WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSUE SANCHEZ, *Applicant*

vs.

ALF WINDOW COVERINGS, LLC;
TECHNOLOGY INSURANCE, administered by AMTRUST[1] *Defendants*

Adjudication Number: ADJ19725418
Riverside District Office

OPINION AND ORDER GRANTING PETITIONS FOR RECONSIDERATION AND OPINION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration, or in the alternative removal, and defendant seeks removal of the Findings and Order (F&O) issued on March 19, 2026. The workers' compensation administrative law judge (WCJ) found, in relevant part, that "it is premature to determine whether applicant may treat outside the defendant's MPN for brain rehabilitation within the appropriate geographic area; that applicant's search for an MPN brain rehabilitation specialists was measured from his residence per Regulation section 9767.5(a); that applicant is not required by CCR section 9767.5(h) to utilize the Medical Access Assistant inside defendant's MPN; that applicant must treat within a reasonable geographic region; there is currently insufficient grounds to hold that the "expanded radius rule" is required to be used in this case." The WCJ additionally ordered that defendant conduct retrospective utilization review (UR) of the treatment requested by Yuri Furman, M.D., that was addressed by the UR deferral letter dated November 6, 2024.

[1] The Minutes of Hearing and Order and Summary of Evidence (MOH/SOE) indicate that Amtrust Concord is the insurance carrier for this employer which was then rolled into the Findings and Order (F&O). The Labor Code section 4906 declaration filed by defendant lists Technology Insurance administered by Amtrust as the carrier for the employer. Per *DiFusco v. Hands On Spa* (2025) 90 Cal.Comp.Cases 1007, defendants are responsible for clarifying coverage and should remedy the issue immediately.

Defendant contends in relevant part that the order to conduct a retroactive review of the request for authorization (RFA) dated November 5, 2024 was improper as the issue of a particular treatment authorization was not raised at trial and because the particular RFA now ordered to be reviewed had already been reviewed and denied by UR and then upheld by Independent Medical Review (IMR).

Applicant argues that Casa Colina was properly designated as a primary treating physician (PTP) because defendant failed to authorize reasonable care or run RFAs through UR as requested by Dr. Furman, the authorized PTP, resulting in a denial of care and responsibility for self-procured medical treatment. Applicant also argues that retrospective review of an allegedly untimely UR determination is inappropriate and that the WCJ should determine medical necessity pursuant to *Dubon v. World Restoration Inc*. (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc decision).

Neither party responded to the other's Petitions. The WCJ issued a Report and Recommendation (Report) recommending defendant's Petition be granted to rescind the order for retrospective review of an RFA and that applicant's Petition be denied.

We have considered the allegations of both Petitions and the contents of the Report of the WCJ. Based on our review of the record and for the reasons discussed below, we will grant both applicant's and defendant's Petitions, rescind the F&O and substitute a new Findings of Fact that finds injury and defers all other issues, and return the matter to the WCJ for further proceedings consistent with this decision.

FACTS

Applicant, while employed by defendant as an installer on May 2, 2024, sustained an injury arising out of and in the course of employment (AOE/COE) to his head, right ear, dizziness, memory loss, headaches, and tinnitus. (MOH/SOE, 2:4-6.)

As will be discussed briefly here, the record here has a complicated history and the issues are not altogether clear.

Applicant filed a Declaration of Readiness to Proceed (DOR) on August 26, 2024 seeking expedited trial on the issue of medical treatment, seeking authorization of Casa Colina as PTP pursuant to a Labor Code section 4600 request for treatment sent August 22, 2024. According to defendant's objection to DOR, though Casa Colina was in the medical provider network (MPN), they only accept patients by referral from a PTP. Defendant contended that a hospital facility

cannot be designated as a PTP and that the location is not within a reasonable geographic distance from applicant's residence.

The matter was set for expedited hearing on September 12, 2024, and a stipulation and order was signed stating, "Defendant authorizes Dr. Yuri Furman as the designated primary treating physician pursuant to Labor Code sec. 4600." There was no indication in the stipulation that Dr. Furman is or is not in defendant's MPN.

On February 18, 2025, applicant filed another DOR for expedited trial for medical treatment. Applicant alleged:

> APPLICANT SUSTAINED AN ADMITTED INJURY ON 0822024 CASA COLINA WAS DESIGNATED AS PTP APPLICANT SUBSEQUENTLY AGREED TO YURY FURMAN ON 09122024 UR RECEIVED RFA FROM DR FURMAN FOR INPATIENT EVALUATION AT CASA COLINA ON 11052024 DEFENDANTS UNTIMELY DENIED THE DOCTORS REQUEST CONTATED (sic) TAMERA CASEY ON 02182024 AND SENT A NEW 4600 LETTER FOR CASA COLINA WTH NO SUCCESS A HEARING IS NECESSARY. (All capitals in original.)

On March 10, 2025, both parties agreed to take the matter off calendar so that applicant could reframe the issues.

On March 18, 2025, applicant requested a Status Conference to set testing allegedly required for the medical legal process. The DOR states, "Dr. Furman request authorization for one in patient evaluation and appropriate testing such as specialized MRI's and Muero-psych (*sic*) testing. These are necessary to determine the level of permanent disability, therefore are med-legal expenses."

On April 10, 2025, the Minutes of Hearing (Minutes) noted that defendant would authorize the MRIs. The WCJ additionally ordered, "as to the neurodiagnostic testing, if there is no MPN facility within 30 miles of applicant that can do this, then under CCR 9767.5, applicant may be entitled to treat outside the MPN for that testing with a provider of their choice if the case were to proceed to trial."

On April 22, 2025, another DOR was filed by applicant to obtain an expedited trial as to whether applicant is allowed to treat at Casa Colina because defendant does not have an appropriate facility in their MPN within 30 miles of applicant's residence.

On May 22, 2025, the parties appeared for an expedited hearing. The Minutes indicate that, "defendant will authorize neuro-diagnostics at Casa Colina. Any treatment requests are subject to UR."

On August 7, 2025, applicant filed another DOR to proceed to expedited trial for medical treatment stating, "On 03102025 Casa Colina sent RFA for residential program the adjuster did not send it through UR under Dubon UR is late." Defendant filed an objection alleging that applicant's objection to the UR deferral was untimely, that the deferral was proper because the RFA was not requested by a valid and authorized PTP, and that the WCAB does not have jurisdiction over a properly disputed RFA.

On September 8, 2025, the matter proceed to expedited trial. The issues were:

> 1. Whether the Court can determine medical necessity per *Dubon* in light of allegedly late UR on RFA for Transitional Living Center Residential Program?
> 2. Whether the RFA for Transitional Living Center Residential Program is a reasonable medical necessity?
> 3. Whether applicant waived the issue by failing to litigate the issue at 4/10/2025 and 5/22/2025 hearings?
> 4. Whether Dr. David Patterson has been properly elected as a treating physician, or whether Dr. Patterson or applicant properly notified defendant pursuant to Labor Code 4603.2?
> 5. Whether Dr. Patterson submitted a report within five working days from 10/19/2025 pursuant to Labor Code 4603.2?
> 6. Whether RFA from Dr. Patterson's report is based on an accurate medical history?
> 7. Applicant contends there is no issue of waiver because Casa Colina was authorized, and defendant failed to put RFA through defendant's UR. Defendant acknowledges receipt of RFA and refused to send to UR after 5/5/2025 hearing.
> 8. Estoppel.

(MOH/SOE, 09/08/2025, 2:10-25.)

On November 6, 2025, the WCJ issued the F&O finding:

> 1. There was a typographical error on the court reporter minutes of hearing indicating Exhibits A through AA were admitted. In actuality, Exhibits A through AAA were admitted into evidence without objection at the 9/8/25 trial.
> 2. Exhibit BBB is now found to be admissible.
> 3. The request for authorization (RFA) dated 3/10/25 is inadmissible.
> 4. The parties both asked for judicial notice of the 5/22/25 minutes of hearing. The court hereby takes notice. The court has no recollection of Defendant asking for judicial notice of a stipulated order from 9/12/24. However, any prior court orders are part of the record pursuant to CCR Section 10803(a)(2).

5. Applicant was admitted into the Casa Colina transitional living center residential program (TLCRP) prior to the hearing on 9/8/25.
6. Josue Sanchez, [ ], while employed on 5/2/2024, as an installer, at Desert Hot Springs, California, by Alf Window Coverings, LLC, insured by Amtrust Concord, sustained injury arising out of and in the course of employment to the head, right ear, dizziness, memory loss, headaches, and tendinitis.
7. The Court cannot determine medical necessity of the TLCRP per *Dubon* because the RFA dated 3/10/25 is not admissible. In addition, even if it were, UR of the 3/10/25 RFA was timely and validly deferred.
8. The court thus lacks jurisdiction to determine the medical necessity of the TLCRP.
9. Defendant's waiver argument is accordingly moot.
10. Dr. David Patterson was not the PTP as of 9/12/24.
11. The court fails to see the relevance of whether Dr. Patterson submitted a report within five working days from 10/19/25 or 10/19/24 pursuant to Labor Code 4603.2.
12. The court fails to see the relevance of whether any RFA in evidence from Dr. Patterson is based on an accurate medical history.
13. The court does not reach the issue of estoppel as that issue is unclear.
14. The issue of sanctions, which was first raised in Defendant's objection of 9/12/25, is deferred.

In the Opinion, the WCJ noted that the March 10, 2025 RFA was inadmissible because it was not listed on the pre-trial conference statement. The WCJ points out that applicant alleged, and defendant provided an email confirming, that applicant was admitted to Casa Colina prior to the hearing September 8, 2025. The WCJ also noted that of the exhibits listed for that trial, the March 10, 2025 RFA was the only actual RFA available and was not admissible, therefore a *Dubon* analysis could not be reached as to medical necessity because there could not be a determination as to the timeliness of any RFA. Further, as of September 12, 2024, Dr. Furman was the validly authorized PTP and that there was no evidence that Dr. Patterson from Casa Colina was requested or authorized as the PTP following that request. Neither party filed a Petition for Removal or Reconsideration.

On December 8, 2025, applicant filed a DOR for expedited trial on the issue of whether there is a properly established MPN in which employee may obtain treatment. In sum, applicant contended that defendant was not responding to a December 5, 2025 request to change the PTP to Casa Colina, noting that a doctor outside the MPN was previously authorized and that treatment at Casa Colina was previously authorized.

On January 8, 2026, the matter was submitted for expedited trial. The following issues were set for trial:

> 1. Whether the applicant may treat outside the defendant's MPN for brain rehabilitation within the appropriate geographic area?
> 2. Whether the applicant's search for an MPN is measured from a residence per Regulation Section 9767.5(a)?
> 3. Whether the applicant failed to utilize the Medical Access Assistant failing the MAA requirement required by Section 9767.5(h)?
> 4. Whether applicant must treat within a reasonable geographic region?
> 5. Whether the expanded radius rule should be required because Indio is a rural area?

(MOH/SOE, 01/08/2026, 2:10-18.)

At trial, applicant testified as to his current address. (*Id.* at 4:23-25.) He also testified that he did not try to reach the medical access assistant for help in locating a doctor within the MPN. (*Id.* at 5:2-6.)

For this trial, defendant submitted an email dated January 8, 2026 from Ricky Keaton at Amtrust to Alam Sessoms at icomplaw.com showing a list of four doctors (Defendant's Exh. HHH). (In Exh. HHH, there does not appear to be an indication of whether the doctors are in the MPN nor what address was being used to calculate distances noted.) This was marked for identification only as applicant objected. The court noted that the exbibits from the prior expedited trial were admitted.

On March 19, 2026, the WCJ issued the following Findings of Fact:

> 1. Exhibit HHH is admissible.
> 2. Josue Sanchez, born [ ], while employed on 5/2/2024, as an installer, at Desert Hot Springs, California, by Alf Window Coverings, LLC, insured by Amtrust Concord, sustained injury arising out of and in the course of employment to the head, right ear, dizziness, memory loss, headaches, and tinnitus (not tendinitis, as erroneously indicated in the Findings of Fact from 11/6/25).
> 3. It is premature to determine whether Applicant may treat outside the defendant's MPN for brain rehabilitation within the appropriate geographic area.
> 4. The Applicant's search for an MPN brain rehabilitation specialist was measured from his residence per Regulation Section 9767.5(a).
> 5. Applicant is not required by CCR Section 9767.5(h) to utilize the Medical Access Assistant inside Defendant's MPN.
> 6. Applicant must treat within a reasonable geographic region.
> 7. There are currently insufficient grounds to hold that the "expanded radius rule" is required to be used in this case.

The WCJ also ordered "that Defendant conduct a retrospective utilization review of the treatment requested by Dr. Furman that was addressed by the UR deferral letter dated 11/6/24 (Exhibits C and O)."

In the Opinion on Decision, after a lengthy discussion of the evidence, the WCJ states:

> In summary, other than neurodiagnostic testing, none of the UR determinations in evidence regarding RFAs by Dr. Furman or any other authorized physician, have specifically approved the type of brain rehabilitation treatment requested by Dr. Patterson in the UR dated 3/11/25, including the transitional living center residential program (TLCRP). As such, we do not yet reach the question of whether Applicant can get brain rehabilitation treatment, such as the TLCRP, outside of Defendant's MPN. That issue is premature until an authorized physician actually requests such treatment and it is either authorized by Defendant without utilization review, or it is approved by UR or IMR, or it is determined to be reasonable and necessary pursuant to *Dubon*. Additionally, if the brain is a denied body part, then it may be necessary to try the issue of whether the brain is an industrially injured body part prior to determining any appropriate treatment for it.

In the Report, the WCJ recommends that:

> It is recommended Defendant's petition for removal be granted and the court's decision amended to remove the order to do retrospective UR, and that Applicant's petition be denied. The parties can then come back, if necessary, for another trial specifically on the issues of whether the UR deferral of 11/6/24 and subsequent denial on 12/9/24 constitute an untimely UR pursuant to Dubon, and whether the requested treatment that was deferred by UR on 11/6/24 is reasonable and necessary.

DISCUSSION

I.

Former Labor Code section 5909[2] 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)

[2] All further statutory references will be to the Labor Code unless otherwise indicated.

> (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.
>
> (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 May 5, 2026 and 60 days from the date of transmission is Saturday, July 4, 2026. The next business day that is 60 days from the date of transmission, is Monday, July 6, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision issued by or on Monday, July 6, 2026, 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 May 5, 2026 and the case was transmitted to the Appeals Board on May 5, 2026. 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 May 5, 2026.

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[3] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

II.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd.* (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes a finding of injury, a threshold issue, and an order to proceed to retrospective UR, which is a jurisdictional finding. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is final, both the petitioners are also challenging an interlocutory finding/orders in the decision. Therefore, the removal standard would apply to our review of those contentions. (See *Gaona, supra*.)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd*. (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, as explained below, we are also

persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

III.

We turn first to the order for retrospective review of an RFA mentioned in the November 6, 2024 UR determination.

We note that defendant's Exhibit A is a UR determination from Genex dated November 13, 2024 that reviews an alleged RFA dated November 5, 2024 and recommends non-certification of caregiver/homecare aid, transportation, and 3 cytochrome p450 and certification of medication management. Exhibit M is a letter dated December 9, 2024 from Genex that reviews a purported RFA dated November 5, 2024 non-certifying inpatient evaluation and specialized MRIs and neuro psyche testing to be done at Casa Colina Hospital. However, these services were authorized as memorialized in the Minutes dated April 10, 2025. There are no IMR determinations in the record.

Exhibit C is a UR letter determination dated November 6, 2024, which purports to defer an RFA from Dr. Furman asking for "Home Care Giver/Home Care Aid, Transportation, inpatient evaluation and appropriate testing at Casa Colina Hospital, medication diclofenac, medication esomeprazole." The letter notes that defendant is deferring the request for authorization because the requesting physician is not authorized and is not in the MPN. The letter also indicates that the date of the request is November 5, 2024, and was received on the same date. Exhibit O is a fax from Amtrust that includes the same letter from Exhibit C.

All parties to a workers' compensation proceeding retain the fundamental right to due process and fair hearing under both the California and United States Constitutions. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal.' " (*Rucker v. Workers' Comp Appeals Bd*. (2000) Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805], citing *Kaiser Co. v. I.A.C.* (1952) 109 Cal.App.2d 54, 58.) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker*, *supra*, at pp. 157-158.)

Here, the only issues set for trial were related to the validity of the MPN, issues surrounding access standards for the MPN, and treatment within a reasonable geographic location. The issues are fairly muddled, but validity of a treatment request and whether retrospective review is

warranted was not an issue. Moreover, the RFA ordered to be reviewed is not in evidence. Defendant is correct that the record appears to include a deferral of the treatment request as well as some non-certifications. Yet, without the RFA, we cannot be certain what treatment was requested, when the RFA was actually sent or dated, and what medical reports it refers to. To further complicate the issues, in the interim, some of the treatment was voluntarily authorized. Also, there are non-certifications addressing requests also made on November 5, 2024, that were upheld by IMR, but the IMR determinations are also not in evidence likely because validity of the UR determination was not raised as an issue.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id*. at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

Further, retrospective review may not be appropriate here. The record is unclear as to whether the treatment was being administered without authorization. Retrospective review pursuant to section 4610(f) and WCAB Rule 9792.6.1 is "utilization review conducted after medical services have been provided and for which approval has not already been given." (Cal. Code. Regs tit. 8 §9792.6.1.) It appears that applicant was admitted to Casa Colina, but it is unclear whether this was separate from the authorization for one evaluation and diagnostics agreed to in the Minutes of April 10, 2025. Thus, it appears that at least some of the treatment in the RFA was authorized and retrospective review would not apply. For the remaining unreviewed and unauthorized treatment, if applicant was not receiving the treatment already, then retrospective review also would not apply. Moreover, without the RFA we have no method of determining what

kind of request the RFA was. If it was prospective, which it appears to be, then the timelines outlined in WCAB Rule 9792.9.3 (B) for prospective review are appropriate and if untimely, the WCAB has jurisdiction to determine medical necessity per *Dubon II.*

For reasons that will be discussed in the next section, whether a brain rehabilitation program at Casa Colina or elsewhere is reasonable and necessary or authorized is not relevant to any access standard for treatment within or outside the MPN for *authorization of a PTP*. As such, review of any RFA or determination of the appropriateness of medical treatment does not need to be determined as a precursor for determining validity of an MPN or access standards for PTPs. Again, we do not have the RFA in evidence, and it also appears that an ongoing brain rehabilitation program was requested in the March 10, 2025 RFA, which the WCJ struck despite the lack of objection to its admission. If an ongoing brain rehabilitation program was subsequently requested or authorized, then it may be relevant to determining access standards for a secondary treating physician or ancillary services.

Based on the information in evidence at this juncture and the framing of the issues for trial, and as recommended by the WCJ in the Report, we will defer all issues except injury AOE/COE. Once the parties return for further proceedings, the parties should take the opportunity to carefully consider the issues in dispute and then, the issues should be clearly stated on the record.

IV.

Section 4600(a) provides:

> Medical, surgical, … and hospital treatment, … that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(Lab. Code, § 4600(a).)

If an employer has established an MPN, an employee is generally limited to selecting a primary treating physician from within the employer's MPN. (Lab. Code, §§ 4600(c), 4616 et seq.) A "primary treating physician" refers to an actual physician and not an entity. (Cal. Code Regs., tit. 8, § 9785(a)(1).) Administrative Director (AD) Rule 9767.6(e) clearly provides employees with the right to designate who will treat them within an MPN:

> At any point in time after the initial medical evaluation with an MPN physician, the covered employee may select a physician of his or her choice from the MPN.

> Selection by the covered employee of a treating physician and any subsequent physicians shall be based on the physician's specialty or recognized expertise in treating the particular injury or condition in question.

(Cal. Code Regs, tit. 8, § 9767.6(e).)

The MPN is required to have "an adequate number and type of physicians…to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the employees are employed." (Lab. Code, § 4616(a)(1).) Section 4616.3(d)(1) provides that "[s]election by the injured employee of a treating physician and any subsequent physicians shall be based on the physician's specialty or recognized expertise in treating the particular injury or condition in question." (Lab. Code, § 4616.3(d)(1).) Thus, an MPN must have available an adequate selection of physicians of specialties or expertise appropriate to the particular injury or condition in question to undertake the role of primary treating physician within a specified geographic area.

The regulations promulgated by the AD require an MPN to have available within specific geographic limits an adequate number of physicians with a "specialty or recognized expertise in treating the particular injury or condition in question." (Cal. Code Regs., tit. 8, § 9767.6(e).)

The specified geographic area, or "access standards" for selecting physicians within the MPN are set forth in AD Rule 9767.5, which provides:

> (a) An MPN must have at least three available physicians of each specialty to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged and within the access standards set forth in (1) and (2).
>
> > (1) An MPN must have at least three available primary treating physicians and a hospital for emergency health care services, or if separate from such hospital, a provider of all emergency health care services, within 30 minutes or 15 miles of each covered employee's residence or workplace.
> > (2) An MPN must have providers of occupational health services and specialists who can treat common injuries experienced by the covered injured employees within 60 minutes or 30 miles of a covered employee's residence or workplace.

(Cal. Code Regs., tit. 8, § 9767.5(a)(1)-(2).)

Thus, the regulations provide for different access standards for accessing care depending on whether the care is provided by a "primary treating physician" or by a "specialist," indicating that these roles serve different purposes. A primary treating physician is defined as the physician

"who is primarily responsible for managing the care of an employee, and who has examined the employee at least once for the purpose of rendering or prescribing treatment and has monitored the effect of the treatment thereafter," and is "selected…in accordance with the physician selection procedures contained in the medical provider network pursuant to Labor Code section 4616." (Cal. Code Regs., tit. 8, § 9785(a)(1).) The AD Rules do not define a "specialist," but that role appears to come within the definition of a "secondary treating physician," who is defined as "any physician other than the primary treating physician who examines or provides treatment to the employee, but is not primarily responsible for continuing management of the care of the employee." (Cal. Code Regs., tit. 8, § 9785(a)(2).) The AD Rules recognize the role of the primary treating physician essentially as a gatekeeper, responsible for referring an injured worker to a specialist pursuant to AD Rule 9767.5(i), which states:

> If the primary treating physician refers the covered employee to a type of specialist not included in the MPN, the covered employee may select a specialist from outside the MPN.

(Cal. Code Regs., tit. 8, § 9767.5(i).)

Under these rules, the MPN must provide a list identifying at least three physicians who are identified as primary treating physicians willing to serve in that role who are within the 15 mile or 30 minute radius of applicant's residence or workplace. These MPN-identified primary treating physicians must be competent to treat "common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the employees are employed." (Lab. Code, § 4616(a)(1).) Thus, the MPN must have at least three physicians available and able to provide treatment for the type of injury sustained.

The burden of proof rests upon the party with the affirmative of the issue. (Lab. Code, § 5705.) It appears that applicant is seeking treatment outside of the MPN and will therefore have the burden of proving that the MPN is invalid[4].

When choosing a primary treating physician from the MPN, an applicant must contact the available primary treating physicians to determine if the physician is willing to treat applicant's specific medical condition. If applicant contacts the offices of the listed primary treating physicians within a 15 mile or 30 minute radius but is unable to identify three primary treating physicians

[4] It is unclear whether this is in fact the objective, as there is some indication in the pleadings but not in the evidentiary record that Casa Colina is in the MPN.

willing to provide applicant's primary care, then defendant's MPN will not meet the access standards for provision of medical treatment.

The rules require the MPN to have available at least three specialists "to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged," within a 30 mile or 60 minute radius of applicant's residence or workplace. If applicant selects a physician who is identified as a specialist, but who has not listed their availability as a primary treating physician, then the greater access standards for specialists in AD Rule 9767.5(a)(2) will apply, so that if that specialist's medical practice is not within the 15 mile or 30 minute radius mandated by Rule 9767.5(a)(1), the MPN will not be in violation of the access standards for primary treating physicians.

This issue was previously addressed in a panel decision: *Gomez v. Fastenal* (February 6, 2013, ADJ8205235) [2013 Cal. Wrk. Comp. P.D. LEXIS 47].[5] In *Gomez*, an Appeals Board panel held that the refusal by a specialist to assume the role of primary treating physician did not, by itself, permit the injured worker to obtain medical treatment outside the MPN:

> It is not a reasonable interpretation of the requirements of Labor Code section 4616.3, that an injured worker is entitled to select a specialist outside the MPN, if a specialist selected from within the MPN is unwilling to assume the role of primary treating physician, provided there are other MPN physicians that meet the access standards available who are able to assume the role of primary treating physician. In most non-emergent cases, an applicant will select a primary treating physician to provide necessary medical treatment within his area of expertise. The primary treating physician may then refer to a specialist to provide a consultation or treatment as a secondary treating physician. The refusal of a specialist to assume the responsibility of a primary treating physician will not negate the validity of the MPN or necessarily give applicant the right to obtain medical treatment outside the MPN. While a specialist in an appropriate medical specialty may agree to assume the role of a primary treating physician, the refusal of a specialist to do so will not allow applicant to go outside the MPN, if there are other physicians within the geographic area who are willing to assume that role.

(*Gomez*, *supra*, at pp. *13-14.)

[5] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc).) Here, we refer to *Gomez* because it considered a similar issue.

Here, there appears to be a conglomeration of questions framed as issues that boil down to whether applicant can treat outside of defendant's MPN.

The first issue noted was whether applicant may treat outside of the MPN for brain rehabilitation within the appropriate geographic area. The framing of the issue contradicts the requests that Casa Colina act as PTP as outlined in trial issues 4 and 5 as well as applicant's Petition which asks that Casa Colina to be designated as PTP. The difficulty is that these are significantly different requests that affect the access standards for the MPN. If applicant is requesting that Casa Colina or one of its physicians act as PTP, and Casa Colina is not in the MPN, applicant must show that there are no available treating physicians willing to take his claim in any appropriate specialty. The framing of the issue in the MOH/SOE does not adequately inform whether the PTP access standard should apply here, thus the record will need to be developed and the issue clarified.

If the request is for a brain rehabilitation program which has been requested or approved while maintaining the prior PTP, then the secondary treater standard/specialist standard will apply. The statutory and regulatory framework anticipates that the primary treating physician will evaluate the employee and make necessary referrals based on the medical evidence. In doing so, this maintains a critical distinction between the types of referrals made. While medical-legal referrals for discovery purposes are exempt from UR and IMR, any referrals for medical treatment must be supported by reporting consistent with the Medical Treatment Utilization Schedule (MTUS) or other evidence-based medicine and remain subject to the appropriate UR and IMR processes.

Whether the request is for a PTP or a specialist, if defendant seeks to enforce the MPN, AD Rule 9767.5(a)(1)-(2) requires that the physician be located 30 minutes or 15 miles from the covered employee's *residence or workplace* for PTP or 60 minutes or 30 miles of the covered employee's *residence or workplace*. (Cal. Code Regs., tit. 8, § 9767.5(a)(1)-(2).) Thus, it is clear that access standards are measured from either the applicant's residence or their workplace. Neither submitted MPN search shows the exact point of origin from which the search was being conducted. Applicant's search simply uses Indio and the zip code which may not be an accurate search. Defendant's search does not indicate an address at all. Likewise, if the MPN is deemed deficient and the applicant may treat outside the MPN, AD Rule 9767.5(c) and (d) both specifically

state that the covered employee may treat outside the MPN *within a reasonable geographic* area.[6] We decline to state whether Casa Colina is within a reasonable geographic area as the issues are not well defined. Additionally, there is no evidence in the record to indicate how far Casa Colina is from applicant's residence, nor is it clear what the parties are asking the court to find.

Though not specifically at issue here, there is indication in the record of a dispute as to whether a facility may be selected as a PTP. There is no stipulation that Casa Colina or its physicians are in the MPN. It appears from the search provided in Applicant's Exhibit 1 that the facility does not appear in the MPN, however that search was limited by the zip code and 100 miles. As noted above, at least one pleading from defendant indicates that Casa Colina is in the MPN. However, we clarify that where an entity is part of an MPN, unless specifically excluded, all physician "employees" of the entity are part of the MPN and need not acknowledge their membership in the MPN individually. (Lab. Code, § 4616(a)(3); Cal. Code Regs., tit. 8, § 9767.5.1(a) & (b)(1)-(2); see *Tolentino v. Luke's Roofing* [2018 Cal. Wrk. Comp. P.D. LEXIS 565, *3] ("The applicable regulations clearly contemplate that an entity may be part of an MPN, and that unless specifically excluded, all physician 'employees' of the entity are part of the MPN").) Still, a "primary treating physician" refers to an actual physician and not an entity. (Cal. Code Regs., tit. 8, § 9785(a)(1).) Thus, medical groups may be members of the MPN and may employ the services of physicians who do not register individually with the MPN. (*Rivas v. North American Trailer* [2016 Cal. Wrk. Comp. P.D. LEXIS 572]; *Montiel v. Socal Framing, Inc.* [2020 Cal. Wrk. Comp. P.D. LEXIS 379].)

Thus, applicant cannot designate a facility as a primary treating physician in any circumstance. However, the applicant *may* designate any willing physician at Casa Colina as a PTP if either Casa Colina is in the MPN or where applicant proves that the MPN is invalid.

Next, we will decline to comment on whether Indio is a rural area as no evidence was provided to make such a determination. Presumably, defendant is seeking to enforce the MPN using AD Rule 9767.5(b) which states:

> If an MPN applicant believes that, given the facts and circumstances with regard to a portion of its service area, specifically areas in which there is a health care shortage, including non-rural areas and rural areas in which health facilities are located at least 30 miles apart, the accessibility standards set forth in subdivisions

[6] It is also not clear in what context this question is being raised. If applicant is selecting a PTP from the MPN or if there is a compliant MPN for PTPs, there is no reasonable geographic restriction, and applicant may select any available PTP subject to possible limitations on the mileage reimbursement per section 4600(c).

> (a)(1) and/or (a)(2) cannot be met, the MPN applicant may propose alternative standards of accessibility for that portion of its service area. The MPN applicant shall do so by including the proposed alternative standards in writing in its plan application or in a notice of MPN plan modification and shall be reviewed and approved by the Administrative Director before the alternative standard can be used. The applicant shall explain how the proposed alternative standard was determined to be necessary for the specialty(ies) in which there is a health care shortage, including a description of the geographic area(s) affected for each specialty at issue, how the applicant determined a physician shortage exists in each area and specialty how the alternative access distance was determined and why it is necessary. The alternative standards shall provide that all services shall be available and accessible at reasonable times to all covered employees.

(Cal. Code Regs., tit. 8, § 9767.5(a)(1)-(2).)

Based on the record, defendant has not provided any evidence to prove that Indio is a rural area so that the MPN access standards may be expanded.

Lastly, we agree with the WCJ that there is no requirement to use the Medical Access Assistant (MAA) and likewise, no remedy if one does not utilize the MAA. Furthermore, there is no evidence in the record that an MAA is in place. Defendant asks applicant if he knew about or called a number (MOH/SOE, 5:5-7), but there are no notices in the record or indication that the number cited is the MAA.

Again, we make no determination on the merits of these issues. However, even though the findings with respect to the treating physician and the application of the MPN are not final orders in this context, we believe that both parties will suffer substantial prejudice and irreparable harm due to the confusion in the evidentiary record and as to what issues are pending. Upon return, the issues to be determined must be clearly stated and the relevant evidence submitted so that the WCJ can address them in the first instance.

Accordingly, we grant both applicant's and defendant's Petitions, rescind the F&O, and substitute a new Findings of Fact, that finds injury AOE/COE and defers all other issues, and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the Findings and Order issued on March 19, 2026 is **GRANTED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal/Reconsideration of the Findings and Order issued on March 19, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on March 19, 2026 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Josue Sanchez, while employed on May 2, 2024, as an installer, at Desert Hot Springs, California, by Alf Window Coverings, LLC, insured by Amtrust Concord, sustained injury arising out of and in the course of employment to the head, right ear, dizziness, memory loss, headaches, and tinnitus (not tendinitis, as erroneously indicated in the Findings of Fact from 11/6/25).

2. Other issues are deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 6, 2026

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

JOSUE SANCHEZ
SOLOV TEITELL
INGBER WEINBERG

TF/md

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