

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

FRANCISCO REBOLLEDO, *Applicant*

vs.

**NEW CURE, INC.;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ9641796
Pomona District Office**

**OPINION AND ORDER DENYING
PETITION FOR RECONSIDERATION**

Defendant State Compensation Insurance Fund (SCIF) seeks reconsideration of the Findings of Fact (Findings) issued on June 12, 2023 by a workers' compensation administrative law judge (WCJ), where it was found that lien claimant WSPT Network (lien claimant) is the owner of the lien for services rendered by Lo Acupuncture.

Defendant contends that the evidence does not support a finding of ownership of the lien at issue herein pursuant to Labor Code¹ section 4903.8, subdivision (a)(1)-(2); that the contract between lien claimant and Lo Acupuncture is a marketing and collection services agreement which does not state that lien claimant is the owner of the lien; and, that there is no evidence that applicant was a patient marketed lien claimant and thus subject to the parties' contract.

Lien claimant filed an Answer to Defendant's Petition for Reconsideration (Answer). The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied.

We have reviewed the entire record in this case, the allegations in the Petition for Reconsideration and the Answer, and the contents of the Report. Based on the reasons stated in

¹ All further references are to the Labor Code unless otherwise noted.

the Report, which we adopt and incorporate herein, and for the reasons stated below, we deny reconsideration.

Section 4903.8 states in pertinent part:

(1) Any order or award for payment of a lien filed pursuant to subdivision (b) of Section 4903 shall be made for payment only to the person who was entitled to payment for the expenses as provided in subdivision (b) of Section 4903 at the time the expenses were incurred, who is the lien owner, and not to an assignee unless the person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee.

(2) All liens filed pursuant to subdivision (b) of Section 4903 shall be filed in the name of the lien owner only, and no payment shall be made to any lien claimant without evidence that he or she is the owner of that lien. (Cal Lab Code § 4903.8 (a)(1)-(2), emphasis added.)

We reminded the parties in *Rebolledo v. New Cure, Inc.*, 2022 Cal.Wrk.Comp. P.D. LEXIS 73, *7-8 (*Rebolledo II*), that section 4903.8, subdivision (a)(1), expressly defines the “owner of the lien” as “*the person who was entitled to payment for the expenses as provided in subdivision (b) of Section 4903 at the time the expenses were incurred...*” (Lab. Code, § 4903.8(a)(1), emphasis added.) “There is no language in the statute...that the ‘owner of the lien’ could only be ‘the medical provider who incurred the expense.’ (*Chorn, supra*, 245 Cal.App.4th at p. 1389, emphasis added.)” (*Rebolledo II*, at **7-8.) We concluded that section 4908.3 does not include or imply any prohibition “against medical providers entering into a lawful contract *and/or* joint venture with a general corporation wherein the general corporation is contractually entitled to payment for the reasonable expenses incurred by applicant (Lab. Code, § 4903(b)). (*Id.*, at *17, emphasis added.)²

We therefore concur with the WCJ that lien claimant produced a contract between itself and Lo Acupuncture establishing its contractual right to payment for the reasonable expense incurred by applicant at issue herein. (Lien Claimant Exh. 23, filed under seal (the Contract), at ¶¶ 2(d), 4(f), and 9-11.) Thus, lien claimant was the “owner of the lien” pursuant to the definition of

² “Whether the parties to a particular contract have thereby created, as between themselves, the strict relation of joint adventurers or some other relation involving cooperative effort, depends upon their actual intention, which is determined in accordance with the ordinary rules governing the interpretation and construction of contracts.” (*Universal Sales Corp. v. California Press Mfg. Co.* (1942) 20 Cal.2d 751, 764-765.)

“owner of the lien” in 4903.8, subdivision (a)(1), i.e., “the person who was entitled to payment for the expenses...at the time the expenses were incurred...” (Lab. Code, § 4903.8(a)(1).)

The WCJ is also correct that the characterization of lien claimant as a billing services corporation is not relevant to the interpretation of the Contract and hence, the question of lien ownership under section 4908.3. Business and Professions Code section 650, subdivision (b), permits contracts between physicians and non-physicians whereby compensation is based on a percentage of gross revenue...” (*Epic Medical Management, LLC v. Paquette* (2015) 244 Cal.App.4th 504, 516.) As stated by the WCJ, “WSPT network does not charge a fee as argued by defendant, but rather receives a percentage of the amount recovered.” (Report, p. 3.)

Finally, it should be reiterated that there is no dispute in this matter that the lien was not assigned from Lo Acupuncture to lien claimant. Indeed, under the Contract, lien claimant has the original and sole right to seek payment on liens for the services rendered by Lo Acupuncture (with, of course, the concomitant contractual duty to pay Lo Acupuncture pursuant to the terms of the Contract). (Lien Claimant Exh. 23, filed under seal (the Contract), at ¶¶ 2(d), 4(f), and 9-11.) The Contract in this matter is therefore materially different than the contract raised in *California Ins. Guarantee Assn. v. Workers’ Comp. Appeals Bd. (Oracle Imaging)* (2012) 203 Cal.App.4th 1328, 1336 [77 Cal.Comp.Cases 143] [agreements stated each medical provider is sole owner of accounts receivable and Pinnacle merely to provide collection services]. The *Oracle Imaging* case is therefore not relevant or persuasive in this matter.

Accordingly, we concur with the WCJ that the Contract establishes lien claimant as the “owner of the lien” at issue herein, as “the person entitled to payment for the expenses...at the time the expenses were incurred...” (Lab. Code, § 4903.8(a)(1).) We therefore deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant State Compensation Insurance Fund's Petition for Reconsideration of the Findings of Fact issued on June 12, 2023 by a workers' compensation administrative law judge is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 28, 2023

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

**WSPT NETWORK
STATE COMPENSATION INSURANCE FUND
LO ACUPUNCTURE**

AJF/abs

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

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

WCAB Case No. ADJ9641796

**FRANCISCO REBOLLEDO vs. NEW CURE, INC.; STATE
COMPENSATION INS FUND**

Workers' Compensation Judge: Charles Bentley
Date: July 19, 2023

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

[omitted]

II
FACTS

This case originally proceeded to trial on June 8, 2021, on the issue of payment of the lien of WSPT network, for the services rendered by Lo Acupuncture.

A Findings and Order issued August 11, 2021 finding that WSPT Network was not the Owner of the lien per Labor Code Sec 4903(b). A Take Nothing was issued.

WSPT Network filed a Petition for Reconsideration dated 9-1-2021. An order Granting Recon was issued on October 29, 2021 (Rebolledo I). Defendant State Fund filed a Recon of the Recon dated November 17, 2021. An Order Granting Recon for further study issued January 13, 2022.

On March 25, 2022, Recon was granted (Rebolledo II) and the mater returned to the trial level for determination of a single issue. "...WSPT Network must produce evidence to support that it is the "owner of the lien" pursuant to its contract and/or joint venture with Lo Acupuncture." (Rebolledo II, Pg 6)

After several discovery hearings, the matter proceeded to trial on May 25, 2023. A Findings of Fact issued June 12, 2023, finding that WSPT Network is the Owner of the lien for services rendered by Lo Acupuncture.

Defendant filed its Petition for Reconsideration of this finding on July 5, 2023.

III DISCUSSION

IS WSPT NETWORK A VALID LIEN OWNER UNDER LABOR CODE SECTION 4903.8

As indicated above, the matter was returned to the trial level specifically to address the issue of lien Ownership. The lien claimant produced the contract between WSPT Network and Lo Acupuncture. (L.C. ex 23). Based on review of this document, the WCJ found that there was a contract between the parties conveying ownership of the lien to WSPT network. Specifically, paragraph 2a obligates WSPT to provide all billing and collections at WS expense. Additionally, paragraph 2d obligates WSPT to enter into liens for acupuncture services for patients marketed by WSPT. In exchange, Paragraph 3 and 4, obligates Lo Acupuncture to provide acupuncture services.

Defendant argues that since there is no evidence that Mr. Rebolledo was marketed by WSPT, they cannot be the lien Owner. However, there has been no other claims made by any other entity for these services, and no indication that Mr. Rebolledo was not marketed by WSPT. The totality of the circumstances indicate that the services incurred by Mr. Rebolledo are subject to the contract.

Defendant points out that the parent of WSPT, Advanced Physicians Management, is listed as a Billing and Collections type of business. (Recon Pg 3) However, defendant does not provide any authority that this type of business cannot enter into a contract or joint venture as described in this case.

Paragraph 9 of the contract indicates that WSPT is the sole biller of services marked by WSPT for services performed by Lo Acupuncture. WSPT network does not charge a fee as argued by defendant, but rather receives a percentage of the amount recovered. Furthermore, paragraph 12 indicates that both parties bear their own costs related to services. Finally, there is no indication that the billing reverts to Lo Acupuncture should WSPT network fail to recover payment.

Defendant is correct, that nothing in the contract (ex 23) uses the word ‘Owner’ or ‘Ownership.’ However, it is clear that the purpose of the contract was to convey rights, duties, responsibilities and obligations between the parties. The definition of a contract is an agreement to do or not do a certain thing. Cal Civ Code § 1549. Exhibit 23 satisfies this definition.

The totality of the terms of the contract are sufficient to convey ownership of the Lo Acupuncture services to WSPT Network is satisfaction of the ownership requirement of Labor Code Sec 4903.8(a)(1)-(2).

IV
RECOMMENDATION

It is respectfully recommended that the Defendant's Petition for Reconsideration be denied in its entirety.

DATE: July 19, 2023

WCJ Charles Bentley