**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**MARIA ESTHER REBOLLO, *Applicant***

**vs.**

**ATRIA SENIOR LIVING; SAFETY NATIONAL CASUALTY, administered by GALLAGHER BASSETT SERVICES, *Defendants***

**Adjudication Number: ADJ17166141**
**Santa Ana District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Lien claimant Medland Medical seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on October 7, 2024, wherein the WCJ found in pertinent part that applicant while employed during the period of January 4, 2022 through January 4, 2023, as a caregiver for defendant and claims to have sustained injury arising out of and occurring in the course of employment (AOE/COE) to her neck, back, shoulders, and hernia. The WCJ found that lien claimant failed to meet its burden of proving that its medical treatment and medical-legal services were reasonable or necessary and disallowed its lien.

Lien claimant contends that the WCJ erred by disallowing its lien for the medical-legal services requested on behalf of applicant and that such services should have been awarded pursuant to the Official Medical Fee Schedule in addition to mandated penalties and interest pursuant to Labor Code section 4622. Lien claimant further argues that the undisputed findings of the treating physician found injury AOE/COE, and therefore the WCJ erred in failing to award lien claimant the reasonable value of its services for the self-procured treatment of the applicant.

We have not received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will grant the

Petition for Reconsideration, rescind the WCJ's F&O, and return this matter to the WCJ for further proceedings consistent with this opinion.

**BACKGROUND**

We will briefly review the relevant facts.

In Case No. ADJ17166141, applicant filed an Application for Adjudication (Application) on January 10, 2023, claiming a cumulative injury to her neck, right shoulder, back, and hernia while employed by defendant as a caregiver, during the period of January 4, 2022 to January 4, 2023.

On March 8, 2023, defendant issued a Notice Regarding Denial of Workers Compensation Benefits to applicant denying all liability for her claim of injury to her neck, shoulders, back, and hernia, ". . . because there is no substantial legal, medical or factual evidence to indicate that your alleged injury for a continuous trauma for dates 1-4-22 to 1-4-23 that may be resulted from your employment at Atria Senior Living." (Exhibit 5, March 8, 2023.)

On March 29, 2023, applicant and her attorney designated Omid Haghighinia, D.C., as applicant's primary treating physician (PTP) pursuant to Labor Code section 4600. (Exhibit 2, March 29, 2023.) Also, enclosed was a letter indicating that applicant's attorney intended to seek a medical-legal evaluation from Dr. Haghighinia. (Exhibit 2, March 29, 2023 and Exhibit E, March 29, 2023.)

On April 13, 2023, Dr. Haghighinia examined applicant and issued a medical-legal report for applicant's claimed injury of January 4, 2022 to January 4, 2023. (Exhibit 9, April 13, 2023.) The report is addressed to applicant's attorney and defendant Gallagher Bassett. The report begins by saying that:

> This Medical-Legal report is issued pursuant to Labor Code §§4620, *et seq.* and 5307.6, and California Code of Regulations § 9793(c)(2), which defines a comprehensive medical-legal evaluation as an evaluation of an injured worker which results in the preparation of a narrative medical report, and is performed by **the primary treating physician** for the purpose of proving or disproving a contested claim; **and** California Code of Regulations § 9793(h)(2), which provides **that the report is obtained at the request of a party or parties** for the purpose of proving or disproving a contested claim and addresses the disputed medical fact or facts specified by the party who requested the comprehensive medical-legal evaluation report.

> This **patient alleges injuries to body parts which are in dispute**. I have conducted a Medical- Legal evaluation to determine if the injuries to these body parts occurred as a consequence of the industrial injuries referenced above.
>
> Pursuant to California Code of Regulations §9793(b)(1), a contested claim is one in which the claims administrator has rejected liability for a claimed benefit. (Emphasis in original and emphasis and underline added)

(Exhibit 9, April 13, 2023, p. 2.)

After evaluating applicant, Dr. Haghighinia concluded that applicant had sustained industrially related injuries, and that there was a need for ongoing medical care. By way of history, Dr. Haghighinia stated that:

> The patient states in February 2017, while performing her usual and customary job duties, she began to experience lower back pain. The patient describes her pain as a sharp, numbing, and tingling sensation. The patient attributes her pain to a specific occasion in which she was lifting a patient off the ground and into the shower. The patient explained that she, along with a coworker, were heading towards the shower when the resident lost balance and fell. The patient along with her coworker picked her up, as she was trying to lift her, she felt a pulling sensation to the lower back. The patient stated the resident was extremely heavy and weighed up to 200 pounds. The patient along with the coworker took the resident and showered her, she continued to have lower back pain through her entire shift. The patient mentioned she reported her injury to her employer.
>
> The patient was sent to the Company's clinic within a week after her injury. The patient was given medication and lumbar support. X rays were taken. The patient was sent to treatment such as therapy and acupuncture. The patient does not recall if she was returned with restrictions.
>
> The patient decided to contact an attorney for legal advice.
>
> The patient stated her attorney sent her to several different doctors. She does not recall all the doctor's names.
>
> The patient continued to work with pain and began to develop right shoulder and neck pain. The patient describes this pain as a pinching sensation and severe stiffness. The patient attributes this pain to constantly pushing, pulling the residents in the wheelchairs, picking the residents off the bed, and bathing the residents.
>
> The patient recalls reporting her new injuries to her employer. The patient was sent out for treatment by her employer. The patient recalls receiving an injection to the right shoulder. Additionally, the patient has undergone several MRI'S to the neck.

> The patient continued to have pain and continued treatment with the company's clinic when approved by the insurance. She was sent to the Culinary Department in 2022. The patient began to take care of the kitchen, handing out breakfast and lunch, cleaning tables and sweeping. The patient's pain continued.
>
> The patient stated the last visit to the company's clinic was in 2022. She has no pending appointments.
>
> She was referred to our office for treatment.

(Exhibit 9, April 13, 2023, pp. 3-4.)

Dr. Haghighinia diagnosed injury to applicant's Cervicalgia (cervical spine), cervical muscle strain bilaterally with radiculitis to upper shoulder musculature, rule out intervertebral disc herniation of the cervical spine, right shoulder pain/impingement syndrome symptom, possible tendonitis, bursitis, rule out internal derangement of right shoulder, lumbago, or lower back pain, lumbar muscle strain with radiculitis to bilateral hips, rule out intervertebral disc herniation of the lumbar spine. He recommended x-rays of the cervical spine, lumbar spine and right shoulder to rule out any abnormalities within these body parts; and physio/chiropractic therapy. (Exhibit 9, April 13, 2023, p. 12.) With respect to causation, Dr. Haghighinia opined as follows:

> Ms. Rebollo is a 51-year-old right-handed female who presents today upon referral and request by their attorney for a Primary Treating Physician's Comprehensive Medical-Legal Evaluation with regards to a continuous trauma injury that occurred from 01/04/2022 to 01/04/2023 while working for Atria Management Company LLC. Her employment began in 2014, as a Caregiver.
>
> She took care of elderly people. The patient's job duties included: helping elder citizens with personal hygiene, bathing, feeding, transferring patients from bed to wheelchair and vice versa, changing patients' clothes, washing dishes, washing clothes, taking trash out, taking patients to patios/outdoor, handing out breakfast and lunch, cleaning tables, sweeping kitchen area, sweeping dining room.
>
> The patient worked 8 hours per day, 5 days a week. Lifting, pushing, and pulling sometimes could go up to about 100+ pounds depending on weights of different patients. Her job required prolonged walking and standing, repetitive mobility with bilateral upper and lower extremities.
>
> Previously, the patient worked for Watermark Company, as a Caregiver, for 8 years from 2006 to 2014.
>
> The patient is still currently working full-time for Atria Management Company LLC. Since the injury was reported, the patient was sent to the Culinary

Department where she cooks, making breakfast and lunch. She has lighter duty. At times, these job activities also increase the pain but not as severe as when she was working as a helper to help elderly people.

The patient indicated in February 2017, while performing her usual and customary job duties, she began to experience some pain and discomfort in the neck, low back and right shoulder. She blamed it as a result of work activities that she performed.

She also had a specific trauma injury when she fell down in the shower while he was lifting her up with the help of a co-worker, she felt a pull in the lumbar spine.

She had reported that injury to employer. She was sent to the company's clinic. X-rays were taken. She was sent for therapy and acupuncture with some benefits.

She eventually hired an applicant attorney for legal advice. She was sent to a different doctor through that attorney and the case apparently was settled and the patient was rewarded.

The patient continued developing neck and right shoulder pain. Lumbar spine was still painful. She also had a previous injury, so she reported another injury as a cumulative trauma. She was referred again to the company's clinic. The patient was evaluated. Therapy was given. Injection to right shoulder was given. The patient underwent MRIs of the neck. She continued to take treatment from the company's clinic. Last time she visited there was at the end of 2022. At that time, they put the patient on restriction. The patient was transferred to the kitchen area by employer with lighter duty.

No other treatment outside what I have mentioned above has been given to this patient.

Today, she is presented here through her applicant attorney for evaluation. She continues to have pain in neck, right shoulder, and lumbar spine region. Stiffness noted at the paraspinal muscle of the neck and low back region. Radiculitis is noted from neck to upper shoulder musculature upon mobility. Radiculitis is also noted from low back to bilateral hips upon mobility. Right shoulder has impingement type of symptoms during above shoulder level activities. Soreness noted within the joint line at rotator cuff and upper shoulder and shoulder blade musculature with stiffness on the right side.

Based on the physical examination performed today, review of the history of the injury with the patient, the patient's description of their job duties, and the length of time that this patient has been employed by the above-referenced employer, it is my opinion with a reasonable degree of medical probability that the patient has suffered a continuous trauma injury in the course and scope of their employment resulting in the above listed diagnoses.

> Given the patient's current symptoms, physical findings, and the nature of her injury, I believe that this patient's current condition and complaints are the direct result of her continuous trauma from 01/04/2022 through 01/04/2023.

(Exhibit 9, April 13, 2023, pp. 10-11.)

Lien claimant issued numerous bills for medical treatment from April 13, 2023 through May 11, 2023. (Exhibits 3, 4, & 8, October 30, 2023, August 7, 2024, August 7, 2024.)

The parties resolved Case Nos. ADJ17166141, ADJ1313841, and ADJ11315644 by way of a Compromise and Release (C&R), and on May 19, 2023, the WCJ issued an order approving the C&R. As relevant here, in Paragraph 9, in the Comments section, it states that: "NEWLY ALLEGED CT CLAIM IS AMENDED TO REFLECT APPLICANT'S LAST DATE OF WORK TO 5/17/2023. CLAIM DENIED FOR LACK OF MEDICAL EVIDENCE (ADJ17166141)." (C&R, p. 7.)

On May 24, 2023, lien claimant issued an Objection to defendant's May 12, 2023 Explanation of Review (EOR). (Exhibit 12, May 24, 2023.)

On July 5, 2023, lien claimant filed a Declaration of Readiness to Proceed (DOR). In the DOR, wherein lien claimant requested a lien conference and alleged that:

> DEFENDANT HAS FAILED TO RESPOND TO OUR REQUEST FOR RESOLUTION OR SETTLEMENT OF BALANCE OWED ON OUR MED-LEGAL AND MEDICAL SERVICES. ON 05/31/2023 DEMAND WAS SERVED WITH ALL OUR SUPPORTING DOCUMENTS TO DEFENDANT BUT NO RESPONSE RECEIVED. WCAB ASSISTANCE NEEDED RESPECTFULLY FOR RESOLUTION OF OUR LIEN."

On August 7, 2024, the parties proceeded to trial on the issue of the lien for medical treatment and the medical-legal services. They also raised the issue of penalties, interest, and costs.

## DISCUSSION

### I.

Former Labor Code section 5909[1] provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on November 7, 2024, and 60 days from the date of transmission is January 6, 2025. This decision is issued by or on January 6, 2025 so that we have timely acted on the petition as required by Labor Code section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on November 7, 2024, and the case was transmitted to the Appeals Board on November 7, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on November 7, 2024.

**II.**

The issues listed for decision do not include the issue of injury AOE/COE, yet the lien of Medland Medical includes not only medical-legal reporting, but treatment. A determination of injury AOE/COE is a threshold issue, and should have been raised as an issue and decided by the WCJ in the first instance

Pursuant to section 3600, to be compensable, an injury must arise out of and occur in the course of employment. Further, the employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd*. (*Clark*) (2015) 61 Cal. 4th 291, 297–298, 302 [80 Cal. Comp. Cases 489]; Lab. Code, §§ 3600(a), 3202.5.) In applying this requirement, however, all reasonable doubts as to whether an injury arose out of employment are to be resolved in favor of the employee. (*Department of Rehabilitation v. Workers' Comp. Appeals Bd. (Lauher*) (2003) 30 Cal. 4th 1281, 1290–1291 [68 Cal. Comp. Cases 831]; *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal. 3d 274, 280 [39 Cal. Comp. Cases 310]; *Lundberg v. Workers' Comp. Appeals Bd.* (1968) 69 Cal. 2d 436, 439 [33 Cal. Comp. Cases 656].) As the California Supreme Court discussed in *Lauher*, pursuant to section 3202, issues of compensation for injured workers "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." Thus, "[a]lthough the employee bears the burden of proving that his injury was sustained in the course of his employment, the established legislative policy is that the Workmen's Compensation Act must be liberally construed in the employee's favor … , and all reasonable doubts as to whether an injury arose out of employment are to be resolved in favor of the employee. …" (*Lauher*, *supra*, at p. 1290, quoting *Lamb*, *supra*, at 280 (emphasis added); see Lab. Code, § 3202.)

The determination of whether an injury arises out of and in the course of employment requires a two-prong analysis. (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal. 4th 644 [63 Cal. Comp. Cases 253].) First, the injury must occur "in the course of employment," which ordinarily "refers to the time, place, and circumstances under which the injury occurs." (*LaTourette*, *supra*, at p. 645.) Second, the injury must "arise out of" the employment, "that is, occur by reason of a condition or incident of employment, [however], the injury need not be of a kind anticipated by the employer nor peculiar to the employment in the sense that it would not have occurred elsewhere." (*Employers Mut. Liability Ins. Co. v. Industrial Acci. Com.* (*Gideon*) (1953) 41 Cal. 2d 676, 679-680.) If we look for a causal connection between the employment and

the injury, such connection need not be the sole cause; it is sufficient if it is a contributory cause. (*Gideon*, *supra*, at p. 680; *Maher v. Workers' Comp. Appeals Bd*. (1983) 33 Cal. 3d 729, 736 [48 Cal. Comp. Cases 326]; *Madin v. Industrial Acc. Com*. (1956) 46 Cal. 2d 90, 92–93 [21 Cal. Comp. Cases 49].) "All that is required is that the employment be one of the contributing causes without which the injury would not have occurred." (*Clark*, *supra* at pp. 297–298, quoting *LaTourette*, *supra*, at p. 651, fn. 1; *Maher*, *supra*, at p. 734, fn. 3.) Further, "the acceleration, aggravation or 'lighting up' of a preexisting disease is an injury in the occupation causing the same." (*Id.* at p. 301.)

Section 4600 subsection (a) provides:

> Medical, surgical, . . . and hospital treatment,. . . that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment. (Lab. Code, § 4600.)

There is no apportionment of the expenses of medical treatment. If the need for medical treatment is partially caused by applicant's industrial injury, the employer must pay all of the injured worker's reasonable medical expenses. (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647].) The California Supreme Court explained in *Granado* that:

> If medical expense reasonably necessary to relieve from the industrial injury were apportionable, a workingman, who is disabled, may not be able to pay his share of the expenses and thus forego treatment. Moreover, the uncertainties attendant to the determination of the proper apportionment might cause employers to refuse to pay their share until there has been a hearing and decision on the question of apportionment, and such delay in payment may compel the injured workingman to forego the prompt treatment to which he is entitled. (*Id.* at p. 406.)

Additionally, we note that section 4600 "consistently has been interpreted to require the employer to pay for all medical treatment once it has been established that an industrial injury contributed to an employee's need for it." (See *Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249, 1261 [82 Cal.Comp.Cases 679]; *Braewood Convalescent Hospital v. Worker's Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 165 [48 Cal.Comp.Cases 566] [employee suffering from pre-existing condition later disabled by industrial injury was entitled to treatment even for a non-industrial condition that was required to cure or relieve effects of industrial injury].)

As discussed above, in the instant matter, on March 8, 2023, defendant denied applicant's claim for cumulative injury, and to date, there has been no finding of injury AOE/COE for this claim of injury. This is a threshold issue and must be addressed before the WCJ may make any findings regarding defendant's liability for lien claimant's claim for payment for the medical treatment. That is, once the WCJ makes a finding of injury of AOE/COE, then the WCJ may determine whether the treatment was reasonable and necessary.

**II.**

Section 4060(b) allows for a medical-legal evaluation by a treating physician and section 4620(a) defines medical legal expense as "any costs and expenses…for the purpose of proving or disproving a contested claim." Section 4064(a) provides that an employer is liable for the cost of any comprehensive medical evaluations authorized under section 4060. The regulations provide that the "primary treating physician shall render opinions on all medical issues necessary to determine the employee's eligibility for compensation..." (Cal. Code Regs., tit. 8, § 9785(d).)

AD Rule 9793(h) states:

> (h) "Medical-legal expense" means any costs or expenses incurred by or on behalf of any party or parties, the administrative director, or the appeals board for X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and as needed, interpreter's fees, for the purpose of proving or disproving a contested claim. The cost of medical evaluations, diagnostic tests, and interpreters is not a medical-legal expense unless it is incidental to the production of a comprehensive medical-legal evaluation report, follow-up medical-legal evaluation report, or a supplemental medical-legal evaluation report and all of the following conditions exist:
>
> (1) The report is prepared by a physician, as defined in Section 3209.3 of the Labor Code.
>
> (2) The report is obtained at the request of a party or parties, the administrative director, or the appeals board for the purpose of proving or disproving a contested claim and addresses the disputed medical fact or facts specified by the party, or parties or other person who requested the comprehensive medical-legal evaluation report. Nothing in this paragraph shall be construed to prohibit a physician from addressing additional related medical issues.
>
> (3) The report is capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim, considering the substance as well as the form of the report, as required by applicable statutes, regulations, and case law.

> (4) The medical-legal examination is performed prior to receipt of notice by the physician, the employee, or the employee's attorney, that the disputed medical fact or facts for which the report was requested have been resolved.
>
> (5) In the event the comprehensive medical-legal evaluation is served on the claims administrator after the disputed medical fact or facts for which the report was requested have been resolved, the report is served within the time frame specified in Section 139.2(j)(1) of the Labor Code.

(Cal. Code Regs., tit. 8, § 9793(h).)

Read together, these sections provide that a medical-legal evaluation performed by an employee's treating physician is a medical-legal evaluation obtained pursuant to section 4060 and that an employer is liable for the cost of reasonable and necessary medical-legal reports that are performed by the treating physician. The Appeals Board has previously held that there was no legal authority to support the proposition that an injured worker is not entitled to request a medical-legal report from their PTP, and in turn, the report from that PTP is a medical-legal expense for which the defendant is liable. (*Warren Brower v. David Jones Construction* (2014) 79 Cal.Comp.Cases 550, 556 (Appeals Board en banc).)

> Moreover, a medical-legal expense is ordinarily allowable if it is capable of proving or disproving a contested claim, if the expense was reasonably necessary at the time incurred, and if the cost incurred was reasonable. (§§ 4620 et seq., 5307.6.) The mere fact that the parties had agreed to an AME in a particular specialty does not mean that a party cannot reasonably obtain a comprehensive medical-legal report from a treating physician in the same or similar specialty. (*Id*)

In the instant case, medical reporting from the agreed medical evaluator and a treating physician is relevant and admissible and could provide a basis for a decision. If lien claimant demonstrates that PTP Dr. Haghighinia's medical-legal report was reasonable and necessary, it is entitled to recover on that basis.

It is clear the intention of section 4060(b), when read together with section 4064(a) is that a medical-legal evaluation performed by an employee's primary treating physician shall be considered a medical-legal evaluation pursuant to section 4060 and as such, the employer should be held liable for any associated reasonable and necessary medical-legal costs and expenses. In addition, section 4063.2 (l) states that: "No disputed medical issue specified in subdivision (a) may be the subject of declaration of readiness to proceed unless there has first been an evaluation by the treating physician or an agreed or qualified medical evaluator." Moreover, the Appeals Board

has previously held that there is no legal authority to support the proposition that an injured worker is not entitled to a medical-legal report from a PTP and no legal authority to support that a PTP's report is not a medical-legal expense for which defendant is liable. (*Warren Brower v. David Jones Construction* (2014) 79 Cal.Comp.Cases 550 (Appeals Board en banc).)

Here, applicant's attorney issued a letter to defendant's attorney requesting a medical-legal report from applicant's PTP pursuant to section 4600. While there was reporting from an AME in one of applicant's previous cases, and an appointment of a panel qualified medical examiner (PQME) in this case, the PTP may still prepare a medical-legal report. As stated above, *Brower* makes clear that a party may request a comprehensive medical-legal from the PTP even when there is an AME. In sum, defendant denied the injury, and thus it was reasonable and necessary for applicant's attorney to request medical-legal reporting from Dr. Haghighinia.

**III.**

Pursuant to *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc), a lien claimant holds the initial burden of proof pursuant under sections 4620 and 4621: that a contested claim existed at the time the expenses were incurred, that the expenses were incurred for the purpose of proving or disproving a contested claim, and that its services were reasonably, actually, and necessarily incurred. Additionally, it was held in *Colamonico* that a defendant does not waive an objection based on section 4620 or 4621 by failing to raise these objections in accordance with section 4622. Here, our review indicates that lien claimant met its burden to show that there was a contested claim. Defendant denied applicant's claim on January 8, 2023, a mere four days after applicant filed a DWC-1 on January 4, 2023. (Exhibit D, January 4, 2023.) The medical legal services of Dr. Haghighinia from Medland Medical in his capacity as applicant's PTP were incurred for the purpose of proving applicant's contested claim. Based on our review, lien claimant has met its burden to show that the medical reporting was reasonable and necessary at the time that it was incurred.

If a lien claimant meets its burden of proof pursuant to sections 4620 and 4621, the analysis shifts to the reasonable value of the invoices pursuant to section 4622. A defendant then has 60 days to review and analyze a medical-legal bill or invoice. (Lab. Code, § 4622(a)(1).) A defendant has two options within this 60-day window: It may pay the bill or invoice in full or pay less than the full amount. Should a defendant decide to pay less than the full amount within the 60-day window, it may still avoid the imposition of a penalty and interest by including an explanation of

review (EOR) with its payment. Section 4622 requires that a defendant object to the invoice or billing with an EOR as described in section 4603.3. (Lab. Code, §§ 4622(a)(1), (e)(1), 4603.3.) Objecting to an invoice with an EOR within the 60-day window is defendant's burden. The defendant is deemed to have waived all objections to a medical-legal provider's billing other than compliance with Sections 4620 and 4621 if they either fail to serve a timely and compliant explanation of review within 60 days, fail to make payment consistent with the EOR, fail to serve a final written determination after a timely request for second review, or fail to make payment consistent with a final determination. (Cal. Code Regs., tit. 8, § 10786; see *Colamonico*, *supra.*) A defendant is then liable for the reasonable value of the medical legal services as well as a 10 percent penalty and 7 percent per annum interest. A lien claimant has the burden of proof of the reasonable value of its services.

In the instant case, as noted above, it appears that lien claimant has met its burden of proof pursuant to sections 4620 and 4621, and the analysis should now shift to the reasonable value of the invoice pursuant to section 4622.

Accordingly, we grant lien claimant's Petition for Reconsideration, rescind the F&O and return this matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Reconsideration of the October 7, 2024 Findings and Order is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the October 7, 2024 Findings and Order is **RESCINDED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**January 6, 2025**

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

**QUINTAIROS, PRIETO, WOOD & BOYER**
**MEDLAND MEDICAL**

**DLM/oo**

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