

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **Misc. No. 257**

5
6 **IN RE: JAVIER JIMENEZ,**
7 *Respondent.*
8

9
10 **NOTICE OF INTENTION
11 TO SUSPEND THE PRIVILEGE OF
12 JAVIER JIMENEZ TO APPEAR AS A
13 REPRESENTATIVE OF ANY PARTY
14 BEFORE THE WCAB
15 (Appeals Board En Banc)**

16 **NOTICE IS HEREBY GIVEN** that the Appeals Board intends to suspend the privilege of Javier
17 Jimenez to appear in any proceeding as a representative of any party before the Appeals Board, or any of
18 its workers' compensation administrative law judges (WCJs) for one hundred eighty (180) days pursuant
19 to Labor Code section 4907 for the reasons set forth below unless good cause is shown why his privilege
20 should not be suspended or further hearing should be provided, as set forth below.

21 Notice is further given that any ordered suspension shall continue until there has been full
22 compliance with the sanction orders described below.

23 **FACTS SUPPORTING SUSPENSION OF THE PRIVILEGE**

24 Over the last three years Mr. Jimenez has been sanctioned numerous times for engaging in bad-
25 faith actions or tactics that are frivolous or solely intended to cause unnecessary delay while acting for
26 lien claimants as their Labor Code section 5700 agent before the WCAB.¹ His misconduct has resulted
27 in the repeated imposition of sanctions against him and his clients and has injured other parties and
wasted judicial resources.

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¹ Labor Code section 5700 provides in pertinent part: "Either party may be present at any hearing, in person, by attorney, or by any other agent..."

1 Sanctions have been imposed for knowingly proceeding to trial without necessary evidence,
2 repeatedly presenting meritless arguments, making a false statement of material facts in a petition
3 presented to the Appeals Board, impugning the integrity of the WCAB and WCJs, and other willful
4 failures to comply with statutory and regulatory obligations.

5 The circumstances under which Mr. Jimenez has been sanctioned and which support the
6 suspension of his privilege to appear, are set forth below. Electronic copies of all documents identified
7 below are available for review in the respective EAMS records of each case.

8 1) *Torres v. Los Angeles Unified School District (ADJ362854/ADJ3049738)*: On or about
9 January 1, 2011, Mr. Jimenez was identified as a Labor Code section 5700 agent for representative
10 Innovative Medical Management (IMM), on behalf of lien claimant Universal Psychiatric Medical
11 Center (UPMC) and he appeared on behalf of UPMC at the lien trial on August 24, 2011. On November
12 2, 2011, the WCJ issued a decision that UPMC was not entitled to further reimbursement, and at that
13 same time gave notice of her intention to sanction IMM and UPMC for Mr. Jimenez's actions and to
14 allow defendant attorney's fees incurred "in preparation for trial," explaining the reasons for the
15 proposed sanction in the accompanying Opinion on Decision in part as follows:

16 At the time of trial on August 24, 2011, Universal Psyche Med Center was
17 represented by Mr. Javier Jimenez. Mr. Jimenez advised the Court that he
18 was not an employee of Universal psyche. Further, Mr. Jimenez advised
19 that he is not an employee of Innovative Medical Management which,
20 pursuant to a Notice of Representation dated June 26, 2009, has authority
21 to represent Universal Psyche. Mr. Jimenez provided no letter of
22 representation on behalf of either entity.

23 The legal aspects of the case were discussed with defendant pretrial. Mr.
24 Jimenez advised the Court that he had no authority to settle with defendant
25 in spite of the fact that it appeared that prosecution of the lien was
26 frivolous. He also stated that he had advised Universal Psyche of the
27 Court's intention to issue sanctions for frivolous prosecution if appropriate.

Defendant raised laches and the Statute of Limitations under Labor Code
Section 4903.5 based on the fact that Universal Psyche did not file a lien
until July 14, 2011. The lien, filed without actual signature by anyone, is
in the sum of \$3,920.00 although the bill provided at the time of trial is for
\$11,275.00 and indicates payment of \$1,615.13 and 'total adjustments' of
\$924.73 for a balance of \$8,735.14. There was no evidence provided at the
time of trial for the discrepancy between the lien and the statement. Under
Labor Code §5703, liens, if signed under penalty of perjury, are permissive
as exhibits to be moved into evidence in addition to sworn testimony. In
the instant matter, Universal Psyche provided neither a signed lien nor
sworn testimony.

1 The lien was filed almost three years after the above referenced Award,
2 more than five years after the date of injury and more than three years after
3 the last date of service in 2008. Mr. Jimenez had no response to these facts
4 in pretrial discussions and proffered no evidence to address the failure of
Universal Psyche to comply with statutory mandates. It was the
impression of the Court that Universal Psyche was as indifferent to the law
as it was to the threat of sanctions for frivolous prosecution of the claim...

5 In the instant matter, defendant denied injury which arose out of and in the
6 course of employment in connection with the dismissed case regarding the
September 17, 2004 date of injury. It also denied the psyche claim added
to the accepted right arm injury on September 21, 2005...

7 Since all of the rights and obligations of a lien claimant are derivative of
8 the applicant's case, lien claimants have the same burden of proof on all
benefit issues as would the applicant were he/she prosecuting the claim...

9 In the instant matter, it is the opinion of the undersigned that lien claimant
did not meet this burden...

10 The exhibits do not address the basis for the treatment: there is no evidence
11 of change of treating physician or request by the Primary Treating
Physician for the treatment; there is nothing in the report of the Agreed
12 Medical Examiner to support the treatment on an industrial basis. The
undersigned is of the opinion that the treatment provided by Universal
13 Psyche was neither reasonable nor necessary to cure or relieve from the
effects of an industrial injury. The undersigned is also of the opinion that
14 the prosecution of the lien was not reasonable as Universal Psyche
provided nothing in the way of legally cognizable evidence to support its
15 bill or the medical reports which are of little, if any, evidentiary value
standing alone. As stated above, Universal Psyche presented no evidence
16 on the legal issues raised by defendant.

17 A response to the WCJ's November 2, 2011 notice of intention that appears to be signed by
18 "R Beggan" for IMM on behalf of UPMC was filed on November 21, 2011. That same date, a petition
19 for reconsideration of the WCJ's decision and notice of intention was filed, that appears to be executed
20 by a "Richard Beggan" for IMM on behalf of UPMC. On January 17, 2012, the Appeals Board denied
21 the petition for reconsideration for the reasons expressed by the WCJ in her November 22, 2011 Report
22 And Recommendation On Lien Claimant's Petition For Reconsideration. The case returned to the trial
23 level.

24 On January 24, 2012, the WCJ issued an order in ADJ362854 imposing a \$2,500 sanction against
25 IMM and UPMC and further ordering them to pay defendant \$3,500.00 in attorney's fees. In a petition
26 executed by an unidentified individual, IMM sought reconsideration of the sanction order on behalf of
27 itself and UPMC. Reconsideration was granted on March 30, 2012 in order to allow further study of the

1 issues. On December 21, 2012, the Appeals Board panel issued its Decision After Reconsideration
2 rescinding the WCJ's sanction order for procedural reasons, but admonishing IMM and the petition's
3 author for "failing to identify the person that filed the present Petition for Reconsideration." The case
4 was returned to the trial level for the WCJ's further consideration of the proposed sanctions.

5 On January 2, 2013, the WCJ served another notice of intention to sanction IMM and UPMC for
6 Mr. Jimenez's actions, again providing an explanation of the reasons for the proposed sanction, in part as
7 follows:

8 At the time of trial on August 24, 2011, lien claimant was represented by
9 Innovative Medical Management with Mr. Javier Jimenez appearing. The
10 legal issues of the case were discussed with the parties pretrial along with
11 evidentiary offers of proof. Mr. Jimenez advised the Court that he had no
12 authority to settle with defendant in spite of the fact that it appeared that
13 prosecution of the lien was frivolous since none of the evidence offered
14 and discussed addressed the legal issues sufficiently to meet lien claimant's
15 required burden of proof. The representative also stated that he had
16 advised Universal Psyche of the Court's intention to issue sanctions for
17 frivolous prosecution if appropriate...

18 Universal Psyche provided neither a signed lien nor sworn testimony [at
19 trial]. At the time of trial, there was no evidence offered or in the
20 Electronic Adjudication Management System of a prior lien, which was the
21 basis for defendant's raising the Statute of Limitations.

22 Additionally, lien claimant originally argued entitlement to reimbursement
23 because psyche treatment was for the compensable consequence of the
24 physical injury in spite of the fact that applicant had signed Stipulations
25 specifically dismissing any such contention...

26 [L]ien claimant knew it could not meet its burden of proof prior to trial
27 when defendant discussed the contents of the reports of Mark Greenspan,
M.D., Agreed Medical Examiner, which are well reasoned and persuasive,
and note with specificity that applicant suffered a relatively benign injury
which required no surgery. He also concluded that she had no injury to her
neck, right wrist and did not develop carpal tunnel syndrome as a result of
industrial injury. He determined she was Permanent and Stationary when
her Primary Treating Physician Dr. Sobol found her so in 2006, a year
before treatment began at Universal Psyche.

The exhibits offered by lien claimant could be given no weight...They do
not address the basis for the treatment: there is no evidence of change of
treating physician or request by the Primary Treating Physician for the
treatment; there is nothing in the report of the Agreed Medical Examiner to
support the treatment on an industrial basis as a compensable consequence
of the physical injury. Therefore, the undersigned is of the opinion that the
prosecution of the lien was frivolous and unreasonable...

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1 No objection to the WCJ's notice of intention was made by Mr. Jimenez, IMM or UPMC, and on
2 February 1, 2013, the WCJ jointly and severally ordered IMM and UPMC to pay a \$2,500.00 sanction
3 for the reasons expressed in the December 27, 2012 notice of intention. Thereafter, on March 4, 2013,
4 the WCJ ordered IMM and UPMC to pay defendant's reasonable attorney's fees of \$3,500.00.

5 Neither IMM nor UPMC sought reconsideration or review of either sanction order. IMM paid the
6 WCJ's February 1, 2013 \$2,500.00 sanction through its check number 20665 on or about July 22, 2013.
7 There is no evidence that the \$3,500.00 in defendant's attorney's fees and costs that the WCJ ordered
8 IMM and UPMC to pay on March 4, 2013, has been paid.

9 2) ***Enriquez v. American Racing Equipment (ADJ2610300)***: Mr. Jimenez represented lien
10 claimant Joyce Altman Interpreters (Altman) in this case. On December 30, 2013, the WCJ issued a
11 notice of intention to sanction Mr. Jimenez and Altman and other lien claimants and their representatives
12 that appeared at an earlier trial for failing to present evidence showing that the lien claims were not
13 barred by the statute of limitations, and because they "failed to provide relevant and probative evidence
14 to support the reasonableness and necessity of the services rendered and reasonableness of the charges,"
15 that they "knew or should have known that their insistence on trial without relevant and probative
16 evidence is frivolous," and that their activities and those of their hearing representatives "were egregious
17 and frivolous."

18 Mr. Jimenez did not challenge the notice of intention and the WCJ jointly and severally
19 sanctioned Mr. Jimenez and Altman \$2,500.00 on April 24, 2014, and May 2, 2014. Neither
20 Mr. Jimenez nor Altman sought reconsideration or judicial review of the sanction. Altman paid the
21 \$2,500.00 sanction by way of check number 15123 on or about June 16, 2014.

22 3) ***Vargas v. Koosharen dba Select Staffing (ADJ8152111)***: Mr. Jimenez represented Altman at
23 a lien trial on June 3, 2014. The events that occurred at that time are set forth in the WCJ's Opinion on
24 Decision that accompanied his June 19, 2014 order disallowing the lien claim, as follows:

25 Lien claimant proffered no evidence that applicant suffered any injury at
26 work.

27 Further, lien claimant produced applicant to testify that she never reported
any injury at work, and offered no evidence of notice to the employer of
any such claim.

1 Defendants issued notice to applicant of their Medical Provider Network
2 on 04/17/2012. This is the only indication in evidence of knowledge of the
3 employer of a claim.

4 Lien claimant's witness, applicant, testified that she responded to a
5 television advertisement after she was laid off. Someone came to her
6 house, filled out papers and scheduled an appointment with a doctor.

7 The election of a treating physician came from applicant's attorney on
8 12/28/2011, prior to any demonstrated notice to the employer or carrier. It
9 was also prior to the filing of the Application for Adjudication of Claim
10 dated 01/17/2012.

11 Therefore none of the interpreting services furnished by lien claimant were
12 for treatment that would be reimbursable by defendant, and under these
13 circumstances defendant has no liability for the lien of Joyce Altman
14 Interpreting...

15 Lien claimant was fully aware of the facts and circumstances surrounding
16 the genesis of this claim, and the fact that there was no evidence to support
17 injury AOE/COE. Lien claimant must be constructively aware of the
18 content of applicant's testimony that it elicited at trial. Specifically, direct
19 examination revealed that there was no report of injury to the employer
20 until after the treatment (for which lien claimant interpreted) began at the
21 instigation of attorneys prior to the filing of the claim.

22 As part of his June 19, 2014 decision, the WCJ gave notice of intention to jointly and severally
23 sanction Altman and Mr. Jimenez \$1,500.00 for being "fully aware at the time of trial of the facts and
24 circumstances surrounding the genesis of this claim, and the fact that there was no evidence to support
25 injury AOE/COE and nevertheless proceed to trial..."

26 Mr. Jimenez made no response to the WCJ's June 19, 2014 notice of intention and an order
27 jointly and severally sanctioning Altman and Mr. Jimenez in the amount of \$1,500.00 issued on July 24,
2014. Mr. Jimenez did not seek reconsideration of the sanction, and Altman paid it by way of check
number 15483 on or about August 11, 2014.

4) *Nunez v. Golden Gate Steel (ADJ2826351)*: Mr. Jimenez represented lien claimant Orthogear
at a lien conference on January 8, 2014, as its Labor Code section 5700 agent with representative
Medical Recovery Solutions, LLC, (MRS). At the conference the WCJ ordered that Orthogear receive
\$400.00 in full satisfaction of its lien. The order states in pertinent part that the parties
"waived...testimony and...submitted the issue of the lien of Orthogear on the present record."

On January 29, 2014, Joann Veitia of MRS and Mr. Jimenez for MRS, all on behalf of Orthogear,

1 executed, verified and filed a petition for reconsideration of the WCJ's January 8, 2014 order to pay the
2 lien, contending that Mr. Jimenez had not waived any rights and that Orthogear wanted a trial of the lien
3 claim.

4 On January 31, 2014 the judge acted under Appeals Board Rules of Practice and Procedure, Rule
5 10859 to rescind the January 8, 2014 Order and set the lien for trial. The WCJ also issued a notice of
6 intention to sanction Orthogear, MRS, and Mr. Jimenez \$2,500.00 each, stating that Orthogear, MRS,
7 and Mr. Jimenez "made incongruous representations...causing unnecessary delay." The proposed
8 sanctions were set to be heard at the trial of the Orthogear lien.

9 On February 24, 2014, Ms. Veitia and Mr. Jimenez for MRS on behalf of Orthogear executed,
10 verified and filed a petition for or reconsideration of the WCJ's January 31, 2014 order or removal of the
11 case to the Appeals Board. Among other things, Mr. Jimenez claimed in the petition that he did not
12 waive any rights at the October 29, 2014 conference and the "WCJ makes arbitrary and capricious; [sic]
13 unsupported allegations..." in his Report (6:2-3), that the prior notice and orders contain "deliberate
14 omission of any reference to lien claimant's arguments..." (8:8), and that Mr. Jimenez was "duly bullied
15 into submitting to [the WCJ] pushing through to Defense's benefit (yet another)..." (10:12-13,
16 parenthesis in original.) On April 22, 2014 the petition for reconsideration was dismissed because it did
17 not challenge a final order, and removal was denied.

18 Orthogear's lien and the WCJ's intention to impose sanctions were tried on June 10, 2014 and
19 October 14, 2014. Mr. Jimenez and others testified and numerous documents were received into
20 evidence.

21 On December 2, 2014 the WCJ found that Orthogear should be "reimbursed" for certain services,
22 but he jointly and severally sanctioned Mr. Jimenez, MRS and Ms. Veitia \$2,500.00 for the reasons
23 expressed in the notice of intention.

24 On December 18, 2014, Ms. Veitia filed a petition on behalf of herself, MRS, and Orthogear
25 seeking reconsideration of the WCJ's decision. In the petition Ms. Veitia "profusely apologized" for the
26 "misstatements made against the WCJ" and stated that she relied to her detriment on information
27 provided by Mr. Jimenez.

1 On March 10, 2015 the Appeals Board affirmed the WCJ's sanction orders. No petition was filed
2 challenging that decision and the WCJ's December 2, 2014 sanction order is now final for all purposes.

3 On May 26, 2015 Deputy Commissioner Dietrich notified Mr. Jimenez and Ms. Veitia that the
4 failure to comply with the December 2, 2014 sanction order was grounds for suspending or removing the
5 privilege to appear before the WCAB as a Labor Code section 5700 agent.

6 Payment of the ordered sanctions has not been received.

7 5) *Beltran v. Robert Iest (ADJ3319996)*: Mr. Jimenez represented lien claimant "L.A. Ortho
8 Hospital" at the lien trial on December 5, 2012, as shown by the Minutes of Hearing (MOH) from that
9 date. The defendant contended at trial that the treatment underlying the lien claim was not authorized to
10 be provided within its MPN, as evidenced by the notices and correspondence received into evidence at
11 the trial. Included with the evidence offered by Mr. Jimenez were bills "filed by BCP Collection [BCP]."
12 (MOH, 2:18-19.) Mr. Jimenez did not clarify at trial that BCP was the assignee of a lien claim of "Los
13 Angeles Orthopedics," the entity identified in the MOH as "L.A. Ortho."

14 On January 14, 2013, the WCJ issued a decision finding that L.A. Ortho Hospital "provided no
15 admissible evidence at the time of [the December 5, 2012] trial to carry the burden of proof as to the
16 reasonableness and necessity of the treatment or the reasonableness of the charges." Based upon that and
17 her other findings, the WCJ disallowed the lien claim and gave notice of intention to sanction L.A. Ortho
18 Hospital \$2,500.00.

19 On February 28, 2013, the WCJ amended the notice of intention to identify Mr. Jimenez as jointly
20 and severally liable with L.A. Ortho Hospital for the proposed sanction and to allow defendant its
21 attorney's fees and costs as part of the sanction.

22 On March 27, 2013, the WCJ issued a second amended notice of intention, explaining that BCP
23 "was not identified on the record as the agency representing lien claimant," that mail sent to "L.A. Ortho
24 Hospital" had been returned with no notice of change of address, and that there was no Notice of
25 Representation on file, causing increased costs and delay. The WCJ again amended the notice of
26 intention to identify L.A. Ortho Hospital, BCP and Mr. Jimenez as jointly and severally liable for a
27 proposed \$2,500.00 sanction for the reasons set forth in the original January 14, 2013 notice.

1 On or about April 19, 2013, Ms. Veitia for MRS on behalf of BCP and Mr. Jimenez petitioned for
2 reconsideration of the WCJ's second amended notice of intention. In the 19 page petition, it was stated
3 that the original lien claim was filed by Los Angeles Orthopedics, but that BCP had acquired the lien and
4 BCP was, in fact, represented in the case at the trial by MRS through Mr. Jimenez, notwithstanding that
5 there was no record of that representation. In essence, the petition claimed that it was the WCJ's error in
6 misidentifying the lien claimant that caused BCP and MRS to not be properly served with the WCJ's
7 January 14, 2013 decision and notices concerning the proposed sanctions.

8 On June 13, 2013, the Appeals Board issued its Opinion And Order Dismissing Petition For
9 Reconsideration dismissing the April 19, 2013 petition because it challenged a notice of intention and not
10 a final order, decision or award. (Lab. Code, § 5900.) The case returned to the trial level.

11 On July 12, 2013, the WCJ issued a nunc pro tunc order substituting BCP for "L.A. Ortho" where
12 referenced in the record. At the same time she issued a third amended notice of intention to jointly and
13 severally sanction BCP, MRS and Mr. Jimenez in the amount and for the reasons set forth in the original
14 January 14, 2013 notice of intention. No response was made to the WCJ's amended notice of intention.
15 Instead, on or about August 1, 2013, Ms. Veitia for MRS on behalf of BCP and Mr. Jimenez filed a 20
16 page petition that again sought reconsideration of the notice of intention to impose sanctions and
17 questioning the extent of the WCJ's nunc pro tunc order substituting BCP for record references to L.A.
18 Ortho.

19 On September 13, 2013, the Appeals Board issued an order dismissing the petition because it did
20 not challenge a final order, decision or award. (Lab. Code, § 5900.) The case returned to the trial level.

21 On October 13, 2013, the WCJ issued an order jointly and severally sanctioning Mr. Jimenez,
22 MRS and their client BCP \$2,500.00 for the reasons set forth in the July 12, 2013 notice of intention.

23 On or about November 14 2013, Mr. Jimenez with Ms. Veitia and MRS on behalf of themselves,
24 and BCP, petitioned for reconsideration of the WCJ's October 13, 2013 sanction order. Reconsideration
25 was granted on January 13, 2014, to further study the issues.

26 On July 18, 2014, the Appeals Board affirmed the WCJ's October 13, 2013 sanction order, and
27 removed the case to itself to propose the imposition of additional sanctions, writing as follows:

1 [L]ien claimant has been seeking to relitigate the same issues with
2 repetitive petitions [now] including accusations that the WCJ has engaged
3 in ‘incredible fabrication’ (Petition page 12). Such unsubstantiated
4 accusations of ‘fabrication’ by the WCJ, a very serious matter if true,
5 appear to us to be untrue and are sanctionable as bad faith actions or
6 tactics. Lien claimant failed to object to the WCJ’s Notice of Intention to
7 Issue Sanctions. Instead, lien claimant objected to defendant’s Bill of
8 Particulars regarding defendant’s claim for fees and costs related to lien
9 claimants prior frivolous actions. Lien claimant has now filed its third
10 petition arising from the lien trial. In fact, there has been no [final] Order
11 regarding any claim for fees and costs by defendant. As such, applicant’s
12 Petition, now before us, is frivolous and subject to sanctions. (5:11-19.)

8 On or about August 1, 2014, Mr. Jimenez with Ms. Veitia and MRS on behalf of themselves, and
9 BCP, filed an objection to the sanction proposed by the Appeals Board. The objection acknowledged
10 errors by Mr. Jimenez and others but claimed they were “inadvertent,” and it continued to be asserted
11 that the WCJ engaged in “fabrications.” (4:20-21.)

12 On November 19, 2014 the Appeals Board panel issued an order imposing additional sanctions of
13 \$1,500.00 jointly and severally against Mr. Jimenez, MRS, Ms. Veitia and their client BCP, for the
14 reasons expressed in the July 18, 2014 notice of intention, and writing further as follows:

15 [P]etitioners repeat the unsubstantiated accusations of ‘fabrications’ [by the
16 WCJ], again seek to re-litigate the same issues [as in earlier petitions], and
17 fail to demonstrate basic competency with respect to the rules of litigation
and conduct before the Workers’ Compensation Appeals Board.

18 The case returned to the trial level.

19 On December 18, 2014, the WCJ issued an Order To Pay Attorney Fees, directing Mr. Jimenez,
20 MRS and their client BCP to jointly and severally pay defendant’s attorney’s fees in the sum of
21 \$2,322.50, which was served December 24, 2014.

22 On or about January 13, 2015, Ms. Veitia on behalf of herself, MRS, BCP, and Mr. Jimenez,
23 petitioned for reconsideration of the WCJ’s December 18, 2014 order to pay attorney’s fees.

24 On March 12, 2015, the Appeals Board panel denied reconsideration for the reasons expressed by
25 the WCJ in her report, and writing further as follows:

26 The conduct exhibited by petitioners and hearing representative Veitia in
27 this case and in others is of significant concern to this panel, and leads us to
refer the concern to the Appeals Board for its consideration on whether to

1 remove or suspend the privileges of Medical Recovery Solutions, LLC,
2 Javier Jimenez and JoAnn Veitia from appearing in any proceedings before
3 the WCAB as provided in Labor Code section 4907. (2:9-13, footnote
4 omitted.)

5 The \$2,500.00 sanction imposed by the WCJ on October 21, 2013 was not further challenged, and
6 it was paid by Atlantis Health Management, Inc. check number 5813 on or about March 23, 2015.

7 The \$1,500.00 sanction by the Appeals Board on November 19, 2014 was not challenged, and it
8 was also paid on or about March 23, 2015 by BCP check number 2520.

9 There is no record of payment of the \$2,322.50 in defendant's attorney fees and costs as ordered
10 by the WCJ on December 18, 2014 as part of the sanctions in this case.

11 6) *Tate v. Los Angeles Unified School District (ADJ1298503/ADJ4673153)*: Mr. Jimenez
12 represented lien claimants Frontline Medical Associates (Frontline) and Firstline Health (Firstline) at a
13 lien conference on October 29, 2014, as their Labor Code section 5700 agent with representative
14 Controlled Health Management (CHM). At the conference, the WCJ noted that the liens were for
15 treatment provided outside of defendant's MPN and which was unauthorized. Mr. Jimenez stipulated
16 that his clients had no evidence to offer to rebut that point, and agreed to dismissal of the liens. The lien
17 claims were then ordered dismissed by the WCJ on that date based upon the written stipulations.

18 On November 14, 2014, Jerome Welch for CHM petitioned for reconsideration of the October 29,
19 2014 dismissal order on behalf of Frontline and Firstline, contending that Mr. Jimenez had not agreed to
20 the dismissal and that the Court acted without his consent. The petition included no proof of service
21 upon Mr. Jimenez.

22 The WCJ addressed the petition on page two of her November 20, 2014 Report And
23 Recommendation On Petition For Reconsideration and describes what, in fact, occurred at the
24 October 29, 2014 conference, as follows:

25 Defendant raised treatment outside the Medical Provider Network (MPN)
26 in response to the lien claims and provided 35 pages of documents
27 including copies of notice and documentation of treatment to Mr. Jimenez
along with a letter signed by applicant's attorney dated April 19, 2007
selecting treatment with a [MPN] physician. Mr. Jimenez advised the
Court he could list no documents for trial as exhibits relevant to entitlement
to treat outside the [MPN]. During discussion, Mr. Jimenez acknowledged

1 the potential for sanction should his client insist on trial without evidence,
2 advised the Court that he had discussed this issue with lien claimants and
3 thereafter, signed the stipulations...dismissing the lien[, which included
4 agreement to dismissal of the liens].

5 On January 15, 2015, the Appeals Board denied reconsideration of the October 29, 2014
6 dismissal order because there was no evidence that medical treatment outside of defendant's MPN was
7 compensable and because Mr. Jimenez agreed to the dismissal as shown by his signature on stipulations.
8 The case was returned to the trial level.

9 Upon return, defendant petitioned for recovery of attorney's fees as sanctions. On February 20,
10 2015, the WCJ issued a notice of intention to sanction Mr. Jimenez, CHM and their clients Frontline and
11 Firstline "pursuant" to the January 15, 2015 decision of the Appeals Board. The WCJ further ordered
12 defendant to present a claim for attorney's fees as sanctions.

13 On or about March 13, 2015, Jerome Welch for CHM, Frontline, and Firstline, presented an
14 objection to the WCJ's notice of intention to sanction. The objection disputed the Appeals Board's
15 January 15, 2015 decision upholding the WCJ's October 29, 2014 order dismissing the lien claims, but
16 describes no evidence showing that treatment was allowed outside of defendant's MPN. Instead, the
17 objection contains procedural arguments based upon two declarations signed by Mr. Jimenez under
18 penalty of perjury that are attached to the objection.

19 In the declaration marked Exhibit 1 and dated December 23, 2014, Mr. Jimenez acknowledged
20 that at the pretrial conference his clients had no evidence showing that treatment was allowed outside of
21 defendant's MPN. He further declared that he "did not agree to any Stipulations of any kind" at the
22 conference and that his signature on the stipulations was "acceptance of personal service of the
23 documents and nothing more."

24 In the declaration marked Exhibit 2 and dated March 13, 2015, Mr. Jimenez provides more details
25 concerning his claimed perception of events at the October 29, 2014 conference, and he reiterates that he
26 did not stipulate to anything at the conference and only signed the stipulations to show receipt of personal
27 service.

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1 On March 19, 2015, the WCJ ordered a \$2,000.00 sanction jointly and severally against
2 Mr. Jimenez and CHM, a second \$2,000.00 sanction jointly and severally against Mr. Jimenez and his
3 client Frontline and a third \$2,000.00 sanction jointly and severally against Mr. Jimenez and his client
4 Firstline. The WCJ also jointly and severally awarded defendant attorney's fees and costs against those
5 same individuals and entities in the amount of \$750.00 as part of the sanctions.

6 Algene Nash for CHM sought reconsideration of the WCJ's sanction order on behalf of CHM,
7 Frontline, and Firstline, arguing that Mr. Jimenez was at fault for not presenting evidence that would
8 have shifted the burden to defendant on the MPN defense, although the evidence was not identified. The
9 petition again included no proof of service upon Mr. Jimenez, and it was dismissed on June 4, 2015, for
10 that reason. However, the panel further noted that it would have affirmed the WCJ's orders based upon
11 her Report And Recommendation On Petition For Reconsideration, which states in pertinent part as
12 follows:

13 [O]n October 29, 2014, the petitioner's representative, Javier Jimenez,
14 advised the Court and the defendant that he could list no evidence relevant
15 to the threshold issue of entitlement to treat outside the defendants Medical
16 Provider Network...There was no challenge at the lien conference to the
17 existence of a valid Medical Provider Network for LAUSD by Mr. Jimenez
18 and no response or rebuttal offered to the document proffered as evidence
by defendant that applicant's attorney had, in fact, acknowledged the
Medical Provider Network and chosen a doctor therein and that the
applicant had been provided with required notices. Mr. Jimenez advised
the Court that there was no evidence available from his client of any
neglect or refusal to provide treatment. (pages 3-4)

19 The WCJ's March 19, 2015 sanction order was not further challenged and is final for all
20 purposes. The \$2,000 sanction jointly and severally imposed against Mr. Jimenez and CHM was paid by
21 CHM check number 2870 or about August 7, 2015. However, the WCJ's March 19, 2015 \$2,000.00
22 sanction against Mr. Jimenez and his client Firstline and the WCJ's March 19, 2015 \$2,000.00 sanction
23 against Mr. Jimenez and his client Frontline have not been paid. There also is no record of payment to
24 defendant of the \$750.00 in attorney's fees as ordered by the WCJ on March 19, 2015.

25 On August 10, 2015, Deputy Commissioner Dietrich notified Mr. Jimenez that the failure to
26 comply with the March 19, 2015 sanction orders was grounds for suspending or removing his privilege to
27 appear before the WCAB as a Labor Code section 5700 agent.

1 7) *Garcia v. Tri-State Employment Services (ADJ8558429)*: On or about May 5, 2015,
2 Mr. Jimenez signed a Notice Of Representation designating him as the representative of lien claimant
3 Kevin Aminian, M.D. The notice expressly referenced a continued lien conference concerning the
4 physician's lien for medical legal expenses that was scheduled for May 12, 2015. However, Mr. Jimenez
5 did not appear at the May 12, 2015 lien conference. As a consequence, the WCJ on that date issued a
6 Notice of Intention to Dismiss Dr. Aminian's lien with prejudice unless good cause was shown to the
7 contrary.

8 Mr. Jimenez, on behalf of Dr. Aminian, filed an Objection to Notice of Intent to Dismiss Lien on
9 May 27, 2015, stating that the failure to appear was due to the late receipt of an email and a calendaring
10 error. The WCJ determined that the objection did not set forth good cause for the failure to appear and
11 on May 29, 2015, issued an order dismissing the lien, which was served on July 8, 2015.

12 On July 28, 2015, Jessica Manion filed a Notice of Representation identifying Legal Service
13 Bureau as the representative of Dr. Aminian and requesting that copies of all future documents be served
14 on that entity. That notice includes no signature by the physician or evidence of service upon him, but
15 does include proof of service of a copy by Ms. Manion on Mr. Jimenez.

16 On July 30, 2015, Mr. Jimenez continued to act on behalf of Dr. Aminian by filing a petition for
17 reconsideration of the WCJ's order dismissing the lien claim, contending that the WCJ did not issue a
18 notice of intention to dismiss before ordering dismissal of the lien, and that lien claimant was denied due
19 process because the dismissal order did not specify whether lien claimant failed to appear for a lien
20 conference or a lien trial.

21 The Appeals Board granted the petition for reconsideration filed by Mr. Jimenez. Upon
22 reconsideration the panel determined that the petition contained the material misrepresentation of fact
23 that the WCJ did not issue a notice of intention to dismiss the lien before ordering its dismissal. Based
24 upon that fact, the Appeals Board panel issued a September 28, 2015 notice of intention to jointly and
25 severally sanction Mr. Jimenez and Dr. Aminian.

26 On October 16, 2005, Miriam Lampkin who was identified as the "Collection Manager" for
27 Dr. Aminian filed a response to the notice of intention on behalf of the physician who was identified as

1 acting in pro per. The response included no proof of service on Mr. Jimenez. It was argued in the
2 response, in part, that a delay in the filing in EAMS of the WCJ's May 12, 2015 notice of intention to
3 dismiss was the reason for the material misrepresentation of fact in the petition filed by Mr. Jimenez.
4 The Appeals Board panel determined that the response to the proposed sanction did not excuse the false
5 statements made in the petition for reconsideration filed by Mr. Jimenez on behalf of Dr. Aminian, and
6 on November 16, 2015 the panel ordered Mr. Jimenez and his client to jointly and severally pay a
7 sanction of \$2,500.00.

8 Payment of the November 16, 2015 sanction has not been received.
9

10 DISCUSSION

11 Sanctions have not caused Mr. Jimenez to conform his conduct to the Appeals Board's Rules of
12 Practice and Procedure (Appeals Board's Rules) and he continues to disregard his obligation to comply
13 with orders of the WCAB. The privilege of appearing before the WCAB as allowed by Labor Code
14 section 5700 is limited by Labor Code section 4907, which provides in full as follows:

15 (a) The privilege of any person, except attorneys admitted to practice in the
16 Supreme Court of the state, to appear in any proceeding as a representative
17 of any party before the appeals board, or any of its workers' compensation
18 administrative law judges, may, after a hearing, be removed, denied, or
19 suspended by the appeals board for either of the following:

20 (1) For a violation of this chapter, the Rules of the Workers' Compensation
21 Appeals Board, or the Rules of the Administrative Director.

22 (2) For other good cause, including, but not limited to, failure to pay final
23 order of sanctions, attorney's fees, or costs issued under [Labor Code]
24 section 5813.

(b) For purposes of this section, nonattorney representatives shall be held
to the same professional standards of conduct as attorneys.

25 It appears there is good cause to suspend the privilege of Mr. Jimenez to appear in any proceeding
26 as a representative of any party before the Appeals Board and WCJs because of the ongoing sanctionable
27 conduct and apparent willful disregard of WCAB orders. A pattern of disciplinary actions and repeated

1 misconduct, with no apparent attempt to reform, supports the suspension or removal of the privilege of
2 practicing before the Workers' Compensation Appeals Board. (*In Re Discipline, Suspension or Removal*
3 *of the Privilege of Louis Moran to Appear in Proceedings Before the Board* (1980) 45 Cal.Comp.Cases
4 519 (Appeals Board en banc) (*Moran*); *In Re Daniel Escamilla* (2013) 78 Cal.Comp.Cases 134 (Appeals
5 Board en banc) (*Escamilla*).

6 In addition, failing to comply with an order or regulation of the WCAB, including an order to pay
7 a sanction, is an interference with the judicial process that provides good cause for suspending or
8 removing the privilege to appear before the WCAB. (Lab. Code, § 4907; *In the Matter of John Hoffman*
9 71 Cal.Comp.Cases 609, 622 (significant panel decision); *Moran, supra*; *Escamilla, supra*; cf. *Reiner*
10 *Discipline* 2014 Cal. LEXIS 10230 (Cal. Sept. 10, 2014).) While several of the ordered sanctions have
11 been paid, the December 2, 2014 \$2,500.00 sanction in ADJ2826351 (*Nunez*), the two March 19, 2015
12 \$2,000.00 sanctions in ADJ1298503/ADJ4673153 (*Tate*), and the November 16, 2015 \$2,500.00
13 sanction in ADJ8558429 (*Garcia*) have not. In addition, there has been no showing of compliance with
14 the December 18, 2014 order to pay defendant \$2,322.50 for its attorney's fees and costs in ADJ3319996
15 (*Beltran*), and no showing of compliance with the March 4, 2013 order to pay defendant \$3,500.00 for its
16 attorney's fees in ADJ3049738 (*Torres*).

17 The repeated improper conduct of Mr. Jimenez as described above has placed an unreasonable
18 burden on opposing parties and has wasted limited judicial resources. Mr. Jimenez's failure to change
19 his conduct notwithstanding the sanctions that have been imposed appears to be contrary to Labor Code
20 section 5813 and California Code of Regulations, title 8, section 10561, and in willful disregard of the
21 Appeals Board's Rules. This ongoing conduct compels us to consider suspension of the privilege to
22 appear in any proceeding as a representative of any party before the Appeals Board or any WCJs
23 pursuant to Labor Code section 4907.

24 Acting as a hearing representative and appearing before the Appeals Board and WCJs constitutes
25 the performance of legal services. (*Eagle Indemn. Co. v. Industrial Acc. Com. (Hernandez)* (1933) 217
26 Cal. 244 [19 I.A.C. 150].) Suspension of the privilege to appear before the Appeals Board and WCJs
27 prohibits the performance of such legal services, including but not limited to the following:

1 “(1) filing pleadings reflecting that the [individual] is ‘appearing’ on behalf
2 of another...;

3 (2) negotiating and settling claims on behalf of a client with third parties...;

4 (4) appearing at depositions on behalf of another...; and

5
6 (5) engaging in discovery or responding to discovery requests...” (*In the*
7 *Matter of John Hoffman* 71 Cal.Comp.Cases 609, 622 (significant panel
8 decision) [bracketed material substituted], citing Rules Prof. Conduct, rule
9 1-311(B)(3) and rule 1-311(B)(4); *Birbrower, Montalbano, Condon &*
10 *Frank v. Superior Court* (1998) 17 Cal.4th 119, 127 [949 P.2d 1, 70
11 Cal.Rptr.2d 304]; *Morgan v. State Bar* (1990) 51 Cal.3d 598, 603 [797
12 P.2d 1186, 274 Cal.Rptr. 8]; *Benninghoff v. Superior Court* (2006) 136
13 Cal.App.4th 61, 69 [38 Cal.Rptr.3d 759]; *Gentis v. Safeguard Business*
14 *Systems, Inc.* (1998) 60 Cal.App.4th 1294, 1308 [71 Cal.Rptr.2d 122];]; *Ex*
15 *Parte McCue* (1930) 211 Cal. 57, 68 [293 P. 47] c.f. *Watung v. Riverside*
16 *Beauty Supply* (2003) 68 Cal.Comp.Cases 1602 (Appeals Board en banc);
17 *Moran, supra*; *Crumpton, supra*.)

18 Mr. Jimenez is entitled to due process and Labor Code section 4907 allows for a hearing before
19 the privilege to appear before the WCAB is suspended. Accordingly, and for the reasons set forth above,
20 notice is hereby given that the privilege of Javier Jimenez to appear in any proceeding as a representative
21 of any party before the Appeals Board or any of its WCJs will be suspended for 180 days pursuant to
22 Labor Code section 4907 unless within 20 days from the date of this notice, good cause is shown in
23 writing why this action should not be imposed and/or good cause is shown in writing within that time
24 why this matter should be set for further hearing.

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1 For the foregoing reasons, the following notice is given:

2 **NOTICE IS HEREBY GIVEN** that the Appeals Board intends to suspend the privilege of Javier
3 Jimenez to appear in any proceeding as a representative of any party before the Appeals Board, or any of
4 its workers' compensation administrative law judges for one hundred eighty (180) days unless good
5 cause is shown in writing **within twenty (20) days** from the date this Notice Of Intention why this action
6 should not be taken and/or good cause is shown in writing within that time why this matter should be set
7 for further hearing.

8 **NOTICE IS FURTHER GIVEN** that if there has not been compliance with each of the above-
9 described sanction orders upon the expiration of any suspension that is imposed, the suspension shall
10 continue until there is full compliance with those sanction orders.

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