WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DIEGO AGUILAR, ***Applicant***

vs.

BRADY SOCAL INC.;
ZURICH INSURANCE COMPANY, ***Defendants***

Real Parties in Interest:
Steven Rigler; Steven J. Rigler Chiropractic Corporation;
Rigler Chiropractic, Inc.; and Crosby Square Chiropractic

Adjudication Number: SAU10073742
Van Nuys District Office

OPINION AND DECISION AFTER RECONSIDERATION

The Workers' Compensation Appeals Board (Appeals Board) issued an Opinion and Order Granting Petitions for Reconsideration in this matter on May 24, 2021[1] to provide an opportunity to study further the legal and factual issues raised by the petition. This is our Opinion and Decision after Reconsideration.

The insurance carriers, third-party administrators, and self-insured employers in the above-captioned consolidated matter (carriers) sought reconsideration and/or removal of the Findings of Law (Findings) issued by a workers' compensation administrative law judge (WCJ) on October 19, 2020. The WCJ found that the carriers' request for production of documents by the lien claimant[2] "of documents related to his association with individuals and entities for which the lien claimant has not been charged or convicted" exceeded the scope of the issue to be determined in these consolidated proceedings, i.e., "the threshold issue of the application of the Labor Code[3]

---

[1] Commissioner Lowe was on the panel that issued the prior decision in this matter but no longer serves on the Appeals Board. Another panelist has been assigned in her place.

[2] "Lien claimant" refers to the real parties in interest in this consolidated proceeding which includes Steven Rigler, Steven J. Rigler Chiropractic Corporation, Rigler Chiropractic, Inc., and Crosby Square Chiropractic.

[3] All further references are to the Labor Code unless otherwise noted.

section 139.21(g) presumption." (Findings, at 22:1-6.) The WCJ therefore denied the carriers' Motion to Compel Production of Documents (Motion to Compel). (*Id*., at 22:14-16.)

The Anti-Fraud Unit (AFU) of the California Department of Industrial Relations (DIR) sought reconsideration of the Findings wherein the WCJ found that DIR has no standing to participate in the remainder of these consolidated proceedings because DIR has "performed its prescribed statutory responsibilities" under sections 139.21 and 4615. (Findings, at 7:24-8:3.)

No answers were filed to either petition for reconsideration. The WCJ filed a Report on Petitions for Reconsideration and/or Removal (Report) recommending that both petitions for reconsideration be denied.

We have reviewed the record in this matter, the allegations of both Petitions for Reconsideration, and the contents of the Report. Based on our review of the record and for the reasons set forth in the Report at pages 6 to 14 as well as for the reasons set forth below, it is our decision after reconsideration to affirm the WCJ's Findings except that we amend the WCJ's finding that AFU lacks standing to find that AFU does have standing to participate in these section 139.21 consolidated special adjudication unit proceedings.

I. OPINION AND ORDER GRANTING RECONSIDERATION WAS TIMELY FILED PURSUANT TO *SHIPLEY*

Section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (Lab. Code, § 5909.) However, "it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice…." (*Shipley v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493]; see *Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 635 fn. 22 [70 Cal.Comp.Cases 312] ["irregularity which deprives reconsideration under the statutory scheme denies due process"].) In *Shipley, supra,* 7 Cal.App.4th at pp. 1107-1108, applicant sought a writ of review of a decision of the Appeals Board denying his petition for reconsideration by operation of law (Lab. Code, § 5909). The Court there granted a writ of review, stating that while the "language [section 5909] appears mandatory and jurisdictional, the time periods must be based on a presumption that a claimant's file will be available to the board; any other result deprives a claimant of due process and the right to a review by the board." (*Shipley, supra,* 7 Cal.App.4th at pp. 1107-1108.)

In *Shipley,* the Court of Appeal reversed the Appeals Board, holding that the time to act on the petition was tolled during the period the file was misplaced and unavailable to the Appeals Board. (*Shipley, supra,* 7 Cal.App.4th at p. 1007.) The Court emphasized that "Shipley's file was lost or misplaced through no fault of his own and due to circumstances entirely beyond his control." (*Shipley, supra,* 7 Cal.App.4th at p. 1007.) "Shipley's right to reconsideration by the board is likewise statutorily provided and cannot be denied him without due process. Any other result offends not only elementary due process principles but common sensibilities. Shipley is entitled to the board's review of his petition and its decision on its merits." (*Id.*, at p. 1108.)[4]

We note that timely petitions for reconsideration filed *and received* by the Appeals Board are "acted upon within 60 days from the date of filing" pursuant to section 5909, by either denying or granting the petition. The exception to this rule are those petitions *not received* by the Appeals Board within 60 days due to irregularities outside the petitioner's control. (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 635, fn. 22, emphasis added ["Irregularity which deprives reconsideration under the statutory scheme denies due process..."].) Pursuant to the holding in *Shipley* allowing tolling of the 60-day time period in section 5909, the Appeals Board acts to grant or deny such petitions for reconsideration within 60 days of receipt of any such petition. This approach is consistent with *Rea* and other California appellate courts, which have consistently followed *Shipley's* lead when weighing the statutory mandate of 60 days against the parties' constitutional due process right to a true and complete judicial review by the Appeals Board.[5]

---

[4] The Court also stated that the fundamental principles of substantial justice (Cal. Const., art. XIV, § 4), and the policies enunciated by Labor Code section 3202 "to construe the act liberally 'with the purpose of extending their benefits for the protection of person injured in the course of their employment,'" compelled its finding that the time to act on applicant's petition was tolled during the period that the file was misplaced. (*Id.*, at p. 1107.)

[5] See e.g., *Hubbard v. Workers Compensation Appeals Bd. of California* (1993) 58 Cal.Comp.Cases 739 [writ of review granted to annul Appeals Board's denial of petition for reconsideration by operation of law (Lab. Code, § 5909)]; see also, *Frontline Medical Associates, Inc. v. W.C.A.B. (Lopez, Leonel; Sablan, Yolanda)* (2022) 87 Cal.Comp.Cases 314 (writ den.); *Entertainment by J & J, Inc. v. Workers' Comp. Appeals Bd. (Bernstein)* (2017) 82 Cal.Comp.Cases 384 (writ den.); *Bailey v. Workers Compensation Appeals Bd. of California* (1994) 59 Cal.Comp.Cases 350 (writ den.). Recent denials in all District Courts of Appeal include: First District, Div. 1 (*Scaffold Solutions v. Workers' Compensation Appeals Board and Angelo Paredes* (2023) (A166655)); First District, Div. 4 (*Kaiser Foundation Health Plan v. Workers' Compensation Appeals Board and Julie Santucci* (2021) (A163107)); Second District, Div. 3 (*Farhed Hafezi and Fred F. Hafezi, M.D., Inc. v. Workers' Comp. Appeals Bd.* (2020) (B300261)(SAU8706806)); Third District (*Reach Air Medical Services, LLC et al. v.Workers' Compensation Appeals Board. et al. (Lomeli)* (2022) (C095051)); Third District (*Ace American Insurance Company v. Workers' Compensation Appeals Board and David Valdez* (C094627) (2021)); Fourth District, Div. 2 (*Carlos Piro v. Workers' Compensation Appeals Board and County of San Bernardino* (2021) 86 Cal.Comp.Cases 599); Fourth District, Div. 3 (*Patricia Lazcano v. Workers' Comp. Appeals Bd*. (2022) 88 Cal.Comp.Cases 54); Fifth District (*Great Divide*

In this case, both petitions for reconsideration were filed on November 13, 2020, but due to an administrative irregularity, the petitions were unavailable to the Appeals Board until after 60 days from the time of filing. The administrative irregularity which caused the petitions for reconsideration to be unavailable to the Appeals Board was not the fault of either party. Thus, pursuant to *Shipley*, the time within which the Appeals Board was to act on the petitions for reconsideration was tolled until the petitions became available to the Appeals Board. The Opinion and Order Granting Reconsideration issued by the Appeals Board on May 24, 2021 was timely filed within 60 days of the Appeals Board's receipt of the petitions.

II. CARRIERS' PETITION FOR RECONSIDERATION

A petition for reconsideration may only be taken from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order "determines any substantive right or liability of those involved in the case." (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661].) If a decision includes resolution of a "threshold" issue, then it may also be a "final" decision whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650]; *Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Bd. en banc); see *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].)[6]

Interlocutory procedural or evidentiary orders entered in the midst of workers' compensation proceedings are not considered "final" orders because they do not determine substantive rights or liabilities. (*Maranian, supra*, 81 Cal.App.4th at p. 1075; *Rymer, supra*, 211

Insurance Company v. Workers' Compensation Appeals Board et al. (MelendezBanegas) (2021) 86 Cal.Comp.Cases 1046); Sixth District (*Rebar International, Inc., et al. v. Workers' Comp. Appeals Board et al. (Hay*nes) (2022) 87 Cal.Comp.Cases 905).

[6] 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.

Cal.App.3d at 1180; *Kramer, supra,* 82 Cal.App.3d at 45; see *Gaona, supra*, 5 Cal.App.5th at p. 660.)

A decision may address a hybrid of both final and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision contains a final order. However, if the petitioner challenging the hybrid decision disputes only the WCJ's determination of an interlocutory issue, then the Appeals Board will *evaluate* the issue raised by the petition under the removal standard applicable to interlocutory, i.e., non-final orders. (See Cal. Code Regs., tit. 8, § 10843.)

The Findings include both a final order resolving the threshold issue of whether AFU has standing to proceed as a party in this matter, and an interlocutory order denying the carriers' Motion to Compel discovery. Accordingly, the Findings is a final order subject to reconsideration rather than removal. However, the carriers' Petition for Reconsideration does not challenge the finding of standing, but instead challenges the WCJ's order denying its discovery. Discovery orders are interlocutory in nature and therefore subject to the removal standard.

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, § 10843(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, § 10843(a).)

Here, the WCJ determined that the issue to be adjudicated in these consolidated proceedings was whether or not lien claimant rebutted the presumption in section 139.21, subdivision (g) (section 139.21(g)), that its liens arose "from the conduct subjecting [lien claimant] to suspension, and that payment is not due and should not be made on those liens because they arise from..." that "criminal" or "fraudulent" activity..." (Lab. Code, § 139.21(g);[7] see Report, pp. 6-14.)

[7] "(g) It shall be a presumption affecting the burden of proof that all liens to be adjudicated in the special lien proceeding, and all underlying bills for service and claims for compensation asserted therein, arise from the conduct subjecting the physician, practitioner, or provider to suspension, and that payment is not due and should not be made on those liens because they arise from, or are connected to, criminal, fraudulent, or abusive conduct or activity. A lien

However, the carriers' Motion to Compel seeks discovery of matters far beyond the scope of the section 139.21(g) presumption, asserting that "it is the 'conduct' of the provider, and not the facts resulting in the conviction for a specific crime that constitutes the presumed fact that the provider must rebut." (Findings of Law, Opinion on Decision, p. 15.)

> The carriers also interpret Labor Code section 139.21(g) to contain a two-prong presumption. The first prong is the conduct that gave rise to the suspension. The second prong is any criminal, fraudulent, or abusive conduct or activity by the provider, whether or not the provider has been charged or convicted. Under this interpretation, the provider would need to establish by a preponderance of the evidence that his liens did not result from undefined abusive conduct, fraudulent conduct, and conduct that is alleged to be similar to that which resulted in his conviction, even though this conduct resulted in no criminal charges or criminal conviction. This interpretation is untenable. The presumption applies only to the conduct that gave rise to the suspension. The Administrative Director is constrained to suspend.a provider only for conduct resulting in a conviction.
>
> As the Administrative Director is without authority to suspend a provider for "abusive conduct," or for "fraudulent conduct," or for any conduct unrelated to a conviction, the presumed fact under Labor Code section 139.21 cannot extend to conduct other than that for which the provider was convicted, and that which was relied upon by the Administrative Director to suspend the provider.

(*Id*., pp. 15-16.)

We agree with the WCJ that the carriers are entitled to discovery consistent with the issues actually presented by the section 139.21(g) presumption proceedings, which are very specific and do not include a fishing expedition into matters associated with the adjudication of any lien not subject to that presumption. (See Lab. Code, § 139.21(i) ["If...a lien does not arise from the conduct subjecting ... [lien claimant] to suspension, the workers' compensation judge shall have the discretion to adjudicate the lien or transfer the lien back to the district office having venue over the case in which the lien was filed."].)

Of course, *if* the special adjudication WCJ judge decides to adjudicate the merits of those lien claims not subject to dismissal pursuant to section 139.21, subdivision (i), then the carriers' discovery may expand to include requests likely to lead to the discovery of relevant evidence in the adjudication of those lien claims (if any). However, that is not going to happen until the preliminary question is resolved – and discovery aimed at information *outside* the conduct for

---

claimant shall not have the right to payment unless he or she rebuts that presumption by a preponderance of the evidence." (Lab. Code, § 139.21(g).)

which lien claimant was suspended under section 139.21 is not likely to lead to the discovery of relevant evidence related *to* the conduct for which lien claimant was suspended under section 139.21.

As a result, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if a final order issues in this consolidated matter. It is therefore our decision after reconsideration to affirm the WCJ's findings and order to deny the carriers' Motion to Compel.

III. AFU'S PETITION FOR RECONSIDERATION

The WCJ found that the AFU does not have standing to participate as a party in these special lien proceedings. (Findings, Findings of Law No. 1.) The WCJ clarified that the AFU lacked "sufficient connection to the action to support" its "participation in the case." (Report, p. 5.) We disagree. Section 139.21 grants the Director general authority to appoint a special lien proceeding attorney to perform legal services in section 139.21 special lien proceedings:

> (f) After notice of suspension, pursuant to subdivision (d), and if subdivision (e) applies, ***the administrative director shall appoint a special lien proceeding attorney, who shall be an attorney employed by the division or by the department.*** *The special lien proceeding attorney shall, based on the information that is available, identify liens subject to disposition pursuant to subdivision (e), and workers' compensation cases in which those liens are pending, and shall notify the chief judge regarding those liens.* Based on this information, the chief judge or his or her designee shall identify a district office for a consolidated special lien proceeding to adjudicate those liens, and shall appoint a workers' compensation judge to preside over that proceeding.
> ...
>
> (h) ***The special lien proceedings shall be governed by the same laws, regulations, and procedures that govern all other matters before the appeals board.*** The administrative director may adopt regulations for the implementation of this section.

(Lab Code § 139.21(f), (h), emphasis added.)

The Director of DIR appointed the AFU as special lien proceeding attorney(s) in the above captioned special lien proceedings. As stated by the AFU in its Petition for Reconsideration:

> In accordance with the statute, the appointed special lien proceeding attorney has taken an active role in the litigation of every section 139.21 lien consolidation case filed to date, including serving discovery when the attorney deems it necessary and appropriate, and representing the DIR at trial. That role is consistent with the appointment authority of the Administrative Director under sections 139.21, subdivision (f) and 117, and with the duties required of the appointed attorney under section 119.[8]
>
> The fact that section 139.21 does not specifically enumerate all of the duties of the special lien proceeding attorney beyond identifying liens to be consolidated for the chief judge does not mean that the responsibilities imposed by section 119 on the appointed attorney do not apply...as section 139.21(h) expressly incorporates "the same laws, regulations, and procedures that govern all other matters before the appeals board." The WCJ's conclusion that attorneys appointed by the Director and/or the Administrative Director are not authorized to conduct discovery and otherwise fully participate in this litigation is in error.

(AFU Petition for Reconsideration, pp. 8-9, fn. omitted.)

Accordingly, as the special lien proceeding attorney for the Director of the DIR in these proceedings, the AFU is a proper party and has standing to participate in these section 139.21 special lien proceedings. We cannot agree that once the task of the special lien proceeding attorney to identify liens subject to disposition is completed, the AFU attorney somehow loses connection to the proceedings or is otherwise unauthorized by statute to appear in section 139.21 special lien proceedings. Although we affirm the WCJ's decision in all other respects, we must amend the WCJ's finding that AFU lacks standing in order to find that AFU *does* have standing as a party to participate in these section 139.21 special lien proceedings.

---

[8] "The attorney shall: ¶ (a) Represent and appear for the state and the Division of Workers' Compensation and the appeals board in all actions and proceedings arising under any provision of this code administered by the division or under any order or act of the division or the appeals board and, if directed so to do, intervene, if possible, in any action or proceeding in which any such question is involved. ¶ (b) Commence, prosecute, and expedite the final determination of all actions or proceedings, directed or authorized by the administrative director or the appeals board. ¶ (c) Advise the administrative director and the appeals board and each member thereof, upon request, in regard to the jurisdiction, powers or duties of the administrative director, the appeals board and each member thereof. ¶ (d) Generally perform the duties and services as attorney to the Division of Workers' Compensation and the appeals board which are required of him or her." (Cal Lab Code § 119.) Special lien proceedings "shall be governed by the same laws, regulations, and procedures that govern all other matters before the appeals board." (Lab. Code, § 139.21(h).)

For the foregoing reasons,

IT IS ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the Findings of Law issued by a workers' compensation administrative law judge on October 19, 2020 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF LAW

1. The State of California, Department of Industrial Relations, does have standing to participate as a party in the Steven Rigler Special Adjudication Unit lien consolidation adjudication.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 12, 2024

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

STEVEN RIGLER, D.C.
MOKRI VANIS & JONES
LEVINSON STOCKTON
OFFICE OF THE DIRECTOR-ANTI FRAUD UNIT
DIR-ANTI FRAUD UNIT

AJF/abs

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

STATEOFCALIFORNIA

DIVISION OF WORKERS' COMPENSATION

WORKERS' COMPENSATION APPEALS BOARD

DIEGO AGUILAR,

Applicant,

v.

BRADY SOCAL, ZURICH INSURANCE, CO.,

Defendants.

SAU10073742
SAN DIEGO DISTRICT OFFICE

REPORT ON PETITION FOR RECONSIDERATION and/or REMOVAL[9]

Real Parties in Interest,

STEVEN RIGLER, STEVEN J. RIGLER CHIROPRACTIC CORPORATION, RIGLER CHIROPRACTIC, INCORPORATED, and CROSBY SQUARE CHIROPRACTIC,

Lien Claimant (s)

. . .

DISCUSSION: SCOPE OF THE PRESUMPTION

The Carriers interpret the Labor Code section 139.21(g) presumption to extend very broadly to any fraudulent or abusive conduct by the medical provider, whether or not the provider has been convicted or even charged with a crime in connection with the conduct. This interpretation contravenes the language in Labor Code section 139.21(g), which limits application of the presumption to the conduct that subjected the provider to suspension from the workers' compensation system. Pursuant to Labor Code section 139.21(a)(1)(A), providers can only be suspended if they have been convicted of one or more of the crimes specified in the statute. Therefore, the presumption cannot extend to conduct that did not result in a conviction. Secondly,

[9] Excepting pages 1 to 5 and including only pages 6 to 14.

only convictions relied upon by the Administrative Director to suspend the provider are relevant to the presumption. Therefore, for purposes of the application of the Labor Code section 139.21(g) presumption, discovery is confined to the crime for which the provider was convicted that was used by the Administrative Director as the basis for suspending the provider from the workers' compensation system. More far ranging discovery may be appropriate to the litigation of the lien claims that survive the application of the presumption, if any.

The plea agreement specifically defined the factual basis of the offense that resulted in Rigler's conviction:

"B. ELEMENTS UNDERSTOOD AND ADMITTED – FACTUAL BASIS

> Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crime, and admits that there is a factual basis for the guilty plea. The following facts are true and undisputed:
>
> 1. From at least August 2013 through September 2014, Defendant was a chiropractor, licensed to practice in the Southern District of California. Among other things, Defendant operated three clinics specializing in chiropractic medicine. As a licensed chiropractor, a medical professional, Defendant owed a fiduciary duty to his patients.
>
> 2. During this time period, Defendant agreed to have patients referred to his chiropractic clinics by Carlos Arguello, Fermin Iglesias and others through various front companies.
>
> 3. In exchange for the referral of patients to Defendant's chiropractic clinics, Defendant agreed that he and his staff would direct each patient to obtain $600 worth of durable medical equipment ("DME") and/or undergo magnetic resonance imaging ("MRI") or other diagnostic testing.
>
> 4. As further part of the scheme, Defendant referred patients to specific DME, MRI or other diagnostic testing providers as directed by Carlos Arguello, Fermin Iglesias and others.
>
> 5. Patients referred to Defendant's chiropractic practice as part of this scheme were not advised prior to being examined that Defendant had agreed to recommend that each of them receive at least $600 worth of DME, MRI or other

diagnostic testing. Defendant agrees that the concealment of this information was material to a patient's determination as to whether to continue in his or her care with Defendant or to seek treatment from another chiropractor or other health care provider.

6. As a further part of the scheme, Defendant caused DME, MRI and similar diagnostic testing providers to submit claims, interalia, via the mail, for payment of the costs from health care benefits programs.

7. From at least August 2013, 3 through September 2014, as part of this scheme, Defendant was sent, on average, more than 40 patients per month.

*** Without any condition or reservation whatsoever, Defendant agrees that these facts are true and correct and may be utilized at any trial (including the Government's case-in-chief), hearing or proceeding against Defendant or any other individual. ***

_____

Signature and Date
Defendant Steven Rigler"

Labor Code section 139.21(g) provides as follows:

"It shall be a presumption affecting the burden of proof that all liens to be adjudicated in the special lien proceeding, and all underlying bills for service and claims for compensation asserted therein, arise from the conduct subjecting the physician, practitioner, or provider to suspension, and that payment is not due and should not be made on those liens because they arise from, or are connected to, criminal, fraudulent, or abusive conduct or activity. A lien claimant shall not have the right to payment unless he or she rebuts that presumption by a preponderance of the evidence."

The primary function of the SAU special lien consolidation proceeding is to ascertain which liens arose from the conduct subjecting the provider to suspension, and which liens did not. To accomplish this, it is necessary to define the presumed facts. California Evidence Code, Division 5, Chapter 3 (Presumptions and Inferences), section 600, sets forth the basic definition of a "presumption":

> "600.(a) A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence."

The burden of proof necessary to rebut such a presumption in a non-criminal case is defined under California Evidence Code section 606:

> "606. The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."

In order for a party to prove the "nonexistence of the presumed fact," it is necessary that the presumed fact be defined. It would be impossible for a party to establish the nonexistence of the presumed fact if the presumed fact was undefined or ambiguous. Therefore, as a threshold matter, it is necessary in this action to establish the presumed fact under Labor Code section 139.21(g). Under Labor Code section 139.21(g), the presumed fact is predicated on a conviction. The Administrative Director's authority to suspend a provider for criminal conduct is statutorily restricted to conduct for which the provider has been convicted. This is apparent from the language of Labor Code section 139.21(a)(1)(A):

> "(a)(1) The administrative director shall promptly suspend, pursuant to subdivision (b), any physician, practitioner, or provider from participating in the workers' compensation system as a physician, practitioner, or provider if the individual or entity meets any of the following criteria:
> (A) The individual or entity has been convicted of any felony or misdemeanor and that crime comes within any of the following descriptions:"

The conviction must be for a crime defined under subsections (i), (ii), (iii), or (iv) of subparagraph (A), of paragraph (1) of subsection (a) of Labor Code section 139.21. Therefore, the presumed fact is predicated on a conviction for a specified type of crime. The conviction must also constitute the basis for the decision of the Administrative Director to suspend the provider from participation in the workers' compensation system (Labor Code section 139.21(g)).

CARRIERS' DISCOVERY MOTIONS

The Carriers' motion to compel production by Rigler (Carriers' Exhibit SS) concerns documents related to his association with provider entities and individuals who have been charged with fraud in various State and Federal proceedings (Carriers' Exhibits BB, CC, EE, FF, GG, HH, II, JJ, KK, MM, NN, OO). In some of these matters, Rigler testified before the Grand Jury; in others he was called as a witness for the prosecution. Rigler was not charged or convicted of crimes related to these criminal proceedings. The Administrative Director did not consider any of these matters in Rigler's suspension proceeding. The conviction relied upon by the Administrative Director was for specified illegal acts in which Rigler referred patients in exchange for illegal kickbacks and bribes in association with named individuals and entities controlled by these individuals (Carlos Arguello, Ferman Iglesias, Attorney "S.O.", Providence Scheduling, Meridian Medical Resources, and MedEx Solutions). (Carriers' Exhibit Z, Information filed in United States of America versus Steve Rigler, November3rd,2015,and Carriers' Exhibit AA, Rigler plea agreement, filed November 3rd, 2015.) The Administrative Director relied on the plea agreement as a qualifying conviction for a crime enumerated under Labor Code section 139.21(a)(1); resulting in Rigler being suspended by the Administrative Director from participating in the Workers' Compensation system as a medical provider. This triggered Labor Code section 139.2(d), notice of the suspension by the Administrative Director to the Chief Judge, and 139.21(f), appointment by the Administrative Director of a division attorney tasked with a identifying Rigler's liens for consolidation and adjudication in a special lien proceeding, and assignment by the Chief Judge of a district office and Workers' Compensation Judge to preside over the special lien proceeding.

The scope of discovery for purposes of the application of the Labor Code section 139.21(g) presumption is statutorily confined to the conduct by the lien claimant that resulted in his conviction and that was relied on by the Administrative Director to suspend the lien claimant from

participation in the Workers' Compensation system. The Carriers' motion to compel production by the lien claimant of documents related to his association with individuals and entities for which the lien claimant has not been charged or convicted is beyond the scope of discovery concerning the threshold issue of the application of the Labor Code section 139.21(g) presumption.

CONCLUSION

The Carriers are at liberty to proffer discovery requests consistent with the statutorily defined scope of the presumption. The whole purpose of submitting the issue of the scope of the presumption was to allow the parties to understand the proper parameters of the presumption so that discovery requests could be fashioned accordingly. The Carriers' request that the WCJ address every existing disputed discovery request before the proper scope of discovery has been determined is unreasonable, and a waste of judicial resources.

Dated: 12/7/2020

_____
CLIFFORD LEVY
WORKERS' COMPENSATION
PRESIDING JUDGE