract. (Cal. Const., art. I, § 9.) (*Chorn, supra*, 245 Cal.App.4th at p. 1381.)

Thus, no issue was raised by the litigants in *Chorn* as to the definition of “owner of the lien” under section 4903.8, subdivision (a)(1), and the issue was neither relevant or necessary to the constitutional issues raised and determined by the Court. Certainly, the issues raised in *Chorn* did not involve the specific question at issue herein, i.e., whether a general corporation formed for billing purposes can be the “owner of the lien” pursuant to a contract, or joint venture with the medical provider.⁷

As a result, the Court’s statement that the Appeals Board has no authority to award payment on a lien to “anyone other than the medical provider who incurred the expense,” is merely (obiter) dictum. (*People v. Vang* (2011) 52 Cal.4th 1038, 1047, fn. 3 [2011 Cal. LEXIS 10964] [when a judicial comment is unnecessary to the decision in the case, it is obiter dictum and not precedential].) As we are not required to follow (obiter) dictum, we now decline to rely on this comment in *Chorn* as determinative of the issue presented herein.

Therefore, it may be that WSPT Network was contractually entitled to payment for the reasonable expenses incurred by applicant (see Lab. Code, § 4903(b)) for services provided by Lo Acupuncture at the time those expenses were incurred. However, “no payment shall be made to any lien claimant without *evidence* that he or she is the owner of that lien.” (Lab. Code, § 4903.8(a)(2), emphasis added.) Thus, WSPT Network must produce evidence to support its claim that it is the “owner of the lien” pursuant to its contract and joint venture with Dr. Bien.⁸

There is currently insufficient evidence in the record to determine the terms of the contract and/or whether there is a joint venture between WSPT Network and Dr. Bien. Without evidence, it is not possible to determine whether WSPT Network is or is not the “owner of the lien.” Given that these material issues of fact were not identified or adjudicated below, we cannot interpose a

⁷ We distinguish such a joint venture relationship from the hiring by a medical provider of a third-party vendor providing billing or collection services. The latter clearly raises an agency relationship whereby the vendor acts as the non-attorney representative of the medical provider.

⁸ The Appeals Board “shall not be 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.” (Lab. Code, § 5708.) Consequently, a WCJ has wide latitude to admit evidence that would potentially not be admissible in other proceedings. (See e.g., *Mote v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 902, 913 [62 Cal.Comp.Cases 891] [hearsay is admissible in workers’ compensation proceedings].)

finding on these issues without violating the parties' rights to due process. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158) [All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions, including the right to call and cross-examine witnesses; to introduce and examine exhibits; and, to offer rebuttal evidence.]

Therefore, the issue of who is the "owner of the lien" pursuant to section 4903.8, subdivision (a) must be considered in the first instance at the trial level. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 404 ["it is well established that the WCJ or the Board may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence"], citing *Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318; *Lundberg v. Workmen's Comp. App. Bd.* (1968) 69 Cal. 2d 436, 440.)

In order to facilitate any award of payment on the lien to the proper party, the WCJ should issue a notice of intention to join Dr. Bien into the proceedings as an interested party. (Lab. Code, § 5307.5(b) [The WCAB has the authority to order joinder "in the same proceeding of all persons interested therein, whether as employer, insurer, employee, dependent, creditor, or otherwise."].) We note that joinder in a workers' compensation proceeding is liberally granted. (Lab. Code, §§ 133, 3202.)⁹

II.

Defendant contends the lien involved in this case is subject to the assignment provisions of section 4903.8. We disagree. It is undisputed that there is no assignment of Dr. Bien's receivables to WSPT Network. In addition, 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.

⁹ "The Division of Workers' Compensation, including the administrative director and the appeals board, shall have power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under this code." (Lab. Code, § 133.) "[T]he act is to be liberally construed and the [Appeals Board] is vested with wide powers to the end that justice may be done in all cases." (*Northington v. Industrial Acci. Com.* (1937) 23 Cal.App.2d 255, 259; see *Moran v. Bradford Bldg., Inc.* (1992) 57 Cal.Comp.Cases 273 (Appeals Bd. en banc); see Lab. Code, § 3202.) The WCAB also has the authority to amend pleadings to conform to proof (eg., Notice and Request for Allowance of Lien), resulting in a relation back to the original filing date of the pleading. (See *Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200; *Coldiron v. Compuware Corporation* (2002) 67 Cal.Comp.Cases 1466 (Appeals Bd. en banc).)

The Legislative purpose and intent behind Senate Bill 863 was to prevent lien abuse and provide disincentives to filing frivolous liens that “overcrowd the workers’ compensation system and delay the resolution of workers’ cases.” (*Chorn, supra*, at pp. 1384-1385.) Senate Bill 863 included *both* sections 4903.05 and 4903.8: section 4903.05 re-enacted the lien filing fee, and in pertinent part, section 4903.8 prohibited assignment of providers’ receivables unless the provider was no longer doing business. (*Ibid.*) We concur with the Court in *Chorn* that “both sections 4903.05 and 4903.8 advance the goal of substantial justice ‘by taking aim at problem liens that impede the functioning of the workers’ compensation system...’” (*Ibid.*)

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.*)

However, there is no evidence in the current record that the lien filed by WSPT Network in this case is the type of frivolous lien or problem lien targeted by the Legislature when it enacted Senate Bill 863. Specifically, the lien at issue herein does not involve an assignment. Instead, the lien was filed by WSPT Network in its own name because of its belief that it is the “owner of the lien” pursuant to its contractual relationship and/or joint venture with Lo Acupuncture.

Taken to its logical extreme, SCIF is asking the Appeals Board to interpret section 4903.8 to limit the filing of liens in workers’ compensation cases to only those liens filed directly by a

provider (or their representative); or, should the provider be out of business, by their assignee. There is no clear statutory basis for such a limited interpretation. Moreover, it is unclear that the Appeals Board has the authority to interfere in the right of providers and general corporations to enter into *lawful* contracts.¹⁰

Accordingly, we cannot agree to read into section 4908.3 a prohibition against medical providers entering into a lawful contract and/or joint venture with a general corporation wherein the general corporation is contractually entitled to payment for the reasonable expenses incurred by applicant (Lab. Code, § 4903(b)). We concur with WSPT Network that it is not an assignee, but that subject to proof, it may be the “owner of the lien” entitled to payment as defined in section 4903.8, subdivisions (a)(1) and (2). It is therefore our decision after reconsideration to rescind the F&A, and return this matter to the trial level for further development of the record consistent with this decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Findings and Award issued on November 3, 2021 by a workers’ compensation administrative law judge is **RESCINDED**.

¹⁰ We note that the relationship between WSPT Network and Dr. Bien must be “outside the ban on corporate medical practice.” (*Conrad v. Medical Bd.* (1996) 48 Cal.App.4th 1038, 1043-1044.) In other words, the contract cannot create any “problematic divided loyalties” between the providers and their patients. (*Ibid.*; see *People ex rel. State Board of Medical Examiners v. Pacific Health Corp.* (1938) 12 Cal.2d 156, 158-159; *Pacific Employers Ins. Co. v. Carpenter* (1935) 10 Cal.App.2d 592, 594-595 [“Under the foregoing authorities it is clearly declared unlawful for a corporation to indirectly practice any of said professions for profit by engaging professional men to perform professional services for those with whom the corporation contracts to furnish such services.”]; see also *Epic Medical Management, supra*, 244 Cal.App.4th at p. 516 [Legal interpretation of the substantive provisions of the parties agreement is necessary to determine whether there is unlawful practice of medicine; interpretation “turns on whether the non-licensee exercises or has retained the right to exercise control or discretion over the physician’s practice.”].)

IT IS FURTHER ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 25, 2022

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

**WSPT NETWORK
WEST STAR PHYSICAL THERAPY
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. *abs*