

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

**CLAUDIO CARDOZO, *Applicant***

**vs.**

**ROCK AND ROLL CAR WASH; REDWOOD FIRE  
AND CASUALTY INSURANCE COMPANY dba BERKSHIRE HATHAWAY  
HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ15763825  
Los Angeles Office 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 and the Opinion on Decision 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 and the Opinion on Decision, both of which we adopt and incorporate, we will deny reconsideration.

**I.**

Former Labor Code<sup>1</sup> section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
  - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

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

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on July 18, 2025, and 60 days from the date of transmission is September 16, 2025. This decision is issued by or on September 16, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on July 18, 2025, and the case was transmitted to the Appeals Board on July 18, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 18, 2025.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the June 16, 2025 Findings and Order is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**September 16, 2025**

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

**PAPERWORK & MORE  
KAPLAN & BOLDY**

**DLM/oo**

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

## **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

The Workers' Compensation Judge ("WCJ") issued an Opinion on Decision and Findings and Award, on June 16, 2025. Defendant, Redwood Fire and Casualty Insurance Company dba Berkshire Hathaway Homestate Companies, hereinafter, "Petitioner," has filed a timely and verified Petition for Reconsideration on July 7, 2025, on the following grounds pursuant to Labor Code § 5903 / Rule 10843:

1. That by the order, decision, or award, the Board acted without or in excess of its powers;
2. The evidence does not justify the Findings and Award and Opinion on Decision;
3. The findings of fact do not support the order, decision or award.

**REPORT ON RECONSIDERATION WAS TRANSMITTED TO THE WCAB ON JULY 18, 2025.**

### **I. CONTENTIONS**

That the WCJ did not identify a disputed medical fact within the scope and practice of a psychologist that existed at the time of the applicant's attorney's August 17, 2025 request, that lien claimant provider did not meet the definition of a PTP, and that lien claimant is barred from compensation because the evaluation took place within the first 60 days of notice of claim.

### **II. BACKGROUND OF CASE**

The matter proceeded to lien trial on the lien of Premier Psychological Services, which involved one date of service for a medical legal evaluation conducted by Dr. Michaels on November 28, 2022. The claim itself involved an admitted specific injury that occurred on January 27, 2022, while the applicant worked as a car washer for defendant, to his thoracic spine and right shoulder, with disputed body parts to the legs, upper extremity, lower extremity, sleep, psyche, stress, internal, neuro, cardio, pulmonary, back, neck and chest. Minutes of Hearing, March 21, 2025, page 2, lines 6-8.

Applicant was initially treated by Dr. Batch, who discharged the applicant on August 2, 2022, for which a denial of PD benefits notice was issued to the applicant on August 16, 2022. LC Exhibit 2. On August 10, 2022, the applicant amended their application to include psyche as a body part. Lien Claimant's Exhibit 1.

The applicant then designated a new PTP on August 17, 2022, via a letter to the carrier from applicant's attorney. LC Exhibit 3. The letter specifically noted that Dr. Mark Michaels would act as the PTP from Premier Psychological Services. Id. at page 1.

Dr. Michaels issued an RFA dated September 21, 2022, requesting that the applicant be provided with a psychological evaluation as "requested by applicant's attorney." LC Exhibit 4.

Dr. Michaels subsequently issued a Medical Legal evaluation dated November 28, 2022, LC Exhibit 6. In said report, Dr. Michaels reports that he was referred the applicant by his attorney,

and was asked to address the applicant's condition on a psychological basis. Id. at page 2. Dr. Michaels further indicates that the report is being conducted at the request of the applicant's attorney because the claim has been denied. Id. at page 2.

Dr. Michaels takes a history from the applicant of both his claim and his symptoms, and reviews some of Dr. Batch's records. LC Exhibit 6, pages 3-16. Under "Discussion," Dr. Michaels reports that the applicant does not have notable psychiatric symptoms, but following his accident, he had "impaired sleep," and finds that it is due 100% to the work injury. Id. at page 16-17.

Lien claimant sent a billing statement to defendant dated April 17, 2023 listing the services provided for the medical legal report on November 28, 2022, totaling \$7,433.00, with no payments having been made. LC Exhibit 7. Further, a demand letter was sent to defendant from lien claimant, attempting to settle the lien on May 6, 2023. LC Exhibit 8.

Based on the evidence submitted to the undersigned judge, it was found that the report of Dr. Michaels dated November 28, 2022 constituted a medical legal report pursuant to CCR § 9793(h)(1)-(5), and that lien claimant was entitled to payment for same.

Thereafter, petitioner's Petition for Reconsideration was filed, and no response has been filed by lien claimant.

### **III. DISPUTED MEDICAL FACT EXISTED AT TIME OF MEDICAL LEGAL EVALUATION**

Petitioner's main argument is that no "psychological disputed fact existed at the time of "the 4600 election letter by applicant's attorney." Petition for Reconsideration, page 4, lines 11-12. Specifically, petitioner outlines that the application was amended to include psyche as a body part on August 10, 2022, and that the L.C. § 4600 letter was issued seven days later "when no dispute existed regarding psychological complaints of injury per LC 4621 (b)." Id. at page 4, lines 7-10.

When the case proceeded to lien trial, psyche was listed as a disputed body part. Minutes of Hearing, March 21, 2025, page 2, lines 5-8. Further, in the Compromise and Release, approved on June 27, 2023, the parties indicated the following on page 7: "Injury is admitted for applicant's thoracic spine and right shoulder only. All other body parts are denied."

Thus, psyche was denied by defendant. Further, the dispute existed at the time the applicant's attorney requested the medical legal report.

Specifically, at the time that the application was amended on August 10, 2022, and applicant's attorney's letter requesting the medical legal dated August 17, 2022, defendant had submitted a Notice denying PD benefits, dated August 16, 2022. Defense Exhibit F. The PD notice indicates that the applicant was released from care on August 2, 2022, with no ratable disability, and was found to have recovered with no permanent disability. Id. at page 1. Accordingly, petitioner advised applicant they were not entitled to any PD benefits. This is not only a denial of PD for the applicant's accepted injury, but notice that there is nothing further owed to the applicant. Given that petitioner was on notice that the applicant had pled an additional body part, a dispute existed as to the applicant's claim.

Further, the PTP Dr. Michaels requested a medical legal be authorized in an RFA dated September 21, 2022. L.C. Exhibit 4. Between the time the application was amended on August 10, 2022, and this request, it does not appear that there were any further notices issued by petitioner, and thus, psyche remained in dispute.

Accordingly, it is found that a medical dispute existed at the time the medical legal was requested.

## **II. LIEN CLAIMANT WAS THE PTP**

Petitioner argues that lien claimant was not a valid PTP because he did not submit a “valid request for authorization.” Petition for Reconsideration, page 4, lines 17-22. Specifically, petitioner argues that because the PTP did not respond to their notice of an incomplete request for authorization, he cannot be considered a PTP. *Id.* at page 6, lines 3-6.

In the case herein, after the applicant had been discharged by Dr. Batch on August 2, 2022, the application was amended on August 10, 2022, to include psyche. Further, the applicant’s attorney designated Dr. Michaels from Premier Psychological Services as his PTP, on August 17, 2022. LC Exhibit 2 and 3.

The L.C. § 4600 letter designating Dr. Michaels as the PTP is valid, and uncontroverted. The argument that because Dr. Michaels did not respond to petitioner’s request of an incomplete RFA on September 21, 2022, Defense Exhibit G, caused Dr. Michaels to lose his PTP designation is not proper. Based on the evidence submitted, Dr. Michaels was properly designated as the PTP, and did not lose his designation as such.

## **III. EVALUATION WAS NOT PERFORMED WITHIN FIRST 60 DAYS OF AN ACCEPTED INJURY**

Petitioner argues that because the medical legal evaluation occurred “within the first 60 days of notice of a claim for psychological injury” that it is barred pursuant to L.C. § 4621(b). Petition for Reconsideration, page 8, lines 7-12. The amendment of an application is not a filing of a new claim. In the case herein, the applicant’s claim had been accepted for his back. Following treatment with Dr. Batch, and being discharged without PD, the applicant amended his accepted claim to include psyche. This amendment of August 10, 2022 was not a “new claim,” but part of an already accepted claim. Accordingly, defendant does not get 60 days following an amendment to an already accepted claim, and the medical legal was properly obtained.

It is recommended that petitioner’s Petition for Reconsideration be denied in its entirety.

DATE: JULY 18, 2025

/S/SANDRA ROSENFELD\_\_\_\_\_  
**Sandra Rosenfeld**

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW  
JUDGE

## **OPINION ON DECISION**

### **LIEN OF PREMIER PSYCHOLOGICAL SERVICES:**

The matter proceeded to lien trial on the lien of Premier Psychological Services, which involved one date of service for a medical legal evaluation conducted by Dr. Michaels on November 28, 2022.

The claim itself involved an admitted specific injury that occurred on January 27, 2022, while the applicant worked as a car washer for defendant, to his thoracic spine and right shoulder, with disputed body parts to the legs, upper extremity, lower extremity, sleep, psyche, stress, internal, neuro, cardio, pulmonary, back, neck and chest. Minutes of Hearing, March 21, 2025, page 2, lines 6-8.

Applicant was initially treated by Dr. Batch, who discharged the applicant on August 2, 2022, for which a denial of PD benefits notice was issued to the applicant on August 16, 2022. LC Exhibit 2.

The applicant then designated a new PTP on August 17, 2022, via a letter to the carrier from applicant's attorney. LC Exhibit 3. The letter specifically noted that Dr. Mark Michaels would act as the PTP from Premier Psychological Services. Id. at page 1.

Dr. Michaels issued what appears to be an RFA dated September 21, 2022, requesting that the applicant be provided with a psychological evaluation as "requested by applicant's attorney." LC Exhibit 4.

Dr. Michaels subsequently issued a Medical Legal evaluation dated November 28, 2022, LC Exhibit

6. In said report, Dr. Michaels reports that he was referred the applicant by his attorney, and was asked to clarify issues and the applicant's condition on a psychological basis. Id. at page 2. Dr. Michaels further reports that the report is being conducted at the request of the applicant's attorney because the claim has been denied. Id. at page 2.

Dr. Michaels takes a history from the applicant of both his claim and his symptoms, and reviews some of Dr. Batch's records. LC Exhibit 6, pages 3-16. Under "Discussion," Dr. Michaels reports that the applicant does not have notable psychiatric symptoms, but following his accident, he had "impaired sleep," and finds that it is due 100% to the work injury. Id. at page 16-17.

Lien claimant sent a billing statement to defendant dated April 17, 2023 listing the services provided for the medical legal report on November 28, 2022, totaling \$7,433.00, with no payments having been made. LC Exhibit 7. Further, a demand letter was sent to defendant from lien claimant, attempting to settle the lien on May 6, 2023. LC Exhibit 8.

Pursuant to CCR § 9793(h), a medical legal expense "means any costs or expenses incurred by or on behalf of any party or parties, the administrative director, or the appeals board for X-rays,

laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and as needed, interpreter's fees, for the purpose of proving or disproving a contested claim.”

Further, pursuant to CCR § 9793(h)(1)-(5), the report must meet the following conditions to qualify as a medical legal report:

- (1) The report is prepared by a physician, as defined in Section 3209.3 of the Labor Code.
- (2) The report is obtained at the request of a party or parties, the administrative director, or the appeals board for the purpose of proving or disproving a contested claim and addresses the disputed medical fact or facts specified by the party, or parties or other person who requested the comprehensive medical-legal evaluation report. Nothing in this paragraph shall be construed to prohibit a physician from addressing additional related medical issues.
- (3) The report is capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim, considering the substance as well as the form of the report, as required by applicable statutes, regulations, and case law.
- (4) The medical-legal examination is performed prior to receipt of notice by the physician, the employee, or the employee's attorney, that the disputed medical fact or facts for which the report was requested have been resolved.
- (5) In the event the comprehensive medical-legal evaluation is served on the claims administrator after the disputed medical fact or facts for which the report was requested have been resolved, the report is served within the time frame specified in Section 139.2(j)(1) of the Labor Code.”

In the case herein, the report issued by Dr. Michaels on November 28, 2022, meets the above requirements, and is a medical legal report. Further, defendant appears to not have issued any payments or EOBs as required by CCR § 10786(e), and thus waived their objections.

Defendant’s arguments that Dr. Michaels did not respond to a notice of an incomplete RFA, that an incomplete RFA would preclude a medical legal report from issuing, and whether the applicant’s attorney’s request for medical-legal by the PTP identified a dispute, are invalid. Here, the claim was admitted with denied body parts, including psyche, for which Dr. Michaels was asked to issue a report addressing same by applicant’s attorney.

The evidence submitted by defendant did not support their arguments against Dr. Michaels’ report not qualifying as a medical legal.

Accordingly, it is found that lien claimant is entitled to the full payment of their charges, including interest and penalties, to be calculated between the parties, with the board reserving jurisdiction over any disputes.

### **PSYCHE AS COMPENSABLE CONSEQUENCE OF ORTHOPEDIC INJURIES:**

Dr. Michaels addressed psyche as a disputed body part in his medical legal report dated November 28, 2022. However, he indicated that the applicant did not have psychiatric

symptoms, but did find that he had sleep issues. LC Exhibit 6, pages 16-17. Accordingly, the applicant did not have psychiatric injury as a result of his orthopedic injuries, but did have sleep issues as per the findings of Dr. Michaels.

DATE: JUNE 16, 2025

/S/SANDRA ROSENFELD

**Sandra Rosenfeld**

WORKERS' COMPENSATION JUDGE