

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

ROLANDO GARCIA, *Applicant*

vs.

**HOLLENBECK PALMS, permissibly self-insured,
administered by ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ18157692
Los Angeles District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR REMOVAL
AND DECISION
AFTER REMOVAL**

Applicant has filed a petition for removal from the order taking the matter off calendar issued on August 12, 2025, by the workers' compensation administrative law judge (WCJ).

Applicant contends that the issue of striking the qualified medical evaluator (QME) is ripe for adjudication.

We have not received an Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal and the contents of the WCJ's Report. Based on our review of the record we will grant removal and as our Decision After Removal, we will rescind the August 12, 2025 order taking the matter off calendar and return this matter to the trial level to create a record.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, 10955(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, § 10955(a).) Here, the WCJ ordered the matter off calendar for further development of the record. The trial judge issued this order without creating a record or explaining the need for further development of the record and thus, the order violates the parties right to due process, which constitutes irreparable harm. Thus, removal is proper in this case.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10761.)

Here, applicant requested that the matter be set for hearing on the issue of striking the QME. The WCJ deferred the issue pending additional reporting and noted in the Report a concern that the QME should be given the opportunity to respond to applicant’s allegations of fraud. We share the concern of the WCJ, as stated in a recent panel decision¹:

Section 4628 describes mandatory requirements for any physician signing a medical-legal report including requirements that the physician personally conduct the examination; that the date and location of the evaluation be disclosed; that the evaluation comply with applicable laws; that the evaluation disclose the name and qualifications of any person who performed services, other than clerical services, in connection with the report; that the report describe in detail any variances with these procedures; that the physician disclose any amount paid for other persons to perform evaluations, procedures or services; and that the physician sign the report with a declaration under penalty of perjury that the contents of the report are true and correct. (Lab. Code, § 4628(a), (b), (i), (j).) Section 4628 also requires that the taking of patient history and excerpting of medical records must be completed by the physician, or if done by others, the physician must “disclose the name and

¹ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal. App. 4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citeable authority and the Workers’ Compensation Appeals Board may consider these decisions to the extent that their reasoning is found persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228, fn. 7 (Appeals Board En Banc); *Griffith v. Workers’ Comp. Appeals Bd.* (1989) 209 Cal. App. 3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) The panel decisions discussed herein are referred to because they considered a similar issue. Practitioners should proceed with caution when citing to a panel decision and verify its subsequent history.

qualification of each person who performed any services in connection with the report ... ,” must review the history and excerpts of medical records prepared by those individuals, and “make additional inquires and examinations” as necessary to determine the relevant medical issues. (Lab. Code, § 4628(b), (c).)

Section 4628 also imposes penalties for non-compliance affecting the substantive rights of the reporting physician. Subdivision (e) states that failure to comply with the requirements of section 4628 shall make the report inadmissible and shall eliminate any liability for payment of any medical-legal expenses. (Lab. Code, § 4628(e), *italics added*.) Subdivisions (f), (g) and (h) address additional penalties for a physician’s knowing failure to comply with these requirements, including civil penalties of up to \$1000 per violation, being held in contempt, and the possibility that the physician will be terminated, suspended or placed on probation as a QME under section 139.2. (Lab. Code, §§ 4628(f), (g), (h); 139.2.) Thus, a finding that a physician has not met the minimum report preparation and disclosure standards described in section 4628 may result in significant consequences for the reporting physician.

The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (Cal. Const., art. XIV, § 4 [“[T]he administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character(.)”]; *Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [94 Cal. Rptr. 2d 130, 65 Cal.Comp.Cases 264].) In addition to this constitutional mandate, we are governed by the legislative mandate of section 3202 and the repeated admonitions of the California Supreme Court to construe workers’ compensation laws liberally in favor of affording substantial justice to injured workers. (Lab. Code, § 3202; see also, e.g., *LeBoeuf v. Workers’ Comp. Appeals Bd.* (1983) 34 Cal.3d 234, 241 [193 Cal. Rptr. 547, 666 P.2d 989, 48 Cal.Comp.Cases 587]; *Webb v. Workers’ Comp. Appeals Bd.* (1980) 28 Cal.3d 621, 626 [170 Cal. Rptr. 32, 620 P.2d 618, 45 Cal.Comp.Cases 1282]; *Veilleux v. Workers’ Comp. Appeals Bd.* (1985) 175 Cal.App.3d 235, 241 [220 Cal. Rptr. 568, 50 Cal.Comp.Cases 698].) It is for this reason that claims brought before the Appeals Board are “entitled to adjudication upon substance rather than upon formality of statement.” (*Beveridge v. Industrial Acci. Com.* (1959) 175 Cal.App.2d 592, 598 [24 Cal.Comp.Cases 274].)

All parties to a workers’ compensation proceeding retain the fundamental right to due process, including notice and an opportunity to be heard, and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157–158 [97 Cal. Rptr. 2d 852, 65 Cal.Comp.Cases 805]; *Rea v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [25 Cal. Rptr. 3d 828, 70 Cal.Comp.Cases 312]; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [7 Cal. Rptr. 2d 66, 57 Cal.Comp.Cases 230].) A fair hearing includes the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and offer evidence in rebuttal. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [108 Cal. Rptr. 2d

1, 66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 157–158 citing *Kaiser Co. v. Industrial Acc. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [240 P.2d 57, 17 Cal.Comp.Cases 21]; *Katzin, supra*, 5 Cal.App.4th at p. 710.)

Our rules require that if a medical-legal report does not appear to comply with the requirements in section 4628, notice must be provided to the parties and to the reporting physician of the deficiencies in the reporting, before the WCJ may decline to receive that report in evidence. (Cal. Code Regs., tit. 8, § 10670(b)(4).) After notice, the WCJ has discretion to allow the physician to address those deficiencies within a “reasonable” time period. (*Ibid.*) Deficiencies in the medical-legal reporting may be curable by the reporting physician, under certain circumstances. (See, e.g., *City of Los Angeles v. Workers’ Comp. Appeals Bd. (Webster)* (1998) 63 Cal.Comp.Cases 190 [writ denied] [subsequent reporting of the source of the actuarial data in the report sufficient to cure the section 4628 defect]; *Canteen Corp. v. Workers’ Comp. Appeals Bd. (Love)* (1997) 62 Cal.Comp.Cases 730 [writ denied] [physician’s error in failing to include declaration under penalty of perjury in report was cured by filing amended report]; *Albertson’s v. Workers’ Comp. Appeals Bd. (Thompson)* (2003) 68 Cal.Comp.Cases 1369 [writ denied] [physician’s report that omitted summary of the medical records was cured by filing supplemental report].) Other deficiencies in the medical-legal reporting have been found to be incurable, rendering the reports inadmissible. (See, e.g., *Scheffield Medical Group v. Workers’ Comp. Appeals Bd.* (1999) 70 Cal.App.4th 868 [69 Cal.Comp.Cases 138] [Court of Appeal affirmed WCAB decision finding that medical-legal reports that relied on the images taken by an unlicensed x-ray technician in violation of section 4628 were inadmissible in consolidated lien proceedings]; *Sonnier v. L.A. Unified Sch. Dist.* (2021) 2021 Cal. Wrk. Comp. P.D. LEXIS 197 [When QME failed to disclose that individuals other than himself summarized the medical records, the WCAB found the medical-legal reports inadmissible, explaining, “section 4628 is a strict liability statute. If the physician who prepared the report did not comply with the statute’s requirements, there is no balancing of whether the failure to comply with its provisions affected the report’s reliability ...”].)

Principles of due process require notice to the reporting physician that their report may be deemed inadmissible because of the significant financial and legal consequences for the physician that may result from a finding of inadmissibility under section 4628, as described above. (Lab. Code, §§ 139.2(d)(2), (k)(5), (l), 4628(e)–(h); Cal. Code Regs., tit. 8, § 10683.) In addition, a medical lien holder is a “party in interest,” and as such, is entitled to “full due process rights,” including notice and an opportunity to be heard prior to a claim being disallowed. (*Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 811 [102 Cal. Rptr. 2d 562, 14 P.3d 234, 65 Cal.Comp.Cases 1402]; Cal. Code Regs., tit. 8, § 10702.) Thus, a reporting physician, as a potential lien claimant, is entitled to notice and an opportunity to address the contention that their reporting failed to comply with section 4628. (Cal. Code Regs., tit. 8, §§ 10670(b)(4), 10682(c), 10683, 10702.)

*(Gurrola Martinez v. H & H Wallboard, Inc., 2025 Cal. Wrk. Comp. P.D. LEXIS 242, *6-10)*

Applicant has filed a petition to strike the current QME alleging fraud, which is a very serious allegation. It would appear that a hearing on the petition would be appropriate so that if additional discovery is needed, a record may be created to support such a decision. If any action is to be taken against the QME, the WCJ may act in accordance with the above guidance to preserve the due process rights of the QME.

We make no judgment at this time as to applicant's petition to strike since without a formal record available to review, we have no ability to make this determination.

Accordingly, we grant removal and as our Decision After Removal, we rescind the August 12, 2025 order taking the matter off calendar and return this matter to the trial level to create a record.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal from the order taking the matter off calendar issued on August 12, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the order taking the matter off calendar issued on August 12, 2025, by the WCJ is **RESCINDED**.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 22, 2025

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

**ROLANDO GARCIA
ROAN TUYAY LAW
NEWHOUSE & CREAGER**

EDL/mt

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