

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **ANA VILLANUEVA,**

5 *Applicant,*

6 **vs.**

7 **TEVA FOODS; TRAVELERS INSURANCE**
8 **COMPANY,**

9 *Defendants.*

Case No. **ADJ9332041**
(Pomona District Office)

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION
(SIGNIFICANT PANEL DECISION)**

10
11 Lien claimant Firstline Health, Inc., (Firstline) seeks reconsideration of the Findings of Fact and
12 Order (F&O) issued on January 2, 2019 by a workers' compensation administrative law judge (WCJ).¹
13 The WCJ found that applicant claimed an injury arising out of and in the course of her employment on
14 October 11, 2012; that criminally charged providers Munir Uwaydah, M.D., and Paul Turley controlled
15 Firstline pursuant to Labor Code² section 139.21(a)(3); and, that Firstline's Exhibit 7³ is not admissible
16 as it was not listed on the pre-trial conference statement. The WCJ ordered that the lien of Firstline in this
17 case is subject to a stay pursuant to section 4615.

18 Firstline contends that as of October 11, 2010, David Johnson, M.D., was the sole owner and
19 officer of Firstline and thus "controlled" Firstline pursuant to section 139.21(a)(3); that Dr. Johnson is
20

21 ¹ The Appeals Board has designated this as a significant panel decision. Significant panel decisions are not binding precedent
22 in workers' compensation proceedings; however, they are intended to augment the body of binding appellate court and en
23 banc decisions and, therefore, a panel decision is not deemed "significant" unless, among other things: (1) it involves an issue
24 of general interest to the workers' compensation community, especially a new or recurring issue about which there is little or
25 no published case law; and (2) all Appeals Board members have reviewed the decision and agree that it is significant. (See
Elliott v. Workers' Comp. Appeals Bd. (2010) 182 Cal.App.4th 355, 361, fn. 3 [75 Cal.Comp.Cases 81]; *Larch v. Workers'*
Comp. Appeals Bd. (1999) 64 Cal.Comp.Cases 1098, 1099-1100 (writ den.); *WCAB Releases Significant Panel Decisions for*
Publication (News Brief, August 1997) 25 Cal. Workers' Comp. Rptr. 197.)

26 ² All further references are to the Labor Code unless otherwise noted.

27 ³ Exhibit 7 is titled "Stock Acquisition Agreement dated 10/11/10." (Minutes of Hearing and Summary of Evidence,
December 12, 2018 (MOH), p. 2.)

1 not currently charged with any crime; and, thus, there are no grounds to impose a section 4615 stay
2 against its lien in this case. Firstline also contends that it was unable to identify Exhibit 7 prior to trial
3 because of the confidential and proprietary nature of the contract, and that it should be admitted.

4 Defendant did not file an answer to Firstline’s Petition for Reconsideration. The WCJ filed a
5 Report and Recommendation on Petition for Reconsideration (Report) recommending that Firstline’s
6 Petition for Reconsideration be denied because defendant’s evidence indicates that Dr. Uwaydah
7 exercised absolute control over Firstline despite the fraudulent identification of other individuals as
8 owners, officers or directors of Firstline in official documents, which was done in order to hide
9 Dr. Uwaydah’s ownership and control of Firstline from creditors, investigators, government agencies and
10 law enforcement.

11 We have reviewed the record in this case and have considered the allegations of the Petition for
12 Reconsideration and the contents of the Report. We have considered the provisions of sections 4615(a),
13 (c), and (e) and the provisions of section 139.21(a)(3). We conclude the following:

- 14 1. Section 4615(a) requires that in order for the lien of an entity to be subject to an automatic
15 stay upon the filing of criminal charges as described in section 139(a)(1)(A), the entity must
16 be “controlled” by a physician, practitioner or provider charged with such a crime.
- 17 2. Pursuant to section 139(a)(3), an entity is “controlled” by a physician, practitioner or provider
18 charged with a crime as defined in section 139(a)(1)(A) if that physician, practitioner or
19 provider “is an officer or a director of the entity, or a shareholder with a 10 percent or greater
20 interest in the entity.”⁴
- 21 3. Control under section 139(a)(3) may be established with admissible evidence that the
22 physician, practitioner or provider charged with a crime as defined in section 139(a)(1)(A) is
23 or was an “officer or a director” of the entity; is or was “a shareholder with a 10 percent or
24

25 ⁴ In the context of proving a section 4615 stay against a lien, defendant must produce evidence that a lien requested by an
26 entity “controlled” by a criminally charged provider involves medical treatment temporally connected to that control.
27 Otherwise, the fact that the provider has been criminally charged is not relevant. We note that the Administrative Director
ultimately determines whether any of the medical treatment identified in the lien arose out of or is connected to the crime
committed by any such provider. (See Lab. Code, §139.21(g).)

1 greater interest” in the entity; or, held de facto⁵ ownership of the entity or de facto control
2 consistent with the rights and duties of an officer or director of the entity.

3 In this case, we concur with the conclusion of the WCJ that defendant’s evidence, namely
4 defendant’s Exhibit C, the “Factual Statement of Paul Turley dated 12/3/18” (Turley Statement), appears
5 to establish prima facie grounds to impose a section 4615 stay against Firstline’s lien based on
6 Dr. Uwaydah’s de facto ownership and control of Firstline. However, the Turley Statement was produced
7 on the eve of trial and thus, lien claimant did not have sufficient notice or opportunity to rebut the Turley
8 Statement.

9 Accordingly, based on our review of the record, and for the reasons set forth below, we grant the
10 Petition for Reconsideration, rescind the F&O and return this case to the trial level for further
11 proceedings consistent with this decision. When a new final order, decision, or award is issued, any
12 aggrieved person may timely seek reconsideration. (Lab. Code, § 5900(a).)

13 **I.**

14 As an initial matter, we note that in order to protect providers’ due process rights to notice, the
15 Department of Industrial Relations (DIR) publishes a current list of criminally charged providers subject
16 to the section 4615 stay (DIR list) on its website.⁶ “Uwaydah, Munir,” and “Turley, Paul,” are providers
17 currently on the DIR list because they were named as criminal defendants in *People v. Munir Uwaydah,*
18 *et al.*, Los Angeles County Superior Case number BA425397. (DIR list, pp. 1, 5, 9.) David Johnson is
19 not listed as a “provider” on the DIR list. (DIR list.)

20 DIR also posted a “Full List of Lien Claimants Whose Liens Have Been Flagged In EAMS As
21 Potentially Subject To A Stay Under Labor Code Section 4615⁷” (DIR potential stay list). The DIR

22 _____
23 ⁵ “De facto” is used in its ordinary meaning of “in fact” or “in reality.”

24 ⁶ The DIR list can be found at: https://www.dir.ca.gov/Fraud_Prevention/List-of-Criminally-Charged-Providers.pdf (DIR list).
25 Also, see Order Granting in Part Plaintiffs’ Motion for Preliminary Injunction on December 22, 2017 (Wu Order) in *Vanguard*
26 *Medical Mgmt. Billing Inc., et al.*, Case No. 5:17-cv-0965-GW-(DTBx) (*Vanguard*), p. 1, §§ 1-2. We take judicial notice of
the Wu Order pursuant to Evidence Code section 452, subdivision (d), as well as the Order to Dismiss with Prejudice issued
by Judge Wu in *Vanguard* on November 28, 2018 pursuant to the parties’ stipulation. The DIR continues to maintain the DIR
list.

27 ⁷ See https://www.dir.ca.gov/Fraud_Prevention/List-of-ERNs-with-4615-DWC-Proceeding-Status.pdf. The DIR continues to
maintain the DIR potential stay list.

1 potential stay list includes more than two dozen listings for Firstline Health and Firstline Health, Inc., all
2 with different electronic record numbers. (*Id.*, p. 60.) Here, lien claimant is identified in the Electronic
3 Adjudication Management System (EAMS) as “Firstline Health Los Angeles,” which is a lien claimant
4 identified on the DIR potential stay list. (*Id.*)⁸

5 The Division of Workers’ Compensation (DWC) previously entered a notation in EAMS in this
6 case indicating that “Firstline Health Los Angeles” may be subject to a section 4615 stay (EAMS
7 notation). We note that the EAMS notation is *not* an order, either final or interlocutory, and is therefore
8 not subject to reconsideration or removal. (Lab. Code, §§ 5900, 5903; Cal. Code Regs., tit. 8, § 10843;
9 see <https://www.dir.ca.gov/dwc/> [“This notation in EAMS is not an adjudication or judicial determination
10 that any particular lien filed by a lien claimant is subject to the stay.”].) Therefore, the EAMS notation is
11 not an order imposing a section 4615 stay against Firstline in this case.

12 DIR also posted the documents on which DWC relied in flagging lien claimants in EAMS as
13 potentially subject to a stay under Labor Code section 4615 (DIR documents).⁹ The DIR posted a
14 “document index” for “Firstline Health Inc. fna Frontline Medical Associates Inc., d/b/a US Health and
15 Orthopedic Medical Clinics/Munir Uwaydah & Paul Turley.” (*Id.*) The document index includes three
16 documents: the Indictment in *People v. Munir Uwaydah, et al.*, Los Angeles County Superior Case
17 number BA425397 (Indictment); a Felony Complaint for Arrest Warrant against Ronnie Case, Jeff
18 Stevens and Leticia Lemus Alvarez in *People v. Ronnie Case, Jeff Stevens and Leticia Lemus Alvarez*,
19 Los Angeles County Superior Case number BA455470 (Felony Complaint); and a fictitious business
20 name record for Firstline Health, Inc., doing business as US Health and Orthopedic Medical Clinics.¹⁰

21 _____
22 ⁸ The EAMS reference number associated by the DIR with “Firstline Health Los Angeles” is 8902005, and the address listed
23 is “10801 National Blvd Ste 401 Los Angeles CA.” (*Id.*) On EAMS, Firstline Health Los Angeles, ERN 8902005, lists two
24 addresses: 10801 National Blvd Ste 401 Los Angeles” and “4300 Long Beach Blvd Ste 170.” The latter address is associated
25 with various other Firstline Health entities listed on the DIR potential stay list which are collectively involved in more than 50
26 California workers’ compensation cases. (EAMS, Firstline Health Los Angeles.)

27 ⁹ See the DIR documents at https://www.dir.ca.gov/Fraud_Prevention/4615-List.htm.

¹⁰ The DIR Document Index for Firstline erroneously titles this document as “Fictitious Business Name Record: Frontline
doing business as US Health and Orthopedic Medical Clinics.” (DIR Document Index for “In re: Firstline Health Inc. fna
Frontline Medical Associates Inc., d/b/a US Health and Orthopedic Medical Clinics/Munir Uwaydah & Paul Turley.”) The
document itself actually relates to *Firstline* doing business as US Health and Orthopedic Medical Clinics. (DIR Document
Index for Firstline, p. 68.)

1 DEFENSE EXHIBIT B: Fictitious Name Permit Application showing a
2 receive date of March 18, 2010.

3 DEFENSE EXHIBIT C: Factual Statement of Paul Turley dated 12/3/18.

4 DEFENSE EXHIBIT D: Defendant's Request for Judicial Notice in
5 Support of Lien Claimant's Stay Pursuant to Labor Code Section 4615
dated 10/17/18 requesting judicial notice of the following:

6 Case of Teodora Chavez, ADJ9602587 and ADJ9602505
7 Case of Maria Cordon, ADJ9055889
8 Declaration of Paul Turley dated April 29, 2013 (MOH, pp. 3-4.)

9 Firstline introduced and the WCJ admitted the following exhibits:

10 LIEN CLAIMANT EXHIBIT 1: Statement of Information showing a file
11 date of July 22, 2011.

12 LIEN CLAIMANT EXHIBIT 2: Fictitious Name Permit dated 1/26/15.

13 LIEN CLAIMANT EXHIBIT 3: Fictitious Business Name Statement with
14 a file date of 9/2/11.

15 LIEN CLAIMANT EXHIBIT 4: Document entitled "Criminal Case
Summary" consisting of eight pages.

16 LIEN CLAIMANT EXHIBIT 5: Declaration of Matthew D. Rifat dated
17 January 30, 2017.

18 LIEN CLAIMANT EXHIBIT 6: Deposition of David R. Johnson dated
19 6/5/14.

...

20 LIEN CLAIMANT EXHIBIT 8: Clinical Laboratory Registration for eight
21 office locations.

22 LET THE RECORD REFLECT that lien claimant has asked the Court to
23 take judicial notice of the following Court decisions and has provided
copies to the Court:

24 Sergio Enciso, ADJ9379743
25 Sherry Arellanes, ADJ9447000
26 Victor Gaulip Sanchez, ADJ8926118
27 Maria Sandoval, ADJ9670790
Bertha Medrano, ADJ8526755
Maria Garcia, ADJ8639584
Maria Maniquiz, ADJ9265395
Miguel Mestas ADJ9371494

1 Jose Pool, ADJ9686953 (MF), ADJ9686845
2 Maria Ayala, ADJ8368255 (MOH, pp. 2-3.)

3 The WCJ determined that defendant's evidence established grounds to impose a section 4615 stay
4 as to Firstline's lien in this case:

5 The question is whether Munir Uwaydah and Paul Turley controlled
6 Firstline as an officer or director of Firstline or as shareholders with a 10
7 percent or greater interest in the entity. The court finds in the affirmative
8 based on the Fictitious Name Permit application which shows Mr.
9 Uwaydah as having a 51% ownership interest in Firstline Health. (Def. Ex.
10 "B" pg. 3) and Mr. Turley with a 49% percent ownership interest.
11 Therefore, the requirements of the section are satisfied. Moreover, the
12 signed declaration under penalty of perjury of Paul Turley (Def. Ex. C)
13 indicates that *Mr. Uwaydah owned and controlled many companies and*
14 *properties even though other individuals were listed as the owners or they*
15 *were supposedly corporations with managing board members. The*
16 *declaration goes on to state that this was all done intentionally so that Mr.*
17 *Uwaydah could hide his ownership and his control from creditors,*
18 *insurance investigators, government agencies, and law enforcement. He*
19 *exercised absolute control over many companies, which included Firstline*
20 *and Frontline. (Dec. Ex. C items #15, 74). Therefore, it appears that Mr.*
21 *Uwaydah had absolute control of Firstline Health despite other individuals*
22 *such as Mr. Turley being named on the corporate documents. (F&O,*
23 *Opinion on Decision, p. 4, emphasis added.)*

17 III.

18 Section 4615 states, in pertinent part:

19 (a) Upon the filing of criminal charges against a physician, practitioner, or
20 provider for any crime described in subparagraph (A) of paragraph (1)
of subdivision (a) of Section 139.21, the following shall occur:

21 **(1) Any lien filed by, or on behalf of, the physician,**
22 **practitioner, or provider or any entity controlled, as**
23 **defined in paragraph (3) of subdivision (a) of Section**
24 **139.21, by the physician, practitioner, or provider for**
medical treatment services under Section 4600 or medical-
legal services under Section 4621, and any accrual of
interest related to the lien, shall be automatically stayed.

25 (2) Except as provided in subdivisions (b) and (c), the stay shall be
26 in effect from the time of the filing of the charges until the
disposition of the criminal proceedings.

27 ...

1 (d) The administrative director shall promptly post on the division's
2 Internet Web site the names of any physician, practitioner, or provider of
3 medical treatment services whose liens are stayed pursuant to this section.

4 **(e) The automatic stay required by this section shall not preclude the
5 appeals board from inquiring into and determining within a workers'
6 compensation proceeding whether a lien is stayed pursuant to
7 subdivision (a) or whether a lien claimant is controlled by a physician,
8 practitioner, or provider.**

9 (f) The administrative director may adopt rules for the implementation of
10 this section.

11 (g) Notwithstanding this section, the filing of new or additional criminal
12 charges against a physician, practitioner, or provider who has been
13 suspended pursuant to subparagraph (A) of paragraph (1) of subdivision
14 (a) of Section 139.21 shall not stay liens that are subject to consolidation
15 and adjudication pursuant to subdivisions (e) to (i), inclusive, of Section
16 139.21, unless a determination has been made pursuant to subdivision (i)
17 of Section 139.21 that a lien did not arise from the conduct that subjected
18 the physician, practitioner, or provider to suspension. (Lab. Code, § 4615,
19 emphasis added.)

20 Section 139.21 states, in pertinent part:

21 (a) (1) The administrative director shall promptly suspend, pursuant to
22 subdivision (b), any physician, practitioner, or provider from
23 participating in the workers' compensation system as a physician,
24 practitioner, or provider if the individual or entity meets any of the
25 following criteria:

26 (A) The individual or entity has been convicted of any felony or
27 misdemeanor and that crime comes within any of the following
descriptions:

(i) It involves fraud or abuse of the federal Medicare or
Medicaid programs, the Medi-Cal program, or the workers'
compensation system, or fraud or abuse of any patient.

(ii) It relates to the conduct of the individual's medical
practice as it pertains to patient care.

(iii) It is a financial crime that relates to the federal
Medicare or Medicaid programs, the Medi-Cal program, or
the workers' compensation system.

(iv) It is otherwise substantially related to the
qualifications, functions, or duties of a provider of services.

(B) The individual or entity has been suspended, due to fraud or
abuse, from the federal Medicare or Medicaid or the Medi-Cal
program.

(C) The individual's license, certificate, or approval to provide
health care has been surrendered or revoked.

1 (D) The entity is controlled by an individual who has been
2 convicted of a felony or misdemeanor described in subparagraph
(A). (Lab. Code, § 139.21, emphasis added.)

3 ...
4 **(3) For purposes of this section and Section 4615, an entity is**
5 **controlled by an individual if the individual is an officer or a director**
6 **of the entity, or a shareholder with a 10 percent or greater interest in**
7 **the entity.**

8 As stated above, the EAMS notation is not an order imposing a section 4615 stay against
9 Firstline. However, the EAMS notation does alert defendant that section 4615 may be a defense to the
10 notated lien claimant's lien. As a defense to any notated lien claimant's lien, defendant bears the
11 affirmative of the issue. (Lab. Code, § 5705.) In other words, defendant bears the burden of proof to
12 establish that a lien is subject to a section 4615 stay.

13 It appears to be undisputed that Dr. Uwaydah and Mr. Turley are physicians, practitioners, and/or
14 providers of medical treatment services whose liens are stayed pursuant to section 4615. (DIR list,
15 *supra.*) Therefore, "any entity controlled, as defined in paragraph (3) of subdivision (a) of Section
16 139.21, by [Dr. Uwaydah or Mr. Turley]...shall" also be stayed. (Lab. Code, § 4615(a)(1).) An entity is
17 "controlled by an individual if the individual is an officer or a director of the entity, or a shareholder with
18 a 10 percent or greater interest in the entity." (Lab. Code, § 139.21(a)(3).)

19 Here, defendant's evidence establishes that Mr. Turley and Dr. Uwaydah were shareholders of
20 Firstline on March 13, 2010, and that both held a 10% or greater share at that time. (Def. Exh. B.) Of
21 more significance, however, is the Turley Statement which was signed under the penalty of perjury on
22 December 3, 2018. (Def. Exh. C.) According to Mr. Turley, he "worked directly" with Dr. Uwaydah "as
23 a named partner of Frontline Medical Associates from 2004 to 2015." (Def. Exh. C, ¶ 6.) Despite
24 Mr. Turley's 49% ownership of Frontline, and his intention to be a partner with Dr. Uwaydah,
25 Mr. Turley "had no authority or control over the business. All decisions were made by Dr. Uwaydah who
26 maintained absolute control over all aspects of the business." (*Id.*, ¶ 8.) Mr. Turley fraudulently back-
27 dated Secretary of State documents in order to avoid law enforcement or insurance companies
questioning the validity of Frontline's corporate status. (*Id.*, ¶ 11.)

Mr. Turley states that Firstline was created to take over the fraudulent activities of Frontline, and

1 that Dr. Uwaydah exercised the same absolute control over Firstline as he had over Frontline, even
2 though others – including Dr. Johnson – were identified as owners, officers or directors:

3 *15. Uwaydah owned and controlled many companies and properties even*
4 *though other individuals were listed as the owners or they were*
5 *supposedly corporations with managing board members. This was all*
6 *done intentionally so that Uwaydah could hide his ownership and his*
7 *control from creditors, insurance investigators, government agencies, and*
8 *law enforcement. He exercised absolute control over all of these entities.*
9 *These companies included, among others, Firstline, Golden State*
10 *Pharmaceuticals, Fusion, U.S. Health, Controlled Health Management,*
11 *California MRI, Accounts Receivable Acquisitions, Sentinel Health*
12 *Medical, LA Health Partners, Greenline Medical Management, Empyrean,*
13 *Blue Oak, and La Jolla.*

14 16. Uwaydah controlled purported owners, co-conspirators and others by
15 various means including, but not limited to, manipulation, loyalty,
16 financial incentives, fraudulent “promissory notes,” litigation, and threats.

17 17. Although I managed the daily operations of the San Fernando medical
18 clinic, I had no actual authority over Frontline and had to ask Uwaydah for
19 permission to do anything related to the company, including receive
20 money to pay cappers. My value to Uwaydah was that I had connections
21 to lawyers that would refer clients for a fee.

22 18. I paid various lawyers, either directly, or through intermediaries called
23 “cappers,” for illegal patient referrals to Frontline...

24 ...

25 24. An important aspect of maximizing the value of the patient was
26 prescription medication. The treating physicians were not given
27 prescription pads and were not supposed to give the patients a prescription
to get filled at a pharmacy of their choice. Instead, prescribed medication
was limited to a formulary, and the medication would be provided by
Frontline or a Uwaydah owned/controlled pharmacy and mailed to the
patient.

28 25. Uwaydah determined what the formulary was and all the patients
29 basically got the same prescriptions, regardless of their ailment.

30 ...

31 36. Alterations were being made to surgical reports and MRIs in order to
32 justify authorization for surgeries, which were very lucrative, particularly
33 spinal fusions...

34 37. The owners of the MRI company at San Fernando complained about a
35 changed MRI report. When I discussed the complaints with Dr. Uwaydah,
36 he told me that Susan Moreno receives a bonus for getting the
37 authorizations for surgery and she would be blamed, not us.

1 38. Uwaydah subsequently purchased the MRI company from the
2 complaining owner. Jeff Stevens was the straw purchaser of the MRI
company on behalf of Dr. Uwaydah.

3 39. I knew and went along with modifying diagnoses of patients in order
4 to maximize profits. We would maximize profits by getting the patients in
5 the door, prescribing them as much pharmaceuticals as we could, and then
move them towards surgery. The goal was to order and prescribe
everything that we could possibly profit from.

6 ...

7 44. *Firstline was formed to replace the operations of Frontline. Firstline*
8 *received the patients and continued to operate in the same manner as*
9 *Frontline. Dr. Uwaydah's name was taken off the company and Dr.*
Johnson's was put on it instead. Eventually, my name was removed from
Firstline as well.

10 ...

11 48. Uwaydah fled the United States to Lebanon in June of 2010...In the
12 Fall of 2010, I traveled to Lebanon to confer with Uwaydah and to discuss
13 how we were going to keep the Frontline Business operating without
Uwaydah's presence, and without his name being connected to the
business.

14 ...

15 52. *In 2011, when I went to Lebanon, Uwaydah told me that we had close*
16 *to a billion dollars in receivables from Frontline and Firstline.*

17 ...

18 56. *Uwaydah's name is on none of the companies he owns. To my*
19 *knowledge, Dr. Uwaydah was a named owner of only Frontline and*
20 *Southbay Surgical. His other businesses listed false owners or fictitious*
21 *boards of directors. Even though these entities were not in his name and*
22 *he was not listed as an owner, or board member, he nevertheless*
23 *controlled all aspects of these entities, including any litigation these*
24 *companies were/are involved in.*

25 57. *Uwaydah used lawyers to set up companies, draft contracts, create*
26 *fraudulent documents and file lawsuits that facilitated the fraudulent*
27 *activities...*

...

62. Dr. Uwaydah's control extends to the current criminal defense in this
case. He has paid millions of dollars for the attorneys for the defendants,
including myself...

...

1 67. Currently, Uwaydah wants me to call him every day. He also currently
2 speaks to Kelly Park, Ronnie Case, Shannon Moore and Letty Lemus.

3 ...

4 71. ... In January or February of 2015, when Maria and I went to Lebanon
5 to discuss with Uwaydah the letter we received from the DA's Office
6 regarding a grand jury, he had a copy of Susan Moreno's hard drive and
7 had us look through thousands of her emails to find anything that could
8 incriminate her... (Def. Exh. C, emphasis added.)

9 Firstline introduced various documents in rebuttal purporting to establish that Dr. Johnson was
10 the only officer, director and owner of Firstline since the inception of the company: a Secretary of State
11 Statement of Information filed on July 22, 2011 (Lien Claimant's Exh. 1); a fictitious business name
12 permit for Firstline issued on December 2, 2014 and current through December 31, 2016 where
13 Dr. Johnson is identified as the shareholder of record (Lien Claimant's Exh. 2); a fictitious business name
14 statement for U.S. Health and Orthopedic Medical Clinics dated July 20, 2011 (Lien Claimant's Exh. 3);
15 and June 5, 2014 sworn deposition testimony from Dr. Johnson stating that he was the sole owner of
16 Firstline since its inception (Lien Claimant's Exh. 6).

17 However, defendant's evidence is that Dr. Uwaydah has owned and controlled Firstline since its
18 inception in 2010, but has identified other people – including Dr. Johnson – on fraudulent corporate
19 documents in order to hide his involvement in the corporation. We note that even if lien claimant's
20 Exhibit 7, a June 11, 2010 stock acquisition agreement between Dr. Johnson, Dr. Uwaydah and
21 Mr. Turley, had been admitted, it would not have rebutted the Turley Statement. Again, Mr. Turley states
22 under the penalty of perjury that Dr. Uwaydah exercised “absolute control” over Firstline as he had
23 Frontline, and “used lawyers to set up companies, draft contracts, create fraudulent documents and file
24 lawsuits that facilitated the fraudulent activities...” (Def. Exh. C, ¶ 57.) Consequently, on the record
25 before us, lien claimant's evidence that Dr. Johnson was the sole owner and director of Firstline does not
26 rebut the evidence produced by defendant that Dr. Uwaydah was the de facto owner and controller of
27 Firstline.

Lien claimant objects that the Turley Statement “was part of a plea arrangement in his criminal
case wherein he pled guilty and got credit for time-served in exchange for his execution of this statement.

1 The allegations are unproven and the declaration can't be taken in lieu of testimony, as there is no cross-
2 examination.” (Petition for Reconsideration, p. 5.) The WCJ responds that lien claimant failed to object
3 to the statement based on the lack of cross-examination at the time of trial, and has thus waived the
4 objection. (Report, p. 5.) Moreover, the WCJ responds that, “the Board in prior panel decisions has found
5 that a signed declaration under penalty of perjury is prima facie evidence of the matters asserted therein
6 under Code of Civil Procedure 2015.5. Thereafter, the burden shifts to the party challenging the
7 sufficiency of the declaration. (*Zendejas v. Hilton Hotels Corporation*, 2018 Cal. Wrk. Comp. P.D.
8 LEXIS 43; (*Hernandez v. Medi-Serve Transportation*, 2018 Cal. Wrk. Comp. P.D. Lexis 12).”

9 Evidence discovered after the pre-trial conference statement may be admissible if “the proponent
10 of the evidence can demonstrate that it was not available or could not have been discovered by the
11 exercise of due diligence prior to the settlement conference.” (Lab. Code, § 5502(d)(3).) Here, the
12 settlement conference was on September 12, 2018 (Pre-Trial Conference Statement, September 12,
13 2018); the section 4615 issue was set for trial on October 17, 2018 (Minutes of Hearing, October 17,
14 2018); the Turley Statement was signed on December 3, 2018, and served on lien claimant on
15 December 11, 2018 (Board Exh. X); and, then, the Turley Statement was introduced at trial by defendant
16 on December 12, 2018. Due to no fault of the parties, the Turley Statement could not be identified at the
17 settlement conference because it was not created until after that conference. It may therefore be
18 admissible pursuant to section 5502(d)(3.)

19 Although we concur with the WCJ that the Turley Statement appears to establish prima facie
20 grounds to impose a section 4615 stay against Firstline’s lien in this case, it is also true that parties to a
21 workers’ compensation proceeding are entitled to due process and a fair hearing. (*Gangwish v. Workers’*
22 *Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker v. Workers’*
23 *Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing
24 includes, but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect
25 exhibits; and to offer evidence in rebuttal. (*Gangwish, supra*, 89 Cal.App.4th at p. 1295; *Rucker, supra*,

26 ///

27 ///

1 at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17
2 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57
3 Cal.Comp.Cases 230].)

4 Here, lien claimant was not served with the Turley Statement until the day before trial, and there
5 is no evidence in the record of this case that lien claimant was aware of the statement prior to the day
6 before trial. Lien claimant appears to have been “surprised” at trial by the admission of the statement, and
7 was thus denied a fair hearing and the opportunity to rebut the Turley Statement.

8 Accordingly, while we agree with the WCJ that defendant appears to have established prima facie
9 grounds that Firstline’s liens in these cases are subject to a section 4615 stay, lien claimant must be
10 afforded due process of law. We therefore grant the Petition for Reconsideration, rescind the F&O and
11 return this case to the trial level for further proceedings consistent with this decision. When the WCJ
12 issues a new decision, any aggrieved person may timely seek reconsideration.

13 For the foregoing reasons,

14 **IT IS ORDERED** that Firstline Health, Inc.’s Petition for Reconsideration of the Findings of
15 Fact and Order issued on January 2, 2019 by an administrative law workers’ compensation judge is
16 **GRANTED.**

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