

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

**CARLOS GARCIA DUENAS, *Applicant***

**vs.**

**CALIFORNIA CHARCOAL AND FIREWOOD, INC.;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ10746669  
Anaheim District Office**

**OPINION AND ORDER  
DENYING PETITION FOR RECONSIDERATION**

Lien claimant Prime Physical Therapy (lien claimant) seeks reconsideration of the Findings and Order (F&O) issued on July 28, 2022 by workers' compensation administrative law judge (WCJ). The WCJ found that lien claimant did not meet their burden of proof to establish it was contractually entitled to payment for the expenses incurred by applicant pursuant to Labor Code<sup>1</sup> section 4903, subdivision (b), for services provided by Absolute PT and Rehab Center. The WCJ disallowed the lien claimant's lien.

Lien claimant contends that pursuant to WCAB Rule 10401, subdivision (a) (Cal. Code Regs., tit. 8, § 10401(a)), and the holdings in *Rebolledo v. New Cure*, 2021 Cal.Wrk.Comp. P.D. LEXIS 300 (*Rebolledo I*), it is the non-attorney collector or representative for providers Absolute PT and Rehab Center (providers).

State Compensation Insurance Fund (SCIF or defendant) filed an Answer to Petition for Reconsideration (Answer), and the WCJ filed a Report and Recommendation on Petition for Reconsideration (Report). The WCJ recommends that the Petition for Reconsideration be denied and reiterated that lien claimant failed to meet its burden of proof to establish legal entitlement to payment for services rendered by the providers.

We have reviewed the record in this matter, the allegations of the Petition for Reconsideration and the Answer, as well as the contents of the Report. Based on our review of the

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<sup>1</sup> All further references are to the Labor Code unless otherwise noted.

record, for the reasons set forth in the Report, which we adopt and incorporate herein, and for the reasons set forth below, we deny the Petition for Reconsideration

## I.

Lien Claimant’s trial brief was filed on April 4, 2022. (Lien Claimants Trial Brief in Support of Payment for Services Rendered, April 4, 2022.) This matter was heard on May 10, 2022, and submitted on the parties’ briefs on or about June 9, 2022. (Minutes of Hearing and Summary of Evidence, May 10, 2022.) On March 25, 2022, a second panel decision was issued by the Appeals Board in the matter of Francisco Rebolledo, ADJ9641796. (*Rebolledo v. New Cure*, 2022 Cal.Wrk.Comp. P.D. LEXIS 73 (*Rebolledo II*). The panel in *Rebolledo II* rescinded *Rebolledo I*. (*Id.*, at \*17-18.) Therefore, at the time lien claimant filed its brief on April 4, 2022, and at all times prior to submission of this matter on June 9, 2022, *Rebolledo I* had been rescinded, and a new decision issued, i.e., *Rebolledo II*.

Lien claimant’s contentions, which are based on *Rebolledo I*, are thus unavailing given that the analysis in *Rebolledo I* is no longer persuasive authority<sup>2</sup> regarding the question of “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).” (*Rebolledo II*, \*7.) Instead, after a further review of the legal questions posed,<sup>3</sup> the *Rebolledo* panel determined that a billing service “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.*, quoting Lab. Code, § 4903.8(a)(2).)

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

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<sup>2</sup> Panel decisions are not binding precedent (as are en banc decisions) on all Appeals Board panels and workers’ compensation judges. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) While not binding, the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Bd. en banc).)

<sup>3</sup> Section 4903.8 is not a “model of clarity.” (See *Baker v. Workers’ Comp. Appeals Bd.* (2011) 52 Cal.4th 434, 450 [“The current text of section 4659(c)’s second sentence is no model of clarity. Perhaps the Legislature may wish to revisit the suitability of the current language...”].)

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). (*Id.*, at \*17.)

The panel in *Rebolledo II* also addressed SCIF’s concern that lien claimant “is not entitled to practice medicine in California, and is therefore not entitled to collect payment for the services” rendered by the providers. (Answer, pp. 3-4; see *Rebolledo II*, at \*7-10.) This contention is based on an assumption that section 4903.8, subdivision (a)(1), mandates that the “owner of the lien” be a medical provider. This contention is erroneous. As stated in *Rebolledo II*,

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.) After further review of the record in this case, as well as the legal issues presented herein, we now believe that our reliance on that summary conclusion was a mistake.

First, 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.) [fn] 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 Court did not include any discussion as to how it reached such a conclusion in light of the clear language of section 4903.8.

...

[T]he 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.

Given that Business & Profession Code section 650, subdivision (b), permits contracts between physicians and non-physicians for management services, including billing and collections (*Rebolledo II*, at \*5, fn.5), “it may be that [lien claimant] was contractually entitled to payment for the expenses incurred by applicant (see Lab. Code, § 4903(b)) for services provided by [providers], at the time those expenses were incurred.” (*Id.*, at \*9). It may also be that a billing service and a

medical provider have entered into a joint venture,<sup>4</sup> thereby establishing a basis for the billing service to be the “owner of the lien.” (Lab. Code, § 4903.8(a)(2).)

Moreover, SCIF’s position was already rejected in *Rebolledo II*:

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. (*Rebolledo II*, at \*13-14.)<sup>5</sup>

Of course, “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.)” (*Rebolledo II*, at \*9.) Thus, lien claimant had to produce evidence to support its claim that it is the “owner of the lien.” (*Id.*, at \*9-10.) In this case, and as clearly found by the WCJ, lien claimant failed to produce evidence that it was “the owner of the lien” under section 4903.8, subdivision (a)(2).

Accordingly, as lien claimant failed to meet its burden of proof, we deny the Petition for Reconsideration.

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<sup>4</sup> As stated in *Rebolledo II*,

“‘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.) (*Rebolledo II*, at \*5, fn. 6.)

<sup>5</sup> “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.’].)” (*Rebolledo II*, at \*14.)

For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Reconsideration of the Findings and Order issued on July 28, 2022 by workers' compensation administrative law judge is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



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

**October 13, 2022**

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

**CARLOS GARCIA DUENAS  
INNOVATIVE MEDICAL MANAGEMENT  
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*

**STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board  
JUDGE JENNIFER KALOPER-BERSIN**

**Carlos Garcia Duenas vs. California Charcoal and Firewood, Inc.;  
State Compensation Insurance Fund  
WCAB No. ADJ10746669**

**REPORT AND RECOMMENDATION ON  
PETITION FOR RECONSIDERATION**

**I**

**INTRODUCTION**

Lien Claimant Prime Physical Therapy Network, filed a timely, verified, petition for reconsideration on the standard statutory grounds, from the trial court's July 28, 2022 Findings and Order, pleading that

1. The Board acted without or in excess of its powers.
2. The evidence does not justify the findings of fact.
3. That the Findings of Fact do not support the decision and order.

Defendant State Compensation Insurance Fund has filed an Answer to the Petition for Reconsideration.

**II**

**STATEMENT OF FACTS**

Applicant, Carlos Garcia Duenas, born May 30, 1959, sustained industrial injury to his back and hips during the course of employment as a delivery driver in California, on June 15, 2016. The case-in-chief resolved via Compromise and Release dated December 9, 2019 and Order Approving Compromise and Release, also dated December 9, 2019, issued by WCJ Thomas Maupin. The matter proceeded to Lien Trial on multiple issues; however, the undersigned issued a Findings of Fact and Opinion on Decision finding that petitioner did not meet their burden proving that they were contractually entitled to payment for the expenses incurred by applicant pursuant to Labor Code §4903(b), for services provided by Absolute PT and Rehab Center.

### III

#### DISCUSSION

Petitioner's claims are unsupported based on a failure to provide evidence of their entitlement to payment for services provided by providers Absolute PT and Rehab Center. As referred to in the opinion, recovery of payment for a medical treatment provider's services requires identifying the interests of those seeking the recovery, and whether they have a valid position for doing so. The WCJ referred to Labor Code §4903.8 which identifies how orders or awards for payments of a lien may be made. This section states:

“(a) 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, 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 interests in the remaining accounts receivable to the assignee.

(b) If there has been an assignment of a lien, either as an assignment of all right, title, and interest in the accounts receivable or as an assignment for collection, a true and correct copy of the assignment shall be filed and served.

(1) If the lien is filed on or after January 1, 2013, and the assignment occurs before the filing of the lien, the copy of the assignment shall be served at the time the lien is filed (2) If the lien is filed on or after January 1, 2013, and the assignment occurs after the filing of the lien, the copy of the assignment shall be served within 20 days of the date of the assignment.

(3) If the lien is filed before January 1, 2013, the copy of the assignment shall be served by January 1, 2014, or with the filing of a declaration of readiness or at the time of a lien hearing, whichever is earliest.

(c) If there has been more than one assignment of the same receivable or bill, the appeals board may set the matter for hearing on whether the multiple assignments constitute bad-faith actions or tactics that are frivolous, harassing, or intended to cause unnecessary delay or expense. If so found by the appeals board, appropriate sanctions, including costs and attorney's fees, may be awarded against the assignor, assignee, and their respective attorneys.

(d) At the time of filing of a lien on or after January 1, 2013, or in the case of a lien filed before January 1, 2013, at the earliest of the filing of a declaration of readiness, a lien hearing, or January 1, 2014, supporting documentation shall be filed including one or more declarations under penalty of perjury by a natural person or persons competent to testify to the facts stated, declaring both of the following:

(1) The services or products described in the bill for services or products were actually provided to the injured employee.

(2) The billing statement attached to the lien truly and accurately describes the services or products that were provided to the injured employee.

(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 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.

(f) This section shall take effect without regulatory action. The appeals board and the administrative director may promulgate regulations and forms for the implementation of this section.”

Labor Code §3202.5 states that

All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. ‘Preponderance of the evidence’ means that evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of evidence.

Labor Code §5705 provides that the burden of proof rests upon the party holding the affirmative of the issue.

While petitioner refers to a right to collect payment on behalf of the physical therapists who provided services to applicant, no evidence was introduced either via testimony or documentation indicating their entitlement to pursue such recovery under the Labor Code. They neither provided records nor other testimony regarding an ownership interest supporting entitlement to payment.

#### IV

#### **RECOMMENDATION**

For the reasons stated above, it is respectfully submitted that the Petition for Reconsideration be denied.

Dated: August 25, 2022

JENNIFER KALOPER-BERSIN  
Workers’ Compensation Judge