WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

NASRI BAKRI, *Applicant*

vs.

COSTCO WHOLESALE;
permissibly self-insured; administered by HELMSMAN MANAGEMENT SERVICES, LLC, *Defendants*

Adjudication Number: ADJ11204383
Long Beach 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, and for the reasons discussed below, we will deny reconsideration.

I.

Preliminarily, we note that former Labor Code[1] 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.

[1] 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 31, 2025 and 60 days from the date of transmission is September 29, 2025. This decision is issued by or on September 29, 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 31, 2025, and the case was transmitted to the Appeals Board on July 31, 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 31, 2025.

II.

Pursuant to section 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) A lien claimant has the burden of proving all elements necessary to establish the validity of its lien. Section 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." (Lab. Code, § 3202.5; *Boehm & Associates v. Workers' Comp. Appeals Bd. (Brower)* (2003) 108 Cal.App.4th 137, 150 [68 Cal.Comp.Cases 548, 557.) A lien claimant treating

physician's burden of proof includes the burden of showing that he or she provided medical treatment "reasonably required to cure or relieve" the injured worker from the effects of an industrial injury. (Lab. Code, § 4600(a); *Williams v. Industrial Acc. Com*. (1966) 64 Cal.2d 618 [31 Cal.Comp.Cases 186]; *Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461]; *Workmen's Comp. Appeals Bd. v. Small Claims Court (Shans)* (1973) 35 Cal.App.3d 643 [38 Cal.Comp.Cases 748].) Where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured worker and the lien claimant must establish injury by preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411]; *Kunz, supra*, 67 Cal.Comp.CasAyes at p. 1592.)

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza, supra*; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion … It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence "… a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

For the reasons stated in the WCJ's Report and Opinion on Decision, we agree that lien claimant did not meet its burden of proof.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 29, 2025

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

PAPERWORK & MORE
PREMIER PSYCHOLOGICAL SERVICES
EMPLOYER DEFENSE GROUP

PAG/bp

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

REPORT AND RECOMMENDATION OF THE WORKERS' COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION AND NOTICE OF TRANSMITTAL

I. INTRODUCTION

Lien Claimant Premier Psychological Services ("Premier") has filed a Petition for Reconsideration ("Petition"), disputing the Findings and Award issued on June 23, 2025. The Petition was filed timely.

The primary issue at trial was whether Premier could recover on its lien claim, which included charges that it claimed were medical-legal and also some for treatment. Premier did not provide a breakdown of the billings it believed should be included in each category at trial. Dr. Michaels provided the bulk of the services that were listed on their billing statement (Ex. 8).

Their claim was denied in full, as the underlying injury claim was found non-industrial, so treatment was non-compensable, and Dr. Michaels' report was found not to be substantial medical evidence, particularly on the central issue in the case, whether the applicant's claimed injury was industrial, and was non-compensable as a result.

Premier's Petition does not raise any issue about the finding that the claimed injury was non-industrial, or that the treatment costs were non-compensable, so those issues are final. Premier is seeking recovery of the amounts it billed for Dr. Michaels' initial evaluation report and other services he provided on the initial date of service as claimed medical-legal costs. Because Dr. Michaels' report lacks adequate foundation and is not substantial medical evidence on any significant litigated issue, the recommendation is that the Petition be denied in full.

II. FACTS

The underlying claim was denied. Per stipulation of the parties at trial, the applicant was employed by Costco from June 30, 2000, through September 27, 2016, which was the cumulative trauma period the applicant claimed in the action, and his injury claims were for "stroke-internal, 800 body systems, 801 circulatory systems, 841 stress, anxiety, depression, psych, and neuro" (Minutes and Summary of Evidence, "Summary," p. 2). The Application for Adjudication was not filed until February 19, 2018 (Ex. 2), and the claim was formally denied on April 5, 2019 (Ex. C). There has been no claim here that the denial was invalid for any reason.

No testimony was submitted from the applicant at trial, either in person or by deposition. The applicant was evaluated by three PQMEs, Dr. Alan Ross, Internist (Ex. D), Dr. Richard Jordan, Psychologist (Ex. E, F and H), and Dr. Israel Gorinstein, Neurologist (Ex. G). From the histories the applicant gave to these PQMEs and information they got from review of his treatment records, he suffered a series of minor strokes starting in 2007, which culminated in a more serious stroke in June 2008, while he was on vacation. This last stroke left significant residual effects, including left-sided weakness. He was only 27 at the time, and was diagnosed and treated

for Antiphospholipid Syndrome, a condition that causes unusual clotting (Dr. Ross, Ex. D p. 27 – 28, Dr. Gorenstein, Ex. G p. 22, based on the treatment records they both reviewed). Per the PQME reports, this stroke condition and its residuals were the most significant aspect of the applicant's claim. Most of the body parts included in his claim were related to this stroke condition, though he also claimed stress from his employment (Dr. Jordan, Ex. E p. 16 – 23).

The only evidence submitted at trial regarding the selection of Dr. Michaels as the applicant's Primary Treating Physician is a letter dated February 27, 2018 (Ex. 3), shortly after the initial Application for Adjudication (Ex. 2) and before Defendant appeared in the action. The first services that Dr. Michaels provided to the applicant were on May 11, 2022 (Ex. 8), over four years later. Dr. Michaels' report states that the applicant's attorney made the referral "for an evaluation" (Ex. 5 p.2), and the referral was actually made after all three PQMEs had found that all aspects of the applicant's claim were non-industrial. It is a reasonable inference that the applicant's attorney's main concern in making the referral was to get evidence to counter the PQME findings on causation.

Per the billing statement (Ex. 8), which is consistent with the reports submitted by Premier, the services provided by Premier consisted of a "comprehensive medical-legal evaluation" and various tests and assessments billed on May 11, 2022, which was the bulk of Premier's billing. Additional services were provided on June 22, 2022, July 13, 2022, July 26, 2022, and August 16, 2022.

The Findings and Award found that none of the conditions claimed by the applicant were industrial, that Premier could not recover on its claim for treatment expenses as the treatment was provided for non-industrial conditions, and that Dr. Michael's initial evaluation report was not substantial medical evidence, particularly on the central contested issue in the case, industrial causation, and therefore did not meet the requirements for compensability.

Premier's Petition for Reconsideration does not contest the finding of no industrial causation or the finding that Premier's treatment costs are not recoverable, so any objections to the findings in those areas were waived. The issues Premier raises on reconsideration are whether denial of medical-legal costs was proper and, if so, whether all of the services provided on May 11, 2022, should be included as medical-legal costs.

III.
DISCUSSION

A. DR. MICHAEL'S EVALUATION REPORT IS NOT SUBSTANTIAL EVIDENCE SO PREMIER IS NOT ENTITLED TO PAYMENT FOR THE EVALUATON

Premier claims in its Petition for Reconsideration that the "primary reason" it was denied recovery for its claimed medical-legal expenses was that Dr. Michaels did not review the PQME reports (Petition for Reconsideration, 5th page; the Petition is not paginated). The fact that he did not review any significant records as part of his evaluation of the applicant, including the PQME reports, certainly made it more difficult for him to provide an evaluation that would have sufficient foundation to be substantial medical evidence on causation or any other significant issue in the case.

Since Dr. Michaels did not know that the applicant's strokes were due to a specific condition, Antiphospholipid Syndrome, which was diagnosed by the applicant's treating physicians after the strokes, and he made no effort to obtain medical information on the mechanism that led to the strokes, he had no medical foundation for any conclusions about whether the strokes were industrial and his findings in that area could not be substantial medical evidence. The evaluating doctors who had relevant expertise in the field found that this condition was nonindustrial (Internal PQME Dr. Ross, Ex. D p. 27 – 28, Neurology QME Dr. Gorinstein, Ex. G p. 22 – 23), and Dr. Michaels had neither the necessary underlying medical information on the applicant's condition nor the relevant expertise, since he is a psychologist, to provide an effective counter to their findings.

In addition to those foundational concerns, Dr. Michaels also lacked a complete and accurate history from the applicant, which was a major concern in evaluating his report.

Dr. Michaels' history, including his "Interview Data" and "Job Description" sections, runs from Page 2 through Page 3 of his May 11, 2022, report (Ex. 5). He reflects (the following is from Ex. 5 p. 3, mostly from the long run-on paragraph on that page) the start of employment in 2000, mini strokes around 2007 and 2008, "both…in the holiday season," and the final, more serious stroke five months later when the applicant was on vacation. He mentions that the applicant had some subsequent treatment through his own insurance. He says that the applicant "attributes his stroke to being stressed and over-worked," without any supporting detail and without mentioning that the most serious stroke happened several months after the first two mini-strokes and while the applicant was on vacation. Although he mentions that the applicant followed-up with UCLA Medical Center after initial stroke treatment in Salt Lake City and that he "has been seeing Dr. Lee since that time," the only diagnosis he mentioned was of "having had a stroke"; nothing about what might have caused a 27-year-old to suffer a series of strokes.

Dr. Michaels says the applicant requested time off from Costco "due to these medical problems," without a specific timeframe, so it is unclear if that was immediately after the final stroke or at some later period. He says the applicant returned to work at Costco part time after about six months, with no mention of how long he worked part time, or if he ever went back to full time work. He says that the applicant "believes that he was mistreated because he had been on the prior management team," with no reference to time frame for the supposed mistreatment or detail on the claimed nature of the mistreatment. There are references to problems with a particular supervisor, Karen Jackson, with no indication of the period when she was his supervisor and when the alleged comments from her occurred or what may have triggered them. Dr. Michaels says the applicant "felt this was a toxic work environment," again without any specific timeframe or discussion of what might have made it "toxic" beyond the few comments attributed to Ms. Jackson and the vague references to "mistreatment." The applicant continued working for Costco until September 2016, and the final stroke was in 2008, and when claimed events happened during that lengthy period should be significant in considering their impact.

Dr. Michaels says the applicant continued working until 2016, lost his home in that year, and decided to move to Texas to live with his parents. It seems that Dr. Michaels understood that his employment at Costco ended because of the move to Texas, but then he says that the applicant worked as a delivery driver for a month before moving, and that he thought he might still be

employed by Costco, inconsistent comments that Dr. Michaels apparently did nothing to clarify. The applicant apparently did not tell Dr. Michaels that he had talked to his doctor about his concerns about expected stress from the upcoming 2016 holiday, and his doctor took him off work because of that, as he told Dr. Jordan (Ex. E p. 16).

Dr. Michaels did not give any information about what the applicant said he was doing in the period between 2016 and 2019, when he said that he attempted unsuccessfully to work in a warehouse for a few months with no information on why he was unable to do that work.

There is no indication from Dr. Michaels that he found the applicant to be unreliable as a witness, though that was noted by the other evaluating doctors, or that he tried to press the applicant to provide information needed for a more complete account of the period and events he mentioned. The way Dr. Michaels presents it, he just took down what the applicant told him, possibly in response to undisclosed questions, without any assessment of the information for consistency or completeness and without follow-up to clarify inconsistencies or fill in gaps in information the applicant provided.

This is in contrast to the history given by Dr. Jordan, the Psych PQME (the other PQME histories were also more detailed and informative than Dr. Michaels' but Dr. Jordan's is the most directly relevant as both he and Dr. Michaels were evaluating the applicant's psychological condition). Dr. Jordan gave an initial summary of background information on the applicant and his family (Ex. E p. 4 – 6), then a detailed summary of his interview with the applicant to get information on his claims and complaints (Id. p. 13 – 24), which demonstrates how difficult it was to get reliable information from him. This interview was done on March 4, 2021, a bit more than a year before Dr. Michaels interviewed him. If he had taken more time and care with getting a full account of the applicant's history and claims, Dr. Michaels should have been able to get all of the information that Dr. Jordan got from the applicant, but the history he provided in his report shows that he did not do that.

The reason for spending all of this time on Dr. Michaels' history is that it is the sole source of information reflected in his report that Dr. Michaels could have used to support findings on the major litigated issue in this case, industrial causation, and it is clearly inadequate for that purpose. However, Dr. Michaels did not even draw on that information as support for his finding on causation, which consisted, in its entirety, of the following sentence: "Based on currently available information, causation of Mr. Bakri's present psychological distress is predominantly industrial (greater than 50%)" (Ex. 5 p. 19).

As stated in *Escobedo v. Marshalls* (2005), 70 Cal.Comp.Cases 604, 621:

> …[A] medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 [445 P.2d 294, 71 Cal. Rptr. 678] (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd., supra,* 68 Cal.2d at pp. 799, 800–801 (an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence); see also *People v. Bassett* (1968) 69 Cal.2d 122,

> 141, 144 [443 P.2d 777, 70 Cal. Rptr. 193] (the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based).

The single most important litigated issue on a denied claim is whether or not the claimed injury is industrial – if it is not industrial, Defendant has no liability, and all other issues are moot. Dr. Michaels' finding on this central issue does not meet the requirements set forth in *Escobedo*, and it therefore cannot be substantial medical evidence.

It should be noted that the same lack of foundation and lack of proper analysis applies to other conclusions stated by Dr. Michaels in his initial report. His entire report is based on a flawed history and inadequate medical foundation and cannot be substantial medical evidence.

The relevant Labor Code sections and regulations on medical-legal reports and evaluations were discussed in the Opinion on Decision, and that discussion will not be repeated here in full as duplicative. The most significant point for this discussion is that to be compensable as a medical-legal report, the report must be "capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim" (8 CCR §9793(h)(3)). The only "disputed medical fact" at the time Dr. Michaels evaluated the applicant that was "essential to the resolution of a contested claim" was industrial causation, and, for all the reasons discussed above, Dr. Michaels' report is not capable of proving or disproving it as it is not substantial medical evidence on that or any other contested issue. It is therefore not compensable.

B. PREMIER IS NOT ENTITLED TO PAYMENT FOR SERVICES RELATED TO DR. MICHAEL'S INITIAL REPORT

Regarding Premier's claim that it should be entitled to payment for charges for testing, etc., done in connection with Dr. Michaels' initial evaluation of the applicant on May 11, 2022, as they are claimed to be part of a medical-legal evaluation of the applicant, 8 CCR §9793(c) states in relevant part:

> "Comprehensive medical-legal evaluation" means an evaluation, which includes an examination of an employee, and which (A) results in the preparation of a narrative medical report prepared and attested to in accordance with Section 4628 of the Labor Code, any applicable procedures promulgated under Section 139.2 of the Labor Code, and the requirements of Section 10682 and (B) is either:
> …
> (2) performed by a Qualified Medical Evaluator, Agreed Medical Evaluator, or the primary treating physician for the purpose of proving or disproving a contested claim, and which meets the requirements of paragraphs (1) through (5), inclusive, of subdivision (h).

Since, as noted above, the report that was the result of the evaluation on May 11, 2022, failed to meet the requirement of 8 CCR §9793(h)(3), under this section, all aspects of that evaluation would be non-compensable. More broadly, if the sole purpose of the activities billed on May 11, 2022, was to contribute to Dr. Michaels' report, and that report is not substantial evidence and therefore, not compensable, there is no reason why those other activities would be compensable separate from the report, particularly as treatment here is non-compensable.

C. DEFENDANT HAD NO OBLIGATION TO PROVIDE DR. MICHAELS WITH MEDICAL REPORTS

Premier asserts in its Petition for Reconsideration that Defendant should have provided Dr. Michaels with copies of the PQME reports (Petition, 7th page), citing the regulation that governs service of medicals between applicant and defendant(s) during the pendency of the case in chief. As a lien claimant, Premier did not become an active party until after resolution of the case in chief, which occurred with the approval of the Compromise and Release on September 13, 2023.

Defendant had no obligation to help Dr. Michaels produce a report that might be substantial medical evidence. The one party that had an interest in correcting defects in his report was applicant's attorney, who requested the evaluation but did not provide him with necessary documentation for that evaluation. However, Dr. Michaels himself had the opportunity and ability to obtain a more complete history from the applicant, which could have included information about evaluations that he had already undergone. Even without that information, he could have asked copies of any evaluations that had already been done or, at a minimum, for copies of records of the treatment the applicant described for him. Unfortunately, he did nothing to develop a proper foundation for his opinions, and his report is not substantial medical evidence as a result. It is not the defendant's fault that Dr. Michaels did not do his job adequately.

IV.
RECOMMENDATION

For all of the above reasons and the reasons stated in the Opinion on Decision, the Petition for Reconsideration should be denied in full.

This matter was transmitted to the Recon Unit on 07.31.2025

DATE: July 31, 2025

Barbara Toy
WORKERS' COMPENSATION JUDGE

Served by mail/email on all parties listed on the attached Proof of Service on the above date.
On: 07.31.2025 By: Briana Gray

OPINION ON DECISION

INTRODUCTION:

The main issue at trial on this case was whether Lien Claimant Premier Psychological Services ("Premier") should recover on its lien claim, particularly whether it can recover medical-legal costs for services provided by Dr. Michaels as well as treatment costs. Premier did not provide a breakdown of the services and amounts they are claiming in these two categories, but from their billing statement (Exhibit 8), their services were provided from 5/11/22 through 8/16/22, and the specific dates of service were 5/11/22, 6/22/22, 7/13/22, 7/26/22 and 8/16/22.

The only item listed that appears most likely to be claimed as medical-legal is the initial entry for 5/11/22, "Comprehensive Medical-Legal Evaluation," for a claimed total of $4030.00. That would indicate that the claim for payment for treatment is $4300.00, given the total billing of $8330.00.

There were a total of eight issues listed by the parties related to the Premier's claim for payment, which will be discussed below. The primary issue among them is whether psych and neuro injury occurred in the course and scope of employment.

THE EVIDENCE

No testimony was provided in this case. The documents submitted by Premier in support of its claim are the applicant's DWC-1 and Application for Adjudication (Ex. 1 and 2, both dated 2/19/18), the applicant's attorney's designation of Dr. Michaels as the PTP (Ex. 3, dated 2/27/18), RFAs and reports from Dr. Michaels, biofeedback notes and a billing statement (Ex. 4 – 8) and a demand letter (Ex. 9). The documents submitted by Defendant in support of its position are the initial letter to the applicant regarding his workers' compensation claim (Ex. A, dated 1/7/19), Delay Notice (Ex. B, dated 1/18/19), Denial (Ex. C, dated 8/5/19), 2/14/20 PQME report from Internist Dr. Alan Ross (Ex. D), 3/4/21 and 9/14/21 PQME reports from psychologist Dr. Richard Jordan (Ex. E and F), 4/2/21 PQME report from neurologist Dr. Israel Gorinstein (Ex. G) and transcript of the 9/14/21 cross-examination of PQME Dr. Jordan (Ex. H).

The validity of the denial is not in issue in this proceeding.

From the histories given in the various medical reports, the applicant suffered a series of minor strokes that started in 2007 and culminated in a more serious stroke in June 2008, while he was on vacation, which left significant residual effects, including left-sided weakness. He was only 27 at the time of the most serious stroke, and was diagnosed and subsequently treated for Antiphospholipid Syndrome, a condition that causes unusual clotting (Internal PQME Dr. Ross, Ex. D p. 27 – 28). Dr. Ross found that the strokes, and the condition that caused them, were entirely non-industrial, and provided an extensive discussion of what he based this on that included references to relevant medical literature as well as the applicant's medical records (Id. p. 28 – 31). His conclusions were confirmed by Neurology PQME Dr. Gorinstein, who provided a detailed discussion of the applicant's complaints, the cause of his series of strokes and cause of

subsequent related complaints, including headaches (4/2/21 report, Ex. G, p. 22 – 23, causation p. 24), finding all of those within his area of expertise to be non-industrial.

The applicant was also evaluated by psychology PQME Dr. Jordan on 3/4/21, who found that he had Adjustment Disorder with Mixed Anxiety and Depressed Mood and Mood Disorder due to Stroke with depressive features. Dr. Jordan's findings are particularly relevant in this proceeding, as Dr. Michaels is also a psychologist and evaluated and treated the applicant's psychological complaints. After extensive discussion and detailed breakdown of the relevant factors, Dr. Jordan found that, at most, 35% of the applicant's psychological complaints were industrial at their highest valuation, so the applicant could not meet the 51% threshold for a compensable psych claim (Ex. E p. 24 – 25). He was able to review the internal report from Dr. Ross for this initial evaluation but was not provided with the neurology PQME report from Dr. Gorinstein until after his deposition (Ex. H), and he provided a detailed summary of Dr. Gorinstein's report and findings in his final report (Ex. F p. 3 – 7). As Dr. Gorinstein also found that the strokes and related conditions were non-industrial, review of his report did not change any of Dr. Jordan's opinions (Ex. F p. 2).

Although the applicant's attorney designated him as the applicant's PTP on 2/27/18, the first indication that Dr. Michaels did anything for the applicant was the RFA he issued on 11/2/21 for an evaluation of the applicant to be done by himself at the request of the applicant's attorney (RFA, Ex. 4). The actual evaluation did not occur until 5/11/22 (Doctor's First Report, Ex. 4, Initial Evaluation report, Ex. 5). The RFA was issued after the PQME evaluations by Dr. Ross, Dr. Jordan and Dr. Gorinstein, and the actual evaluation occurred after the supplemental report from Dr. Jordan following his review of Dr. Gorinstein's findings. Dr. Michaels did not review any of those reports and seemed completely unaware that the applicant had been evaluated by any PQME or that there were findings by doctors in multiple specialties that his strokes and other neurological and psychological complaints were non-industrial.

WHETHER THE APPLICANT'S PSYCH AND NEURO INJURY OCCURRED IN THE COURSE AND SCOPE OF HIS EMPLOYMENT WITH COSTCO WHOLESALE

As noted above, two PQMEs with relevant expertise, Internist Dr. Ross and Neurologist Dr. Gorinstein, found after evaluating the applicant and reviewing his extensive treatment record that his strokes were caused by a non-industrial condition, Antiphospholipid Syndrome, and that his employment did not contribute to them. They both supported their findings appropriately, and their reports and findings meet the standards for substantial medical evidence set forth in *Escobedo v. Marshalls* (2005), 70 Cal.Comp.Cases 604, 621. There is no medical evidence in the record that counters their findings, and no reports from other doctors in their respective areas of expertise. The applicant's neurological injury is therefore found non-industrial.

PQME Psychologist Dr. Jordan reviewed and duly considered the reports of both Dr. Ross and Dr. Gorinstein in reaching his conclusions, and also the extensive history he got from the applicant (Ex. E p. 4 – 6, 13 – 23), his review of around 2000 pages of treatment records (summarized Ex. E p. 26 – 68), and his own examination and testing of the applicant (Ex. E p. 6 - 12). He reviewed Dr. Gorinstein's report after his initial evaluation of the applicant. Reviewing

that report, which was in line with the findings of Dr. Ross, did not change his opinions, as he discussed in his 2/25/22 report (Ex. F p. 1 - 2).

He gave a detailed analysis of his findings on causation in his initial report and discussed it further in his cross-examination (Ex. H). Focusing on the period in 2013, when the applicant reported that perceived harassment at work was at its most intense and therefore the chance of meeting the threshold for industrial causation for a psychological injury would be highest, and considering the applicant's own breakdown of the contribution of different factors to his psychological problems, he found that at least 40% of the applicant's psychological problems were due to the stroke condition that both Dr. Ross and Dr. Gorinstein found non-industrial, 50% were due to work-related stress and 10% to the perceived harassment. Of the work-related stress, he found that half (25% of the total) was due to stress from the cognitive and physical effects of the applicant's strokes, which would therefore be non-industrial, and half (25% of the total) was due to inherent stress of his job. At most, then, the 25% due to the inherent stress of the job plus 10% for perceived harassment might be found industrial, which could not reach the more-than-50% threshold required under Labor Code[1] Section 3208.3(b)(1). Because these two categories could never reach the required threshold, no consideration of whether they would actually be industrial or subject to factual or legal defenses was needed and, because these calculations were based on the period when possible industrial causes were most likely to meet the threshold, there was no period after the strokes in 2008 when industrial causation could be found for the applicant's psychological complaints (Ex. E p. 24 – 25).

Although Dr. Michael's first evaluation of the applicant was about two and a half months after the Supplemental report from PQME Dr. Jordan (Ex. F), the last of the PQME reports, there is no indication in his report that Dr. Michael was aware that there had been any PQME evaluations or findings. The history (Ex. F p. 2 – 3) is more cursory than those in the PQME reports. Although the PQME reports all reflect review of voluminous treatment reports following the strokes and the applicant's various problems and treatments since the final stroke in 2008, the only treatment records listed in Dr. Michael's report are three treatment notes dated 7/28/16, 2/20/18 and 2/26/18, all from UCLA, and two work restriction forms from Costco dated 9/27/17 and 2/20/18 (Ex. 5 p. 4).

There is no indication in this report that Dr. Michael requested or felt the need to review any additional records or reports, or that he felt any concern over the fact that the applicant had his strokes at an unusually young age (27 in 2008) or that he was on Warfarin when Dr. Michael saw him at age 41 (Ex. 5 p. 17) to control clotting, or that he considered what those facts might indicate about the cause of the strokes. His Discussion assumes that the strokes and the applicant's other complaints were all work-related without explanation (Ex. 5 p. 17 – 18) or indication of foundation other than the cursory history the applicant gave him and the applicant's own representations that everything was work-related. His "Conclusions and Recommendations" (Ex. 5 p. 17 – 18) and "Causation & Apportionment" sections similarly lack a foundation that would show they were supported by substantial medical evidence. Among other problems with

1 All Code references are to the California Labor Code unless otherwise indicated.

his analysis and conclusions, he leaves it unclear exactly what he is referring to as the industrial injury, does not mention the stroke in his "Conclusions and Recommendations" section, and talks about "physical problems" without making it clear if he is talking about the results of the strokes or something else. He concludes in his "Causation & Apportionment" section that the applicant's "psychological distress is predominantly industrial (greater than 50%)" without any discussion of what that conclusion was based on.

Comparing the reports and conclusions of Dr. Michael and PQME Dr. Jordan, Dr. Jordan's conclusions are supported by substantial medical evidence and are themselves substantial medical evidence. Dr. Michael's conclusions on causation are not based on medical evidence or a complete history and cannot be found to be substantial medical evidence. Causation on the psych injury issues must be found per Dr. Jordan's findings accordingly, and Dr. Michael/Premier Psychological Services, as the party with the affirmative of the issue (Section 5705), has not met the threshold for finding psychological injury industrial here.

Neither the claimed neurological nor the claimed psychological injury can be found industrial on the evidence before the Court.

WHETHER ANY OF THE SERVICES PROVIDED BY DR. MICHAELS WERE VALID MEDICAL-LEGAL COSTS AND WHETHER PREMIER PSYCHOLOGICAL SERVICES CAN RECOVER FOR THEM

As noted above, the only services that appear to be potentially medical-legal are related to Dr. Michaels' initial report, which was billed as a "Comprehensive Medical-Legal Evaluation" with associated testing (Ex. 8), so the question is whether that initial evaluation was a valid Comprehensive Medical-Legal Evaluation.

A "Comprehensive Medical-Legal Evaluation" is defined in 8 CCR §1(h) as "a medical evaluation performed pursuant to Labor Code Sections 4060, 4061, 4062, 4062.1, 4062.2 or 4067 and meeting the requirements of section 9793(c) of Title 8 of the California Code of Regulations."

Section 4060, per subsection (a), applies "to disputes over the compensability of any injury. This section shall not apply where injury to any part or parts of the body is accepted as compensable by the employer," which describes the current case. The purpose of an examination under this section is to provide a mechanism to determine compensability, which would be through Section 4062.2 as the applicant was represented (Section 6060(c)). While the section is for selection of a QME to evaluate compensability, a report from a Primary Treating Physician is also admissible for this purpose (Section 4060(b))

8 CCR §9793 states in relevant part:
…

> (c) "Comprehensive medical-legal evaluation" means an evaluation, which includes an examination of an employee, and which (A) results in the preparation of a narrative medical report prepared and attested to in accordance with Section 4628 of the Labor Code, any applicable procedures promulgated

under Section 139.2 of the Labor Code, and the requirements of Section 10682 and (B) is either:
(1) performed by a Qualified Medical Evaluator pursuant to subdivision (h) of Section 139.2 of the Labor Code, or
(2) performed by a Qualified Medical Evaluator, Agreed Medical Evaluator, or the primary treating physician *for the purpose of proving or disproving a contested claim*, and which meets the requirements of paragraphs (1) through (5), inclusive, of subdivision (h). [Emphasis added]

…

(h) "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.* The cost of medical evaluations, diagnostic tests, and interpreters is not a medical-legal expense unless it is incidental to the production of a comprehensive medical-legal evaluation report, follow-up medical-legal evaluation report, or a supplemental medical-legal evaluation report and all of the following conditions exist:
(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. [Emphasis added]
…

The central point here is that, among other requirements, to be a valid Comprehensive Medical-Legal Evaluation, Dr. Michaels' evaluation had to be "for the purpose of proving or disproving a contested claim" (Subdivision (c)(2)), and the report had to be "capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim" (Subdivision (h)(3)). The central issue on a denied claim is whether the claimed injury occurred in the course and scope of

employment and as discussed in the previous section, Dr. Michaels did not meaningfully address that issue, and the opinion he expressed on causation was not supported by and was not itself substantial medical evidence.

Dr. Michaels' evaluation and report do not meet the required standards to be found a valid Comprehensive Medical-Legal Evaluation, and the evaluation, report and everything that was associated with that evaluation are not compensable on that basis.

WHETHER ANY OF THE SERVICES PROVIDED BY DR. MICHAELS/PREMIER PSYCHOLOGICAL SERVICES ARE RECOVERABLE AS TREATMENT COSTS

Since the injury claim was found entirely non-industrial, there is no basis for finding that any of the treatment provided was compensable.

REMAINING ISSUES

Since the claim was found non-industrial and the lien claim has also been found non-compensable in full, there is no basis for awarding penalties or interest to the lien claimant, or for them to be reimbursed their lien filing fee. Since Premier Psychological Services chose to proceed through the lien process rather than through the Medical-Legal Expense Dispute process, it waived any claims it may have had under that process; in addition, since it could not establish that the claimed Comprehensive Medical-Legal Evaluation was valid for the reasons discussed above, it could not meet its initial burden of proof within that process.

For all of these reasons, Premier Psychological Services cannot recover on its lien claim.

DATE: June 23, 2025

Barbara Toy
WORKERS' COMPENSATION JUDGE