

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

FERNANDO SANCHEZ, *Applicant*

vs.

GRIMMWAY ENTERPRISES, permissibly self-insured, *Defendants*

**Adjudication Number: ADJ8075850
Bakersfield 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 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 WCJ's Opinion on Decision, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 29, 2021

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

**GRANT & WEBER
MEDICAL COST REVIEW**

MWH/oo

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION:

Petitioner, Bakersfield Memorial Hospital, seeks relief from the August 10, 2021 Findings of Fact (Findings) by filing a timely, verified Petition for Reconsideration (Petition).

Applicant, Fernando Sanchez, 53 years old on the date of injury, while employed on December 8, 2010 as a forklift driver, sustained injury to the neck, abdomen, hernia, back, hips (including pelvis), shoulders, lower extremities, circulatory system, excretory system, nervous system, psychiatric/psyche, respiratory system, lungs, trachea, reproductive systems, depression, neurocognitive disorder, pancreatitis, gastroesophageal reflux, sexual dysfunction, neurogenic bowel and bladder, sleep disorder, heart, bilateral dialysis shunt/fistula, renal failure, and hypogonadism, arising out of, and in the course of employment by Grimmway Enterprises, Inc.

The Petition's listing of statutory authority for filing is consistent with Labor Code §5903, Sections (a), (c), and (e) since it recites those provisions.

The Petition contends, generally, that the Board order payment of \$51,594.00 less \$14,018.00 to Petitioner.¹

Specifically, the Petition claims:

- that the Board admonish Defendant;²
- that Petitioner's bill represents charges for inpatient services;³
- that Defendant's payor summary is inappropriate;⁴
- that Defendant failed to provide a payor summary within 30 days;⁵
- that the contract does not apply;⁶
- that the various billing issues discussed by witnesses Tedy Norohian and Alex Kauffman need not be addressed;⁷
- that the correct DRG code is DRG 981;⁸
- that DRG 981 entitles Petitioner to "\$51,594.58 less paid";⁹
- that the Board must consider unintended consequences haunting the Workers Comp community;¹⁰
- that the Board may or may not be aware that Payors access "these PPO networks" after authorization to treat;¹¹
- that the provider was expecting OMFS of DRG 981;¹²

¹ Petition, p. 7, lines 13-16. [Note: the Petition bears no page numbering. The page numbers referred to in this Report and Recommendation are the linear count of the pages in the Petition.] [Note: the Petition's line numerals do not align with the lines of text. This Report uses the closest line numeral when referring to a line of text.]

² Petition, p. 4, lines 20-21.

³ Petition, p. 4, line 24.

⁴ Petition, p. 4, line 25.

⁵ Petition, p. 5, lines 4-5.

⁶ Petition, p. 5, line 13.

⁷ Petition, p. 5, lines 13-14.

⁸ Petition, p. 5, line 19.

⁹ Petition, p. 5, lines 20-22.

¹⁰ Petition, p. 5, lines 23-24.

¹¹ Petition, p. 5, lines 26-27.

¹² Petition, p. 6, line 2.

that the EOB/EOR has language suggesting that there is a PPO network involved;¹³
that the EOB advised lien claimant to file a lien or an Application with the WCAB;¹⁴
that Defendant raised subject matter jurisdiction in court;¹⁵
that all medical providers belong to a PPO network;¹⁶
that a defendant can eliminate all providers from the WCAB;¹⁷
and that since the Statute of Limitations is four years to bring a contract civil dispute, by the time a lien claimant gets their day at the WCAB, the four years have passed and the provider is left without a recourse.¹⁸

II. FACTS:

Applicant suffered an industrial injury on December 8, 2010 to multiple body parts while working as a forklift driver for Defendant. Applicant received medical treatment by several providers, including Bakersfield Memorial Hospital.

The case-in-chief was settled by Stipulated Award on February 26, 2019.

The lien of Bakersfield Memorial Hospital was tried on April 20, 2021. The parties were given time to submit briefs, and the matter was submitted on May 26, 2021. The contract of October 2, 2006 between Bakersfield Memorial Hospital and First Health Network was admitted as Defendant's Exhibit I.

A Findings of Fact issued on August 10, 2021, finding that the October 2, 2006 contract fixed the amounts to be paid for the services of Bakersfield Memorial Hospital. It then found that under Labor Code §5304, the Board had no jurisdiction over the treatment by Bakersfield Memorial Hospital. Bakersfield Memorial Hospital filed their Petition for Reconsideration on August 30, 2021.

III. DISCUSSION:

The Findings appealed from found that the Board had no jurisdiction over the lien of Petitioner. Petitioner's arguments do not discuss this lack of jurisdiction, but focus on the amount of money Petitioner should be paid.

The Petition argues that the Board admonish Defendant.¹⁹ This argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

The Petition argues that Petitioner's bill represents charges for inpatient services.²⁰ This may be true, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

¹³ Petition, p. 6, lines 7-8.

¹⁴ Petition, p. 6, lines 8-9.

¹⁵ Petition, p. 6, lines 11-12.

¹⁶ Petition, p. 6, lines 14-15.

¹⁷ Petition, p. 6, line 16.

¹⁸ Petition, p. 7, lines 4-6.

¹⁹ Petition, p. 4, lines 20-21.

²⁰ Petition, p. 4, line 24.

The Petition argues that Defendant's payor summary is inappropriate.²¹ This may be true, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

The Petition argues that Defendant failed to provide a payor summary within 30 days.²² This may be true, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

The Petition argues that the contract does not apply.²³ The Petition states that the evidence clearly establishes that the contract does not apply. There is no reason given as to why the contract does not apply. The contract relied upon in the Finding, that of October 2, 2006, was signed by Tammy Wilcox, identified as a Vice President of Bakersfield Memorial Hospital. Both parties offered this contract, although it was only admitted as Defendant's Exhibit I. The evidence shows that the contract does apply. The argument does not show error in the Finding.

The Petition argues that the various billing issues discussed by witnesses Tedy Norohian and Alex Kauffman need not be addressed.²⁴ Whether or not the billing issues need to be addressed, those issues are not related to the jurisdictional question. They would not show error in the Finding.

The Petition argues that the correct DRG code is DRG 981.²⁵ This may be true, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

The Petition argues that DRG 981 entitles Petitioner to "\$51,594.58 less paid".²⁶ This may be true, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

The Petition argues that the Board must consider unintended consequences haunting the Workers Comp community.²⁷ This may be true, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

The Petition argues that the Board may or may not be aware that Payors access "these PPO networks" after authorization to treat.²⁸ Whether or not the Board is aware of this does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

The Petition argues that the provider was expecting OMFS of DRG 981.²⁹ This may be true, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

The Petition argues that the EOB/EOR has language suggesting that there is a PPO network involved.³⁰ This may be true, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

²¹ Petition, p. 4, line 25.

²² Petition, p. 5, lines 4-5.

²³ Petition, p. 5, line 13.

²⁴ Petition, p. 5, lines 13-14.

²⁵ Petition, p. 5, line 19.

²⁶ Petition, p. 5, lines 20-22.

²⁷ Petition, p. 5, lines 23-24.

²⁸ Petition, p. 5, lines 26-27.

²⁹ Petition, p. 6, line 2.

³⁰ Petition, p. 6, lines 7-8.

The Petition argues that the EOB advised lien claimant to file a lien or an Application with the WCAB.³¹ This may be true, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

The Petition argues that Defendant raised subject matter jurisdiction in court.³² This is correct, and resulted in the Finding that the Board had no jurisdiction. This does not show error in the Finding.

The Petition argues that all medical providers belong to a PPO network.³³ This may be true, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

The Petition argues that a defendant can eliminate all providers from the WCAB.³⁴ It claims the Defendant can do this by including the name of the network the provider belongs to on the EOB. It is not clear how this would produce such a result, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

The Petition argues that since the Statute of Limitations is four years to bring a contract civil dispute, by the time a lien claimant gets their day at the WCAB, the four years have passed and the provider is left without a recourse.³⁵ It is unclear as to whether or not the timeline suggested is correct, but this argument does not address the only ruling in the Findings that the Board does not have jurisdiction over Petitioner's lien. This argument does not show error in the Finding.

None of Petitioner's arguments show error in the Finding that the Board had no jurisdiction over Petitioner's lien.

IV. RECOMMENDATION:

Based on the foregoing, it is recommended that the Petition for Reconsideration be denied.

DATE: SEPTEMBER 7, 2021

DONALD H. JOHNSON
Workers' Compensation
Administrative Law Judge

³¹ Petition, p. 6, lines 8-9.

³² Petition, p. 6, lines 11-12.

³³ Petition, p. 6, lines 14-15.

³⁴ Petition, p. 6, line 16.

³⁵ Petition, p. 7, lines 4-6.

OPINION ON DECISION

Jurisdiction over Civil Contract Disputes

This issue is actually whether Labor Code §5304 applies to this dispute. That section states that the Board has no jurisdiction over treatment under Labor Code §§4600 to 4605 if an express agreement fixing the amounts to be paid for medical, surgical, or hospital treatment has been made between the entity providing the treatment and the employer or insurer.

The Defendant offered the contract dated October 2, 2006 (Defendant Exhibit I) as such a contract.¹ Lien Claimant offered this contract as Exhibit 20. This exhibit is a contract between the First Health Network and Bakersfield Memorial Hospital.² The contract states it applies for all inpatient admissions and outpatient services on or after November 1, 2006.³

The contract provides that the hospital shall bill in accordance with Article 4, and the payer shall only be liable for the amounts provided for in paragraph 4.2(b) less amounts listed in paragraph 4.2(c).⁴ The contract provides for the amounts to be paid for the services of Bakersfield Memorial Hospital, if it applies to the services.

Based on Lien Claimant Exhibit 4, the "date of services" are listed as from "022712" to "030312".⁵ This appears to indicate from February 27, 2012 to March 3, 2012. At trial the testimony of Alex Kauffman implied the date of services was February 27, 2012.⁶ Witness Tedy Norohian also referred to billing information dated February 27, 2012.⁷ Defendant's Exhibit Estates the date of service was February 27, 2012.⁸

This indicates that the services were provided in 2012, which is after the November 1, 2006. The contract of October 2, 2006, covers the services provided by lien claimant, Bakersfield Memorial Hospital.

Since there is an express agreement fixing the amounts to be paid for the services of Bakersfield Memorial Hospital, the Board has no jurisdiction over the dispute for treatment.

Enforceability of the PPO Contract

The contract of October 2, 2006 is valid, but since it also deprives the Board of jurisdiction over the dispute, the enforceability of the contract cannot be ruled upon.

Mandatory Arbitration Clause in the PPO Contract

The Board has no jurisdiction to rule on whether this clause should be applied.

¹ Defendant also listed contracts dated September 27, 2006 (Defendant Exhibit G) and April 6, 2006 (Defendant Exhibit H) but these documents were not filed in EAMS.

² Defendant Exhibit I, Contract Article I, para. I. I.

³ Id. at Article 1, para. 1.2,

⁴ Id. at Article 4, para. 4.1(a). Paragraph 4.2(c) provides for deduction of amounts for copayments, deductibles, and coordination of benefits.

⁵ Lien Claimant Exhibit 4, Billing Statement, entry under "45 SERV. DATE".

⁶ Minutes of Hearing and Summary of Evidence, April 20, 2021, p. 10, lines 1-3.

⁷ Id. at p. 13; Jines 30-32.

⁸ Defendant Exhibit E, Medical Cost Review, January 23, 2020, p. 1, para. I.

Value of Services

The Board has no jurisdiction to determine the value of services.

Costs and Sanctions

The Board has no jurisdiction to determine costs or sanctions.

Penalties and Interest

The Board has no jurisdiction to determine penalties or interest.

Lien of Bakersfield Memorial Hospital

The Board has no jurisdiction to rule on the lien of Bakersfield Memorial Hospital.

DATE: AUGUST 10, 2021

DONALD H. JOHNSON
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE