

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

**MARLON GREEN, *Applicant***

**vs.**

**UNIVERSITY OF CALIFORNIA, BERKELEY, permissibly self-insured, administered by  
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ12336780  
Oakland District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Orders (F&O) issued by the workers' compensation administrative law judge (WCJ) on July 13, 2023, wherein the WCJ found in pertinent part that lien claimant Gary Martinovsky M.D., is to be paid at the med-legal rate pursuant to Title 8 California code of Regulations Section 9795 for reports produced on July 9, 2020, April 13, 2021 and July 24, 2021; and that Dr. Martinovsky is to be paid at the PR2 rate for the report produced on January 28, 2021.

Defendant contends that it is not liable for medical-legal expenses generated to contest utilization review decisions; and that Dr. Martinovsky did not meet his burden of proof to show that a contested claim existed at the time his medical-legal expenses were incurred.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We received an Answer from Integrated Pain Care on behalf of Dr. Martinovsky (hereafter lien claimant).

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will deny reconsideration.

## BACKGROUND

Marlon Green, applicant, claimed injury to his head, nose, and left shoulder, while employed by defendant as a groundskeeper on July 13, 2019. The injury claim was accepted, and applicant underwent a course of treatment, including that which he received from lien claimant. (See LC Exhs. 3 – 10.) The parties settled the injury claim by a Compromise and Release; a WCJ issued the Order Approving Compromise and Release on July 23, 2021.

Defendant and lien claimant proceeded to trial on May 4, 2023. The issue submitted for decision was described as follows:

Specifically, the parties want me to address four items that are left to be paid, a July 9, 2020, report, a January 28, 2021, report, an April 13, 2021, report, as well as a July 24, 2021 report. Defendant argues that there is no payment due at all for any of these reports while Lien Claimant argues that the reports should be paid as a medical-legal report issued by the primary treating physician. (Minutes of Hearing and Summary of Evidence (MOH/SOE), May 4, 2023, p. 2.)

## DISCUSSION

We first note that, as the WCJ stated in her Report, defendant filed an unverified petition for reconsideration. Labor Code section 5902 requires that a petition for reconsideration be verified. (See also Cal. Code Regs., tit. 8, § 10510(d).) We have previously held that where a petition for reconsideration is not verified, the petition may be dismissed if the petitioner has been given notice of the defect (either by the WCJ's report or by the respondent's answer) unless, within a reasonable time, the petitioner either: (1) cures the defect by filing a verification; or (2) files an explanation that establishes a compelling reason for the lack of verification and the record establishes that the respondents are not prejudiced by the lack of verification. (See *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 (Significant Panel Decision).)<sup>1</sup> One week after filing its initial Petition, defendant filed a "Supplemental" Petition including a verification. Defendant "cured" the defect in a reasonable time. Based thereon, the Supplemental Petition is accepted and is addressed on the merits.

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<sup>1</sup> Although panel decisions of the Appeals Board are not binding precedent and have no stare decisis effect, they are citable to the extent they point out the contemporaneous interpretation and application of the workers' compensation laws by the Board. (*Smith v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 530, 537, fn. 2 [65 Cal.Comp.Cases 277]; *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145, 147]; *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 [Appeals Board en banc].)

Pursuant to Labor Code section 4064:

(a) The employer shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee pursuant to Sections 4060, 4061, and 4062. Each comprehensive medical-legal evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms, except medical treatment recommendations, which are subject to utilization review as provided by Section 4610, and objections to utilization review determinations, which are subject to independent medical review as provided by Section 4610.5. ...  
(Lab. Code, § 4064.)<sup>2</sup>

Clearly, the provisions of section 4064 apply to the comprehensive medical-legal evaluations performed by agreed medical examiners and qualified medical examiners. However, they do not apply to medical-legal expenses that pertain to section 4610 utilization review determinations, and/or section 4610.5 objections to utilization review (UR) determinations, which are subject to independent medical review (IMR). (See Lab. Code, §§ 4610, 4610.5.)

Section 4620 states in part:

(a) For purposes of this article, a medical-legal expense means any costs and expenses incurred by or on behalf of any party ... for the purpose of proving or disproving a contested claim.  
(b) A contested claim exists when ... the employee is claiming entitlement to any benefit arising out of a claimed industrial injury and one of the following conditions exists:  
(1) The employer rejects liability for a claimed benefit. ...  
(Lab. Code, § 4620.)

As applicant's primary treating physician (PTP), Dr. Martinovsky recommended various treatment protocols which were denied by utilization review. When authorization for treatment sought by an injured worker's PTP is denied by UR, the injured worker is entitled to obtain a report from the PTP contesting the utilization review denial. (Lab. Code, § 4610.5(f)(3)(A).) In the reports at issue herein, Dr. Martinovsky did not "address all contested medical issues arising from all injuries;" instead he addressed only the treatment he requested (a benefit to which applicant was claiming entitlement) that had been denied by UR. Thus, his July 9, 2020, April 13, 2021, and July 24, 2021 reports were medical-legal expenses incurred by applicant pursuant to section 4620.

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<sup>2</sup> All further statutory references are to the Labor Code unless otherwise noted.

Accordingly, we deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings of Fact and Orders issued by the WCJ on July 13, 2023, is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

I CONCUR,

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**October 2, 2023**

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

**NATHAN CUTHBERT, J.D., INTEGRATED PAIN CARE SAN FRANCISCO  
RONALD LAWRENCE SNIDER, CLAIMLOGIX, LLC**

**TLH/mc**

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