WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

URSULA FRANCO, *Applicant*

vs.

VIE DE FRANCE YAMAZAKI; SOMPO AMERICAN INSURANCE COMPANY, Administered By BROADSPIRE SERVICES, *Defendants*

Adjudication Number: ADJ13570874
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Lien Claimant Universal Diagnostic & Imaging seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of August 13, 2025, wherein it was found that lien claimant was not entitled to reimbursement because it "failed to meet [its] burden of proof in demonstrating that [it was] a validly licensed medical provider allowed to provide services in this case as a medical facility." In this matter, in a Compromise & Release approved on May 24, 2024, in exchange for $115,000, applicant settled her claim that while employed as a packing and machine operator during a cumulative period ending August 21, 2020, she sustained industrial injury to various body parts. As part of the settlement, defendant agreed to "pay, adjust, or litigate" all liens of record, including Universal Diagnostic & Imaging's lien claim.

Lien claimant contends that the WCJ erred in disallowing its lien claim, arguing that it was able to provide the services it billed for under its structure as a normal corporation (rather than a validly formed professional corporation) controlled by a non-physician. We have received an Answer from defendant and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, for the reasons stated by the WCJ in the portions of the Report quoted below, and for the additional reasons set forth below, we will deny the lien claimant's Petition.

Preliminarily, we note that former Labor Code section 5909 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, Labor Code section 5909 was amended to state in relevant part that:

> (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.
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> (b)
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> (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.
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> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code 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 September 16, 2025 and 60 days from the date of transmission is Saturday, November 15, 2025. The next business day that is 60 days from the date of transmission is Monday, November 17, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on November 17, 2025, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 September 16, 2025, and the

[1] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

case was transmitted to the Appeals Board on September 16, 2025. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 16, 2025.

Turning to the merits, in reaching her decision, the WCJ relied upon *People ex rel. Allstate Ins. Co. v. Discovery Radiology Physicians, P.C. (Allstate)* (2023) 94 Cal.App.5th 521, 533-535 [88 Cal.Comp.Cases 857]), where the Court of Appeal explained:

> Historically, the Medical Practice Act prohibited physicians from practicing through for-profit corporations or artificial legal entities of any kind. (See *Lathrop v. HealthCare Partners Medical Group* (2004) 114 Cal.App.4th 1412, 1420 [8 Cal. Rptr. 3d 668].) More recently, the Act has been amended to permit physicians to conduct their medical practices through medical corporations or partnerships so long as all the entities' shareholders or partners, as well as all employees rendering professional services, are themselves licensed. (*Lathrop*, at pp. 1420–1421, citing §§ 2402, 2406, 2415, 2416; Corp. Code, §§ 13401, 13405.) However, the Act continues to prohibit what is sometimes referred to as the corporate practice of medicine (see, e.g., *Markow v. Rosner* (2016) 3 Cal.App.5th 1027, 1033 [208 Cal. Rptr. 3d 363])—that is, it "generally precludes for-profit corporations—*other than* licensed medical corporations—from providing medical care through either salaried employees or independent contractors." (*People v. Cole* (2006) 38 Cal.4th 964, 970 [44 Cal. Rptr. 3d 261, 135 P.3d 669], italics added; see also *Steinsmith v. Medical Board* (2000) 85 Cal.App.4th 458, 460 [102 Cal. Rptr. 2d 115] (*Steinsmith*) ["[m]edicine may be practiced in a partnership or group of physicians (§ 2416), but '[c]orporations and other artificial legal entities … have no professional rights, privileges, or powers' (§ 2400), and a 'fictitious-name' permit to operate a facility called a '"medical clinic"' can be issued only if the clinic is wholly owned by licensed physicians (§ 2415, subd. (b))"].)
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> Applying this principle, the Court of Appeal found a violation of the Medical Practice Act in *Steinsmith, supra*, 85 Cal.App.4th 458. There, the plaintiff was a licensed physician who performed disability evaluations as an independent contractor of a clinic owned in part by nonphysicians. (Id. at p. 460.) The physician was cited by the Medical Board of California for aiding in the unlicensed practice of medicine, a finding that the Court of Appeal upheld. (Id. at pp. 460–464.) In so finding, the court rejected the physician's contention that the nonphysician owners did not practice medicine because they merely owned the clinic and administered its business affairs. The court explained: "A similar argument was rejected long ago in *Painless Parker v. Board of Dental Exam*.

> (1932) 216 Cal. 285 [14 P.2d 67]. In that case, a licensed dentist was found to have aided and abetted the unlicensed practice of dentistry by a corporation he formed to own and operate dental offices. (Id. at pp. 289, 298.) The dentist argued, as *Steinsmith* does here, that the licensing requirements for the provision of professional services did not apply to 'the purely business side of the practice.' (Id. at p. 295.) Our Supreme Court rejected that argument … . [¶] … The unlicensed practitioner in *Painless Parker* was a corporation, but it has long been 'well settled' that 'any other unlicensed person or entity' is subject to the same sanctions for unlawful practice as an unlicensed corporation. [Citation.] Accordingly, the *Painless Parker* case disposes of *Steinsmith's* argument that there was no unlicensed practice he could have aided." (*Id.* at pp. 465–466.)
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> The Attorney General similarly opined in a 1982 opinion addressing whether an entity not licensed as a medical corporation could lawfully engage physicians to treat employment-related injuries sustained by employees of another corporate entity. (65 Ops.Cal.Atty.Gen. 223 (1982).) The Attorney General noted that, as general rule, a corporation "may neither engage in the practice of medicine directly, nor may it do so indirectly by 'engaging [physicians] to perform professional services for those with whom the corporation contracts to furnish such services.'" (Id. at p. 224.)

Although *Allstate* discussed this limitation in the context of the unlicensed practice of medicine, the limitation applies to all licensed professionals. (Corp. Code, § 13401).

In the instant matter, lien claimant sought reimbursement for a medical legal report authored by neurologist Benjamin Gross, M.D. as well as for the provision of certain electrodiagnostic testing. Clearly, the drafting of Dr. Gross's report which interpreted the electrodiagnostic testing and offered an actual medical diagnosis of mild right carpal tunnel syndrome constitutes the practice of medicine.

As far as the actual conducting of the electrodiagnostic tests, the lien claimant states in its Petition, without any citation to authority, that a diagnostic testing and imaging facility "is not even regulated by the Medical Board of California, because medicine is not prescribed and medical doctors are not required, only specialized technicians." (Petition for Reconsideration at p. 4.) In fact, in the case of radiological technologists, "It shall be unlawful for any person to administer or use diagnostic or therapeutic x-ray on human beings in this state, unless that person … is acting withing the scope of [their] certification or permit, and is **acting under the supervision of a licentiate of the healing arts.**" (Health & Safety Code, § 106965, subd. (a) [Emphasis added].) "Licentiate of the healing arts" is defined as medical doctors, osteopaths, and chiropractors. (Health & Safety Code, § 114850, subd. (h)(1).) As far as other "technical supportive services"

such as electrodiagnostic testing, "a medical assistant may … perform … additional technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon or a licensed podiatrist. A medical assistant may also perform all these tasks and services upon the specific authorization of a physician assistant, a nurse practitioner, or a certified nurse-midwife." (Health & Safety Code, § 2069, subd. (a)(1).) Any physician assistant, nurse practitioner or certified nurse-midwife must, in turn, be supervised by a licensed physician. (Health & Safety Code, § 2069, subd. (a)(2).) The physician, podiatrist, physician assistant, nurse-practitioner, or certified nurse-midwife must be present in the facility when these procedures are undertaken. (Health & Safety Code, § 2069, subd. (b)(3).) So, while certified technicians may be performing the tests, they do so only under the ultimate supervision of a physician, and they thus also constitute the practice of medicine.[2]

Accordingly, the WCJ correctly determined that the services for which lien claimant seeks reimbursement could only be performed and billed by healing arts professionals in the scope of their licenses or their duly organized professional corporations. For these reasons and the reasons stated in the portions of the WCJ's Report which we quote below, we will deny lien claimant's Petition. We have omitted the WCJ's discussion of whether the tests performed were "simple" and whether lien claimant was required to obtain a fictitious business name permit. Those issues are not relevant to the resolution of this matter.

RECOMMENDATIONS ON PETITION FOR RECONSIDERATION

A. BRIEF STATEMENT OF THE CASE AND PROCEDURAL HISTORY

> Ursula Franco, while employed during the period July 14, 2005 through August 21, 2020, as a packing and machine operator, sustained injury arising out of and in the course of employment to her bilateral shoulders and left elbow. The claim was resolved by way of Order Approving Compromise & Release agreement for $115,000 on May 24, 2024.
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> Following the settlement, the case was set for trial solely on the lien of Universal Diagnostics & Imaging, with the parties stipulating that the lien issues would be

[2] Certain physical therapists may perform these tests upon authorization of a licensed physician, although without their supervision, so long as the physical therapist does not interpret the data. (Cal. Bus. & Prof. Code sec. 2620.5.) There is no argument that a physical therapist performed the tests here and if they did those tests could only be billed by licensed physical therapists or their professional corporation. (Corp. Code, § 13401; Health & Safety Code, § 2600 *et seq.*) Here it appears that the owner of the lien claimant corporation is a psychologist, not a medical doctor or physical therapist.

bifurcated and the Court would only be making a determination regarding those issues raised related to the corporate status of Universal Diagnostics & Imaging, and their ability to provide diagnostic studies based on their licensing status. The parties have a dispute as to whether Universal Diagnostics is a general corporation or a professional corporation. The lien claim of Universal Diagnostics & Imaging is in the amount of $11,050.

The matter proceeded to trial on July 16, 2025. The WCJ issued a Findings and Order dated August 13, 2025, wherein it was found that while Universal Diagnostics & Imaging (UD&I), did have Fictitious Business Name Statement (FBNS), which allowed them to operate in the state, they did not have the proper Medical Board Designation to allow them to practice medicine based on the fact that the facility was providing medical services in the form of professional diagnostics studies but was owned and operated by a non-physician, Jo Anne Kaplan, Ph.D., psychologist The lien claimant has now filed a Petition for Reconsideration of that determination, where they reiterate their arguments that the lien claimant is not practicing medicine and as such is not required to be a Professional Corporation but instead, may operate as a General Corporation and provide the diagnostic tests which do not require a licensed medical corporation. The Petition is timely and verified.

B. <u>REVIEW OF APPEAL</u>

The lien claimant argues that neither the court, nor the WCJ offered any case law to support the proposition that a medical license is required in order to operate the diagnostic testing facility. To the contrary, however, numerous cases were cited, as well as panel decisions, for this proposition. Lien claimant wishes to shift the burden to the Defendant on this issue, rather than offer case law to support their contention that they are legally authorized to provide the medical testing. No cases are presented by lien claimant which support their theory. The Board has considered this issue in the past, yet, no cases are found to support the lien claimant's argument.

[Discussion of whether these were "simple" tests or not omitted. Regardless of whether they were simple or not, they require the ultimate supervision of a licentiate of the healing arts.]

C. <u>DISCUSSION</u>

To reiterate the cases decisions, the WCJ references Defendant's trial brief stating that:

The Allstate Court further explained:

" ... the Act [Medical Practice Act] continues to prohibit what is sometimes referred to as the corporate practice of medicine (see, e.g., Markow v. Rosner

(2016) 3 Cal.App.5th 1027, 1033 [208 Cal. Rptr. 3d 363])-that is, it 'generally precludes for-profit corporations-other than licensed medical corporations-from providing medical care through either salaried employees or independent contractors.' (People v. Cole (2006) 3 8 Cal.4th 964, 970-971, italics added; see also Steinsmith v. Medical Board (2000) 85 Cal.App.4th 458, 460 (Steinsmith) ["[m]edicine may be practiced in a partnership or group of physicians(§ 2416), but [c]orporations and other artificial legal entities ... have no professional rights, privileges, or powers' (§ 2400), and a 'fictitious-name' permit to operate a facility called a "'medical clinic'" can be issued only if the clinic is wholly owned by licensed physicians (§ 2415, subd. (b))"].)" [Clarification added] (Emphasis added.)

The Court continued in Allstate:

... "Subsequently, in a 2009 opinion the Attorney General "reiterate[d] [its] view that professional radiology services-specifically including the selection of a suitable radiologist, and the selection of a suitable radiology facility with appropriate equipment and personnel, as well as preparing and interpreting radiological images-involve the exercise of professional judgment as part of the practice of medicine." (92 Ops.Cal.Atty.Gen. 56 (2009).)." Id at 869.

(a) Statutory law in California requires a corporation to be registered as a professional corporation prior to rendering any medical or diagnostic services to patients.

Corporations (Corp.) Code§ 1340l(b) defines a professional corporation:

"'Professional corporation' means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, … pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board ... shall not be required to obtain a certificate of registration in order to render those professional services.

In the matter before this court, there was no evidence that UD&I is a professional corporation or was a professional corporation at the time services were rendered to the applicant. The California Secretary of State's business search website revealed UD&I filed its Articles of Incorporation on 3/28/2012 indicating it is a general corporation (Defense Exhibit A).

In response, the Lien claimant asserts the following:

The defendant claims that Universal Diagnostic & Imaging (UD&I) must be a professional corporation in accordance with Business and Professions (B&P) Code §2400. However, the defendant's argument is incorrect. California Corporation Code § 13401 (b) [in pertinent parts] states the following:

• "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5

Jo Anne Kaplan is a psychologist (PhD), who is licensed to practice by the State Board California. License No.: PSYl 71260. The lien claimant's facility provides services in the field of imaging and diagnostic studies, not psychology. The facility is not a hospital, nor any other medical facility owned or operated by medical doctors practicing medicine. As such, the lien claimant's facility is not regulated by the CA Medical Board, nor the code sections described by the defendant.

Professional Service vs. Professional Corporation

The defendant has misinterpreted the law. Professional service and professional corporation are two separate things, and not all those who provide professional services are required to form a professional corporation.

The lien claimant is not aware of any code section(s) that states an imaging facility is required to form a professional corporation, or if owned by a psychologist, it is required to do the same, especially when psychological services are not provided.

D. <u>CONCLUSION</u>

As found in the Opinion on Decision, the Judge continues to recommend that the Petition be denied for the reasons previously stated, which are summarized below:

[Discussion of whether a fictitious name permit is required is omitted as moot.]

Next, turning to the principal issue of whether Universal Diagnostics is providing medical services, the answer, in accordance with the B&P codes. the Medical Board of California and the finding in the Allstate case, is yes. This practice was invalidated in the ruling in Allstate when the court stated:

"The Medical Board of California further states that a non-physician may not "own or operat[e] a business that offers patient evaluation, diagnosis, care and/or treatment," and a management service organization may not 'arrang[e] for,

advertis[e], or provid[e] medical services rather than only provid[e] administrative staff and services for a physician's medical practice (non-physician exercising controls over a physician's medical practice, even where physicians own and operate the business)' ... It explains: 'In the examples above, non-physicians would be engaged in the unlicensed practice of medicine, and the physician may be aiding and abetting the unlicensed practice of medicine.'"

Joann Kaplan is not a medical doctor but is instead a psychologist and is the owner of the Universal Diagnostics & Imaging office. Under the Allstate ruling, she is not allowed to own and operate a medical facility which is what Universal Diagnostics is. The fact that she has a FBS and is hiring certified technicians and doctors to administer the diagnostic tests, does not cure the defect or render her services valid as they are not being provided in accordance with the requirements of the Medical Board of California. The WCJ recommends that the Petition for Reconsideration be denied.

For the foregoing reasons,

IT IS ORDERED that Lien Claimant Universal Diagnostic & Imaging's Petition for Reconsideration of the Findings and Order of August 13, 2025 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMISSIONER

/s/ PAUL F. KELLY, COMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 17, 2025

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

URSULA FRANCO
GLAUBER BERENSON
COSTFIRST CORP
LIEN RECOVERY GROUP

DW/oo

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