

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

DOREEN ERHAHON, *Applicant*

vs.

**KAISER FOUNDATION HOSPITAL, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

***Real Parties in Interest:*
Med-Legal, LLC**

**Adjudication Number: SAU10439563
San Bernardino District Office**

**OPINION AND DECISION AFTER RECONSIDERATION;
OPINION AND ORDER DENYING PETITION FOR REMOVAL**

We previously granted the “Petition for Reconsideration, or in the Alternative, for Removal of Order Dated February 10, 2021 Consolidating Cases for Discovery Purposes” (Petition), filed by real party in interest Med-Legal, LLC, in order to further study the legal and factual issues raised by the Petition and to enable us to reach a just and reasoned decision. This is our opinion and decision after reconsideration and/or removal.

Med-Legal, LLC (Med-Legal) sought reconsideration or in the alternative, removal, of the “Order of Consolidation and Stay, Designation of Master File and Notice of Hearing” (Consolidation Order), issued on February 10, 2021 by a workers’ compensation administrative law judge (WCJ).¹ The Consolidation Order granted the Amended Petition for Consolidation and Stay (Consolidation Petition), filed by defendant Kaiser Foundation Hospital (Kaiser) to consolidate 57 cases for purposes of discovery as to 42 lien claims by Med-Legal, and to stay Med-Legal’s collection efforts in those cases pending completion of the discovery. The WCJ granted the Consolidation Petition “for determination of the issues raised” in the Consolidation Petition,” and stayed the adjudication of Med-Legal’s claims in those cases. The WCJ specifically found that

¹ The Consolidation Order was issued by William E. Gunn based on a delegation of authority from the Chief Judge of the Department of Workers’ Compensation. (See Consolidation Order, p. 1.)

the consolidation and stay applied only to Med-Legal's claims, and did not impact the adjudication of the merits of the underlying claims for workers' compensation benefits. The WCJ designated the above captioned matter as the master file for the consolidation; assigned WCJ Jody Eaton as the special adjudication unit (SAU) judge for the consolidation; and, ordered all documents regarding the consolidation to be filed at the San Bernardino district office. A status conference was set for March 10, 2021 with WCJ Jody Eaton.

Med-Legal contends that the Consolidation Order issued without affording Med-Legal an opportunity to be heard; failed to discuss the factors of WCAB Rule 10396 (Cal. Code Regs., tit. 8, § 10396) in a meaningful way; and, was not based on substantial evidence. Med-Legal also contends that the Consolidation Order will cause Med-Legal substantial prejudice and irreparable harm because it will be unable to collect on the consolidated liens; it will be forced to incur more costs to continue to provide services in the consolidated cases without prospect of timely recovery from Kaiser; and, that its business relationship with attorneys in *all* Kaiser cases will be negatively affected. Further, Med-Legal contends that non-IBR review of its claims is a sufficient process for Kaiser to object to its claims compared to this consolidation which will stall 57 cases while Kaiser conducts discovery unrelated to the underlying claims for workers' compensation benefits; and, which will force Med-Legal to establish its entitlement to payment on each lien during consolidation, and then duplicate those efforts in each case after the consolidation is dismissed. Finally, Med-Legal contends that reconsideration will not be an adequate remedy because the costs and chilling effect of the Consolidation Order will already have been incurred.

Kaiser filed an answer to the Petition, and contends that the Consolidation Order is for purposes of discovery in a limited number of cases, and is therefore not a final order, as was also found in *Landmark Med. Mgmt. v. Workers' Comp. Appeals Bd. (Ortiz)* (2016) 81 Cal.Comp.Cases 220 [2016 Cal.Wrk.Comp. LEXIS 9]; that the Consolidation Order affects only 42 liens in 57 cases, and does not affect Med-Legal's business relations in other cases; that there has been no violation of due process because the Consolidation Order is an interlocutory procedural order consolidating and temporarily staying a limited number of liens for purposes of discovery; and, thus, does not "dispense with rights to monetary recovery" as alleged by Med-Legal.

The WCJ filed a Report and Recommendation (Report) reiterating that the Consolidation Order was issued for purposes of discovery in a limited number of cases because Kaiser provided evidence that Med-Legal "stymied all efforts to conduct discovery related to its billing practices

in individual claims by dismissing or forfeiting individual bills to avoid discovery.” (Report, p. 2.) The WCJ states that the consolidation and stay of these limited number of liens will not prejudice or harm Med-Legal, but rather, provide efficient utilization of judicial *and party* resources by addressing issues common to all the consolidated liens in one proceeding, versus litigating the issues multiple times with the risk of inconsistent orders and decisions. (Report, p. 8.)

We have reviewed the record in this case, the allegations of the Petition and the Answer, as well as the contents of the Report. Based on the reasons set forth in the Report, which we adopt and incorporate herein (except for section F.),² and for reasons set forth below, it is our decision after reconsideration to affirm the Consolidation Order because the Consolidation Order is an interlocutory, procedural, non-final order. We also deny removal because Med-Legal sustained no severe prejudice or irreparable harm, and reconsideration remains a viable remedy should any final orders issue in this consolidated matter.

I.

As an initial matter, it is true that the Consolidation Order issued without an opinion on decision. The WCJ is required to “make and file findings upon all facts involved in the controversy...” (Lab. Code, § 5313.) As explained in *Hamilton, supra*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

However, a WCJ’s report may cure any technical or alleged defect in satisfying the requirements of Labor Code section 5313. (*City of San Diego v. Workers’ Comp. Appeals Bd. (Rutherford)* (1989) 54 Cal.Comp.Cases 57 (writ den.); *Smales v. Workers’ Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 1026 (writ den.).)

Here, any deficiency in the Consolidation Order was cured by the WCJ’s Report wherein he detailed the procedural and substantive grounds for consolidating and staying the liens at issue herein.

² Section F pertains to orders for which Med-Legal has not sought reconsideration.

II.

Next, the Consolidation Order is not a final order. A petition for reconsideration is only properly taken from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) “An order, decision, or award of the WCAB or workers’ compensation judge is final for purposes of a petition for reconsideration where it determines any substantive right or liability of those involved in the case.” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180 [260 Cal.Rptr. 76] quoting *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661, 665]; see also, *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410, 413].) In other words, an order is “final” when it determines a “threshold” issue fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650, 650-651, 655-656].)

Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian, supra*, 81 Cal.App.4th at p. 1075 [65 Cal.Comp.Cases at p. 655] (“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’”); *Rymer, supra*, 211 Cal.App.3d at p. 1180 (“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”); *Kaiser Foundation Hospitals (Kramer), supra*, 82 Cal.App.3d at p. 45 [43 Cal.Comp.Cases at p. 665] (“[t]he term [‘final’] does not include intermediate procedural orders”).)³ Such interlocutory decisions include pre-trial orders regarding evidence, discovery, trial setting, venue, and similar issues.

Here, the Consolidation Order is an interlocutory, procedural order, consolidating and staying a limited number of Med-Legal liens *in order to conduct discovery* on issues common to those liens. The Consolidation Order only consolidates and stays 42 Med-Legal lien claims in 57 cases, and contrary to Med-Legal’s allegations, specifically *excludes* the underlying claims for

³ As further explained in *Maranian*: “A threshold issue is an issue that is basic to the establishment of the employee’s rights to benefits, such as the territorial jurisdiction of the Board, the existence of the employment relationship, and statute of limitations issues. Likewise, the term final order includes orders dismissing a party, rejecting an affirmative defense, granting commutation, terminating liability, and determining whether the employer has provided compensation coverage.” (*Maranian, supra*, 81 Cal.App.4th at 1075; see *Pointer, supra*, at pp. 533, 537, fn. 4.) Such issues, if finally determined, “may avoid the necessity of further litigation” (*id.* at p. 534) and hence render workers’ compensation litigation more expeditious and inexpensive. (*Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [210 Cal.Rptr.3d 101].)

workers' compensation benefits from the consolidation and stay. The Consolidation Order did not determine the rights of Med-Legal to recover, nor the liability of Kaiser as to the liens. Therefore, the Consolidation Order contains no final orders determining the substantive rights or liabilities of Med-Legal or Kaiser as to the consolidated and stayed liens. As stated by the WCJ:

A consolidation and stay of cases regarding the Med-Legal liens has been ordered, not a denial of the liens on their merits, nor has the Court's order impacted the ability of Med-Legal to carry on their business as they argue. Med-Legal is free to continue to operate, file and collect on liens in other cases, file amended liens in these consolidated cases, and may still use the non-IBR medical legal process to collect on bills for other services.

The substantive rights and liabilities of Med-Legal are undisturbed and the underlying merits of the liens were not addressed in the Order. (Report, pp. 3-4.)

Moreover, consolidation for purposes of discovery is not uncommon in workers' compensation procedures, and such orders are normally found to be interlocutory procedural orders, i.e., not final orders. (See eg., *Ortiz, supra.*) We therefore affirm the Consolidation Order insofar as Med-Legal sought reconsideration of an interlocutory procedural order, i.e., a non-final order.⁴

III.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) The Appeals Board will grant removal only if the petitioner shows that substantial 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, Med-Legal alleges that the Consolidation Order "raises the specter of a complete stoppage of Med-Legal's business with no due process..." and that "WCJs are not free to dispense

⁴ We note that the filing of a petition for reconsideration removes jurisdiction over the matter from the WCJ and halts all proceedings at the trial level until the petition is resolved. (Cal. Code Regs., tit. 8, § 10961.) Furthermore, improperly filed petitions for reconsideration waste the judicial resources of the Workers' Compensation Appeals Board. It is important that parties adequately examine which remedy is proper prior to filing a petition.

with rights to monetary recovery absent due process.” (Petition, p. 8.) If true, this would most likely support removal. However, this is not true, and Med-Legal’s allegations border on misrepresentation.

First, and of most significance, Med-Legal was served with the Consolidation Petition, and was able to file its Opposition to the Amended Petition to Consolidate (Opposition). (Consolidation Petition, Proof of Service; Opposition.) The WCJ affirms that the Opposition was considered before the Consolidation Order was issued:

Med-Legal took advantage of due process. They were served with the Petition giving them notice and submitted an objection, taking advantage of the opportunity to be heard. The objection was reviewed and considered by this Court and over ruled. Due process occurred because Med-Legal was given notice and an opportunity to be heard which they took advantage of. Med-Legal argues they should be allowed to call and cross examine witnesses, introduce and inspect exhibits and offer evidence in rebuttal. With no authority specifically directing the procedure to follow on SAU consolidations, (excepting those under LC 139.21(e)-(j)), the Court is of the opinion that conducting a full adversarial hearing to rule on disputed facts and issues only to decide whether the liens should be consolidated would defeat the purpose of consolidating cases for adjudication and cause undue delay not warranted by the procedural order issued. Med-Legal would have the Board hear and decide the merits of the underlying disputed facts and issues, before a decision to consolidate is made, for purposes of determining whether consolidation should occur. This would be a waste of time and judicial resources. (Report, p. 9; see Consolidation Order, p. 1.)

Next, given that Med-Legal has yet to prove entitlement to recover on any of the consolidated and stayed claims, no potential rights it has in those claims has yet vested. (See *Landmark Med. Mgmt. v. Workers’ Comp. Appeals Bd. (Ortiz)* (2016) 81 Cal. Comp. Cases 220, 221 [2016 Cal. Wrk. Comp. LEXIS 9].) As a result, the Consolidation Order could not possibly have infringed on Med-Legal’s property rights in those claims. Given that the Consolidation Order was only issued as to 42 liens in 57 cases, Med-Legal’s allegation that the Consolidation Order will somehow cause interference with all of its business is unfounded. Moreover, Med-Legal presents no evidence to support its allegations related to any “chilling” effect on its business relationships with other attorneys in other cases.

In addition, we do not agree with Med-Legal that the Consolidation Order somehow interferes with its right to seek monetary recovery in *all* cases, including the 47 lien claims subject to the Consolidation Order. Again, the express terms of the Consolidation Order was issued *for*

purposes of discovery on questions of fact and law related to Kaiser’s objection to the consolidated claims. In addition, while discovery on the issues presented by Kaiser related to potential fraudulent billing may lead to some case specific production, there is no order that Med-Legal sustain any sort of burden of proof related to its liens during the consolidated discovery proceedings. Med-Legal will *not* be required to duplicate discovery and production efforts in the future – after all, one of the reasons the Consolidation Order issued was to *prevent* duplication of discovery efforts in each of these 57 cases.

Finally, Med-Legal contends that the discovery for which the liens were consolidated should have been conducted and the outstanding questions of fact and law determined *prior to any* order of consolidation. We agree with the WCJ that this would be putting the cart before the horse, and more significantly, would defeat the purpose of consolidating these liens to conduct discovery on factual and legal issues common to all the liens at issue. Kaiser requested consolidation in a limited number of cases to conduct discovery related to its allegations that the claims asserted are part of a pattern and practice of fraudulent billing by Med-Legal. (Consolidation Petition, p. 10; see “Declaration of Alicia Long in Support of First Amended Petition for Consolidation and Stay of Med-Legal Claims” (Long Declaration).) Kaiser submitted a sworn declaration detailing how Med-Legal has obstructed Kaiser’s efforts to conduct corporate discovery related to its allegations of fraudulent billing practices in at least 10 cases. (*Id.*, p. 9; see “Declaration of Betsey Gillette RE: Discovery Efforts in Cases Involving Med-Legal, LLC, in Support of First Amended Petition for Consolidation and Stay” (Gillette Declaration).)

There can be no dispute that Kaiser has the right to defend claims asserted by Med-Legal, and indeed, has the affirmative burden of proof to establish fraud in defense of Med-Legal’s claims. (Lab. Code, § 5705.) At least one Appellate Court has found that a workers’ compensation defendant has the constitutional right to petition the Workers’ Compensation Appeals Board (WCAB) to consolidate and “stay processing of workers’ compensation bills and lien claims” based on allegations of illegal business practices. (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464 [71 Cal.Comp.Cases 210] (*Premier* [Anti-SLAPP motion against lien claimants granted in favor of defendants.]⁵)

⁵ In *Premier*, lien claimants filed a complaint against defendants who petitioned for and were granted consolidation and stay of lien claims in order to determine common issues of illegal billing practices. (*Premier, supra*, 136 Cal.App.4th at p. 469-470.) “The gravamen of the complaint is that after Premier submitted plaintiff physicians’ bills to defendants for payment, and filed liens in numerous workers’ compensation cases before the WCAB, defendants

Indeed, the circumstances of this matter are similar to those in *Harvard Surgery Ctr. v. Workers' Compensation Appeals Bd. (Yero)* (2005) 70 Cal.Comp.Cases 1354 [2005 Cal.Wrk.Comp. LEXIS 239] (writ den.). In *Yero*, the WCJ described consolidation for purposes of common discovery as the usual and most efficient procedure prior to consideration of consolidation for purposes of adjudicating common issues of law and fact:

“ . . . Normally in these very complex consolidations the Court follows the following procedure. First, the Court will grant consolidation for discovery purposes only. This is because the parties are not sure of the exact issues until discovery is complete. If the trial court in the initial petition sees there is a good possibility that consolidation may be warranted and that there are common issues of law and fact as to all cases for discovery, the Petition to Consolidate for discovery purposes will be granted. Once discovery is complete, then the issues would be framed. Once the issues are framed, and known, the trial court can determine whether the cases should be consolidated or tried separately. That was the procedure that was followed in this case. Defendants have raised very complex issues that they claim are common to all the cases. There are numerous depositions to be taken and much discovery ahead. The rulings and problems in these areas would be the same as to all cases. The numerous issues raised by defendants as to the lien claimant's conduct shows the possibility that there are common issues of law and fact that would be apparent as to all the cases, once the issues are framed. However, whether these cases should or shouldn't finally be consolidated, cannot be determined until discovery is complete and the matter is set for hearing on the issue of consolidation. The cases were therefore consolidated at this time for discovery purposes only...” (*Yero, supra*, 70 Cal.Comp.Cases at p. 1328.)⁶

Accordingly, it is our decision after reconsideration to affirm the Consolidation Order given that Med-legal sought reconsideration of an interlocutory procedural order, i.e., not a final order. We also deny removal because Med-Legal sustained no severe prejudice or irreparable harm, and reconsideration remains a viable remedy should any final orders issue in this consolidated matter.

collectively conspired to contest, delay, and avoid payment of these bills and liens.” (*Id.*, at p. 470.) The Court in *Premier* granted defendants anti-SLAPP (strategic lawsuit against public participation) motion.

⁶ See also, *Ortiz, supra*, 81 Cal. Comp. Cases at p. 222 [“Bringing these cases together for discovery purposes under one judge and assisting parties in compliance with the statutes makes eminent sense and enables a more efficient utilization of departmental resources by grouping same parties with same facts for discovery and possibly eventual trial.”].)

For the foregoing reasons,

IT IS ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the Order of Consolidation and Stay, Designation of Master File and Notice of Hearing issued on February 10, 2021 is **AFFIRMED**.

IT IS FURTHER ORDERED that Med-Legal, LLC's Petition for Removal of the Order of Consolidation and Stay, Designation of Master File and Notice of Hearing issued on February 10, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 3, 2021

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

**MED-LEGAL, LLC
HOLLAND & KNIGHT LLP
LAW OFFICE OF BRISSMAN & NEMAT
MICHAEL SULLIVAN & ASSOCIATES LLP
KNOX RICKSEN LLP**

AJF/abs

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION OR IN THE ALTERNATIVE REMOVAL**

**I
INTRODUCTION**

Petitioner Med-Legal LLC, (Med-Legal) filed a verified and timely Petition for Reconsideration or in the Alternative Removal on Mar. 2, 2021 of the Order of Consolidation and Stay and Designation of Master File and Notice of Hearing dated Feb. 10, 2021.

Med-Legal argues:

- (1) The Order makes no findings supporting the decision to grant consolidation;
- (2) The Order is not justified by the evidence, [particularly where the party moving for consolidation did not offer any argument or evidence on multiple factors supporting consolidation;
- (3) The Order will result in significant prejudice to Med-Legal;
- (4) The Order will result in irreparable harm; and
- (5) The significant prejudice and irreparable harm created by the Order cannot adequately be remedied upon reconsideration of any final order, decision or award in the underlying cases.

It is recommended the Petition for Reconsideration or in the Alternative Removal be denied.

**II
FACTS**

On Jan. 6, 2021 Defendant Kaiser Foundation Hospital (Kaiser) filed a Petition for Consolidation and Stay of Med-Legal claims, and on Jan. 7, 2021 an Amended Petition for Consolidation and Stay of Med-Legal Claims, for 57 cases. Kaiser alleged 1676 invoices had been submitted by Med-Legal for copy services in 170 different cases, and that serious questions had arisen regarding the legitimacy of the charges including whether the services had been requested or performed. The Petition stated that testimony from an applicant's attorney showed that Med-Legal billed for services neither requested nor authorized in at least one claim. Kaiser also alleged Med-Legal had stymied all efforts to conduct discovery related to its billing practices in individual claims by dismissing or forfeiting individual bills to avoid discovery. Kaiser filed the Petition in order to conduct discovery in 57 cases with liens and staying the collection efforts on 1676 pending invoices until discovery is complete.

On Jan. 25, 2021 Med-Legal filed an Objection and Opposition to the Amended Petition for Consolidation and Stay of Med-Legal Claims. Med-Legal argues the Board should deny the request for consolidation because it ran counter to the very standard governing consolidation and failed for a lack of competent evidence and legal support. Med-Legal argues the factors found in Cal. Code Regs., tit. 8, § 10396 have not been met because Kaiser's factually flawed analysis is a misrepresentation and is intentionally misleading, revealed no common issues of law or fact, failed to address all of the factors regarding consolidation, and will cause tremendous prejudice and

burden to Med-Legal. Med-Legal disputed the facts alleged by Kaiser and made a series of evidentiary objections to the declarations submitted by Kaiser in support of their Petition. An Order of Consolidation and Stay, Designation of Master File and Notice of Hearing for 47 of the identified cases, (which appears to be in error by not including all 57 cases in the order), was issued by the Court on Feb. 10, 2021, noting that the Objection by Med-Legal had been reviewed, and that based on Cal. Code Regs., tit. 8, § 10396 the objection was over-ruled. The order noted the assigned WCJ may make further orders as appropriate regarding the order of consolidation and stay. The Order also designated this case, SAU10439563, as the Master File and ordered the parties to use only the designated case number when referencing the consolidated matter. The matter was then set for a status conference with WCJ Eaton in San Bernardino on Mar. 10, 2021.

On Feb. 19, 2021 Med-Legal filed a Petition for Automatic Reassignment to Another Worker's Compensation Judge and requested a change of venue in the same Petition.

On Mar. 2, 2021 Kaiser objected to the Petition for Automatic Reassignment to Another Workers' Compensation Judge.

III

DISCUSSION

A. RECONSIDERATION IS NOT APPROPRIATE

Reconsideration may be taken only from a final order, decision or award and not a determination of a threshold issue. A final order determines a substantive right or liability of a party. In this case, the Order of Consolidation and Stay, Designation of Master File and Notice of Hearing is not a final order, decision or award and is dispositive of a threshold issue only. It has not determined a substantive right or liability of the parties. Med-Legal makes extensive argument that reconsideration is appropriate because the order impacts their substantive rights as they will be unable to collect on the liens filed in the consolidated cases. A consolidation and stay of cases regarding the Med-Legal liens has been ordered, not a denial of the liens on their merits, nor has the Court's order impacted the ability of Med-Legal to carry on their business as they argue. Med-Legal is free to continue to operate, file and collect on liens in other cases, file amended liens in these consolidated cases, and may still use the non-IBR medical legal process to collect on bills for other services.

The substantive rights and liabilities of Med-Legal are undisturbed and the underlying merits of the liens were not addressed in the Order. Reconsideration of an order of consolidation and stay of liens was held to be inappropriate in Landmark Medical Management, LLC v. WCAB (Ortiz) (2016) 81 CCC 220 (writ denied). Of note is the fact that although the underlying ADJ cases have been consolidated into an SAU master file allowing the SAU consolidation to proceed independently of the underlying ADJ cases, the Order is clear that the merits of the underlying claims for workers' compensation benefits are not addressed in this consolidation.

Reconsideration should be denied as it is not the appropriate remedy.

B. NO FINDINGS WERE NECESSARY TO BE INCLUDED IN THE ORDER

Med-Legal claims the Order does not discuss the factors of Cal. Code Regs., tit. 8, § 10396 in any meaningful way, specifically the failure to address the mandatory factors that shall be considered in light of their argument.

Cal. Code Regs., tit. 8, § 10396 states the following:

(a) Consolidation of two or more related cases, involving either the same injured employee or multiple injured employees, rests in the sound discretion of the Workers' Compensation Appeals Board. In exercising that discretion, the Workers' Compensation Appeals Board shall take into consideration any relevant factors, including but not limited to the following:

- (1)** Whether there are common issues of fact or law;
- (2)** The complexity of the issues involved;
- (3)** The potential prejudice to any party, including but not limited to whether granting consolidation would significantly delay the trial of any of the cases involved;
- (4)** The avoidance of duplicate or inconsistent orders; and
- (5)** The efficient utilization of judicial resources.

Consolidation may be ordered for limited purposes or for all purposes.

(b) Consolidation may be ordered by the Workers' Compensation Appeals Board on its own motion, or may be ordered based upon a petition filed by one of the parties. A petition to consolidate shall:

- (1)** List all named parties in each case;
- (2)** Contain the adjudication case numbers of all the cases sought to be consolidated, with the lowest numbered case shown first;
- (3)** Be filed in each case sought to be consolidated; and
- (4)** Be served on all attorneys or non-attorney representatives of record and on all non-represented parties in each case sought to be consolidated.

(c) Any order regarding consolidation shall be filed in each case to which the order relates.

(d) If consolidation is ordered, the Workers' Compensation Appeals Board, in its discretion, may designate one case as the master file for exhibits and pleadings. If a master file is designated, any subsequent exhibits and pleadings filed by the parties during the period of consolidation shall be filed only in the master case. However, all pleadings and exhibit cover sheets filed shall include the caption and case number of the master file case, followed by the case numbers of all of the other consolidated cases.

(e) All relevant documentary evidence previously received in an individual case shall be deemed admitted in evidence in the consolidated proceedings and shall be deemed part of the record of each of the several consolidated cases.

(f) When cases are consolidated, joint minutes of hearing, summaries of evidence, opinions, decisions, orders, findings or awards may be used; however, copies shall be filed in the record of proceedings of each case.

Despite the assertions of Med-Legal, the Court did consider the 5 factors of Cal. Code Regs., tit. 8, § 10396(a) in making its decision. There are common issues of fact or law as the cases all have a dispute as to whether the services billed by Med-Legal were ordered or performed. The law regarding the issues is the same in all the cases. The issues are complex, as they appear to involve extensive discovery and factual and legal analysis that is not ordinarily within the day to day decision making of a WCJ. Prejudice to the parties was considered and none was apparent as this is not a final order adjudicating the merits of the filed liens. Also the number of liens stayed is relatively small, and Med-Legal continues to have a remedy for collection for other services through the non-IBR medical legal process. Delay of the trial of any of the underlying ADJ cases was also considered, but there is no delay because this consolidation is an SAU consolidation and the underlying ADJ cases will continue independently, and a delay, if any, of the litigation of the liens involved is a necessary part of the consolidation and would occur on an individual basis due to objection by Defendant, because Kaiser maintains the right to object to payment on the liens and conduct discovery whether the liens are consolidated or not. The benefit to all parties is a consolidation may actually hasten the resolution of the liens because discovery and litigation occurs once, rather than on multiple occasions over a longer span of time.

Prejudice, if any, to Med-Legal is actually small. Only 47 cases were ordered consolidated to address the liens and bills. Not every Med-Legal lien on file in EAMS was included. Consolidation is warranted to avoid duplicate or inconsistent orders, as with multiple cases with the same issues this becomes a factor especially with multiple cases in different locations. Consolidation is warranted to allow the efficient utilization of judicial resources. This issue is particularly apparent here under the procedural history of this case. In the consolidation order, all parties were ordered to reference only the SAU master file number when filing documents. Med-Legal apparently ignored this and filed their documents in each underlying ADJ case. This has resulted in a plethora of duplicate tasks and documents requiring this Court and others to review. This is exactly what consolidation seeks to avoid. In one instance the subsequently filed request to change venue was addressed by another PWCJ after having been filed in an underlying ADJ case in that venue. (ADJ6670508) This even resulted in Med-Legal writing an explanatory letter to the PWCJ. This could easily have resulted in duplicate or inconsistent orders and certainly wasted judicial resources. Consolidation and the order to file documents in the consolidated case is warranted specifically to prevent the type of confusion and duplicate tasks created by Med-Legal. Med-Legal's argument that the factors of consolidation in Cal. Code Regs., tit. 8, § 10396 haven't been met is specious at best. Their own conduct is an example of the problems consolidation seeks to prevent. The objection to the consolidation should continue to be overruled.

Labor Code § 5313 requires findings to be made on all facts involved in a controversy after submission of the matter for decision. This matter was never submitted for decision and thus specific findings regarding the factors warranting consolidation in Cal. Code Regs., tit. 8, § 10396 were not itemized by the Court in the Order, nor was a summary of evidence made. The factors were considered by the Court including the objections and argument made by Med-Legal, prior to issuance of the Order.

Med-Legal argues they briefed all 5 factors identified in Cal. Code Regs., tit. 8, § 10396 and since Kaiser didn't discuss all 5 of the factors, they should prevail on their objection. Kaiser specifically addressed four out of 5 of the factors in their Petition. The failure to address all 5 specifically listed factors is not fatal to Kaiser's Petition, nor is the failure of the Court to

specifically itemize, discuss and make findings on each factor in the order fatal to the order. All 5 factors were met, warranting consolidation.

C. THE ORDER IS JUSTIFIED BY THE EVIDENCE.

Med-Legal argues the order is not justified by the evidence as they set forth in painstaking detail how the supposed evidence offered in support of the Petition is factually inaccurate, misleading, speculative and rank conjecture and that the order doesn't address why the evidence shows that consolidation is warranted.

Consolidation is a procedural device to eliminate the problems illuminated by the factors listed in Cal. Code Regs., tit. 8, § 10396(a). Consolidation brings together multiple cases for adjudication of common issues of law and fact to prevent multiple decisions addressing the same issues and evidence, and allow judicial resources to be used efficiently. An ancillary result is that consolidation allows efficient utilization of a parties' resources, rather than costly duplicate efforts.

When a petition for consolidation is reviewed the only evidence before the reviewing Court is usually in the petition and objections. If the Court were to make an in depth inquiry and adjudication into the merits of the evidence and objections from both parties upon the initial filings as insisted upon by Med-Legal, and prior to ordering the consolidation, it would only create more delay and waste judicial resources. The non-consolidated cases would proceed independently creating the problems the consolidation regulation seeks to eliminate. This is why a stay of the consolidated cases is also ordered during the pendency of the consolidation proceedings to prevent the independent adjudication of the cases at issue.

Med-Legal submitted evidentiary objections to support their objection to the consolidation. What Med-Legal misses is the Board is issuing an order of consolidation to organize cases for adjudication to determine the underlying disputed facts and issues, and specifically the facts and issues they dispute. The evidentiary objections by Med-Legal go more towards the weight of the evidence than to the admissibility of the evidence because the Board is not bound by the common law or statutory rules of evidence and procedure. This doesn't mean the objections of Med-Legal should be ignored, but in light of the nature of a consolidation, the Court is more concerned with issuing a consolidation order that does not effect the substantive rights of the parties and still allows the issues raised by Kaiser and Med-Legal to be addressed in depth in an orderly fashion when the merits are considered in the matter, and not at this point in the ligation.

As an example of the inquiry that would be necessary if the method argued by Med-Legal were used, Kaiser has alleged specific detailed facts to support their Petition, (Petition for Consolidation P3:L23-P4L11). Med-Legal disputed these factual allegations, (Petition for Reconsideration P3:L8-11). This conflict would have to be adjudicated. The problem for the reviewing Court is the disputed facts also go to the heart of the allegations made by Kaiser as to the merits of the liens at issue. Consolidation as a procedural device should be ordered to allow the disputed facts and objections to be determined in an organized manner and not in individual cases by separate WCJs all over the state. Contrary to Med-Legal's claims, consolidation will allow their arguments to be herd and considered in depth and ruled upon. Consolidation allows the efficient utilization of judicial resources by addressing the disputed issues once and not multiple times with the risk of inconsistent orders or decisions.

The evidence presented in this matter is factual allegations by Kaiser that appear to support consolidation for adjudication of the underlying facts and issues, objections were made that relate

more to the merits of the underlying factual allegations than the basis for ordering a consolidation. The end result is a factual dispute that needs to be adjudicated. Based on this the evidence does support the consolidation order, but whether the evidence supports payment or non-payment of the liens remains to be determined as the consolidation order does not address this issue.

D. SIGNIFICANT PREJUDICE AND IRREPARABLE HARM HAS NOT OCCURRED.

Med-Legal argues the Order will result in significant prejudice and irreparable harm, arguing removal is not warranted because the order stays liens in 57 cases and freezes collection efforts with no due process. Med-Legal took advantage of due process. They were served with the Petition giving them notice and submitted an objection, taking advantage of the opportunity to be heard. The objection was reviewed and considered by this Court and over ruled. Due process occurred because Med-Legal was given notice and an opportunity to be heard which they took advantage of. Med-Legal argues they should be allowed to call and cross examine witnesses, introduce and inspect exhibits and offer evidence in rebuttal. With no authority specifically directing the procedure to follow on SAU consolidations, (excepting those under LC 139.21(e)-(j)), the Court is of the opinion that conducting a full adversarial hearing to rule on disputed facts and issues only to decide whether the liens should be consolidated would defeat the purpose of consolidating cases for adjudication and cause undue delay not warranted by the procedural order issued. Med-Legal would have the Board hear and decide the merits of the underlying disputed facts and issues, before a decision to consolidate is made, for purposes of determining whether consolidation should occur. This would be a waste of time and judicial resources.

Retired Associate Chief Judge Mark Kahn reported in Harvard Surgery Ctr. v. Workers' Compensation Appeals Bd., 70 Cal. Comp. Cases 1354, (Cal. App. 2d Dist. August 04, 2005):

“ . . . Normally in these very complex consolidations the Court follows the following procedure. First, the Court will grant consolidation for discovery purposes only. This is because the parties are not sure of the exact issues until discovery is complete. If the trial court in the initial petition sees there is a good possibility that consolidation may be warranted and that there are common issues of law and fact as to all cases for discovery, the petition to consolidate for discovery purposes will be granted. Once discovery is complete, then the issues would be framed. Once the issues are framed, and known, the trial court can determine whether the cases should be consolidated or tried separately. That was the procedure that was followed in this case. Defendants have raised very complex issues that they claim are common to all the cases. There are numerous depositions to be taken and much discovery ahead. The rulings and problems in these areas would be the same as to all cases. The numerous issues raised by defendants as to the lien claimant's conduct shows the possibility that there are common issues of law and fact that would be apparent as to all the cases, once the issues are framed. However, whether these cases should or shouldn't finally be consolidated, cannot be determined until discovery is complete and the matter is set for hearing on the issue of consolidation. The cases were therefore consolidated at this time for discovery purposes only. No Petition for Reconsideration was taken from that order and the parties proceeded on the discovery issue.”

Judge Kahn's preferred course of action was to review the initial petition for consolidation and if there was a good possibility that consolidation may be warranted, consolidation for discovery would be ordered. Once discovery was completed and the issues framed, the matter was set for a hearing on the issue of consolidation. This Court having found no authority specifically addressing the procedure to follow in SAU consolidations, (excepting the LC 139.21(e)-(j) procedure) and using the Harvard Surgery Ctr. V. WCAB, supra, 70 CCC 1354, as a guide, typically does the following upon receipt of a petition for consolidation: The petition is reviewed and if it complies with the drafting requirements in Cal. Code Regs., tit. 8, § 10396, and indicates a possibility that consolidation may be warranted based on the allegations in the petition, a consolidation and stay of liens is ordered and assigned to a WCJ and a notice of hearing issued for a status conference. If an objection to the consolidation is made it is reviewed and considered prior to issuance of the order. When the order is issued it contains a delegation of authority to the assigned WCJ to make further orders regarding the consolidation as are necessary. Further orders issued by SAU judges assigned consolidations in the past have included orders joining additional liens into the consolidation, dismissing liens or parties from the consolidation, and dismissing the consolidation as a whole. What is different about this method from Judge Kahn's is rather than order the consolidation to conduct discovery to determine whether consolidation is warranted, this Court delegates the assigned WCJ the authority to act on the consolidation, parties and issues, including whether the consolidation continues to be warranted. This is the same result obtained by Judge Kahn, just in different manner in order to expedite things as much as possible. The matter is set for a status conference to allow the WCJ and parties to meet and discuss the status of discovery, issues, pending objections, and other matters. A party maintains their right to object to the allegations in the petition for consolidation and argue the consolidation should be dismissed or they should be dismissed from the consolidation with the assigned WCJ, who is in a better position to inquire in to the merits of the underlying facts and issues than the Court is upon a mere review of the allegations in the petition and objections. A status conference, rather than another type of hearing, is set to allow the WCJ to choose the direction to go in the matter. The WCJ is given the discretion to issue any necessary orders in regards to the consolidation or type of future hearings.

This court could have ordered consolidation for discovery purposes exactly as Judge Kahn did to determine whether the allegations to support consolidation were warranted, but elected to do it in a different manner, while still allowing all parties to maintain their respective rights and defenses. Judge Kahn didn't have SAU judges specifically assigned to hear and decide consolidated cases which we now do. Because of this a consolidation order can be issued and assigned to an SAU judge immediately rather than conduct an in depth inquiry by the reviewing WCJ as to whether consolidation should even occur.

Med-Legal also argues to stay the liens outside of the normal objection/non-IBR process is an ultra vires underground regulation. This argument ignores the fact that Med-Legal chose to file liens in these cases, thus coming within the lien procedures instead of the non-IBR medical legal process. This order was not issued to remove Med-Legal from the non-IBR medical legal process, it was ordered to consolidate and stay liens Med-Legal had filed.

Med-Legal further claims the Order will produce irreparable harm to itself and others because it allows Kaiser to stall substantive injury cases from proceeding with en masse discovery irrelevant to the underlying injury claims, the outcome of which will result in unnecessary delays, costs and error because it is in one consolidated action.

Med-Legal's argument is absurd. The substantive cases in chief are not being stalled. The EAMS SAU system was created to allow litigation of consolidated cases and lien issues independent of the ADJ process, thus not interfering with the litigation of the cases in chief. There is no interference with the substantive injury cases by an SAU consolidation despite the claims of Med-Legal. Med-Legal also maintains the remedy of a protective order if the discovery requested is not relevant or otherwise objectionable.

Med-Legal argues the order requires them to clear another hurdle to recovering on its liens in these cases, "passing muster in consolidation", a hurdle not permitted or contemplated by the Labor Code. Contrary to this argument is the existence of the consolidation regulation itself in Cal. Code Regs., tit. 8, § 10396 that allows consolidation of cases. Med-Legal's argument in conjunction with their previously addressed ultra vires argument implies this Court has somehow brought into creation a procedural process requiring them to "pass muster in consolidation" on all their liens, regardless of whether they are part of this consolidation or not. The argument is farfetched at best. The facts in this matter alone indicate this is not the case. The Petition for Consolidation was filed to address allegations of wrongdoings identified by Kaiser in 57 cases. Med-Legal claims to be a preeminent provider of medical-legal services in the California Workers' Compensation system, and most assuredly has more than 57 cases with bills or liens at issue that are not having to "pass muster in consolidation". Med-Legal admits they choose to pursue collection through the non-IBR medical-legal process in numerous other cases. Despite the claims of their collections being impaired, and a "hurdle" to collection having been created, this is hardly the case.

Med-Legal also argues irreparable harm from the chilling effect of the order because it forces attorneys to find another vendor because of the stay of liens. The liens may be stayed from being litigated, but nothing prevents Med-Legal from amending the liens in the cases for additional services provided. Med-Legal also leaves out of their argument that they retain the ability to pursue future collection through the non-IBR medical legal process completely sidestepping the lien process. None of their services are impaired, and the claim they are prevented from providing services and seeking payment is false.

E. RECONSIDERATION

Med-Legal argues that reconsideration will not be available if the order is not a final order and reconsideration is pursued at the end of the consolidation proceeding. Somehow Med-Legal maintains this condemns them to an endless cycle of expensive litigation because they are forced to litigate this consolidation to unclear ends, and that the issues in the consolidation are precisely the issues Med-Legal must already litigate to prove up its right to recover. The unclear ends are identified in the Petition. Kaiser identified what they thought were problems and the evidence they were relying on quite clearly. This argument also ignores that fact that the issue here is the consolidation order, not the merits of the underlying liens. Far from creating irreparable harm, the order actually allows discovery and litigation to occur once for the issue and thus limiting costs.

Med-Legal's argument the Order "establishes an expensive alternative process for Kaiser to use to subvert the standard, long-established Workers' Compensation collections regime" is baseless. The order doesn't create an expensive alternative process, but uses existing regulation to consolidate cases to address common issues of fact and law to avoid duplicative and unnecessary costs. Med-Legal also ignores the right of a defendant to object and question the bills and liens. This too is a long established Workers' Compensation regime. It appears Med-Legal's position is

that no one has a right to challenge their requests for payment. This is absurd. The argument made that it will require hundreds of labor hours and substantial sums spent to respond to answering discovery ignores the fact that a Defendant has the right to question the liens filed in each individual case, including conducting discovery. If discovery were ongoing in each individual case and a Defendant were asking the same questions, the costs to all parties would be substantially more and a defendant would even be subject to a protective order. The consolidated action seeks to avoid all of this.

Reconsideration remains as a remedy for Med-Legal.

F. . . .

IV **CONCLUSION**

The Consolidation Order is not a Final Order, Decision or Award subject to reconsideration nor are specific findings regarding Cal. Code Regs., tit. 8, § 10396 required to be itemized in the Order. The order is justified by the evidence and will not result in significant prejudice or irreparable harm to Med-Legal. The Order does not create significant prejudice and irreparable harm resulting in the inadequacy of reconsideration after a final order.

It is recommended that Med-Legal's Petition for Reconsideration or in the alternative Removal be denied.

DATE: 03.24.2021

William E. Gunn

PRESIDING WORKERS' COMPENSATION
ADMINISTRATIVE JUDGE