**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**MARCO ANTONIO TORO SERVIN, *Applicant***

**vs.**

**MIKE'S RESTAURANT SUPPLY; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants***

**Adjudication Number: ADJ14196079**
**Anaheim District Office**

# OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Lien claimant Medland Medical seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of August 6, 2026, wherein defendant Medland Medical was assessed Labor Code section 5813 attorneys' fees and costs incurred by the defendant for Medland Medical's continued prosecution of a lien claim that had already been settled, and for Medland Medical's failure to attend a lien conference. In this matter, in a Compromise and Release approved on October 12, 2022, in exchange for $5,000.00, the injured worker settled his claim that, while employed during a cumulative period ending January 18, 2021, he sustained industrial injury to various body parts.

Lien claimant contends that the WCJ erred in assessing Labor Code section 5813 attorneys' fees and costs. We have received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report). We have also have accepted and considered a supplemental brief filed by the lien claimant in response to the Report.

For the reasons stated in the portions of the Report quoted below, which we adopt and incorporate, we will deny the lien claimant's Petition.

## I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909, which states 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.

(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 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 15, 2026 and 60 days from the date of transmission is Saturday, November 14, 2026. The next business day that is 60 days from the date of transmission is Monday, November 16, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on November 16, 2026, so that 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on September 15, 2026, and the case was transmitted to the Appeals Board on September 15, 2026. 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 15, 2026.

[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.

**II.**

Turning to the merits, we will deny lien claimant's Petition for the reasons stated in the portions of the Report quoted below:

**I.**
**INTRODUCTION**

Lien claimant, Medland Medical Tustin, filed a timely and verified Petition for Reconsideration under *Labor Code* §5903 following the court's Findings and Award dated 8/6/26 awarding Travelers Property Casualty Company of America costs in the amount of $979.20.

Lien claimant contends the court erred by "ignoring and suppressing the Uncontradicted Sword Affidavit of Carolyn Davis"; the court violated *Labor Code* §5813 and lien claimant's due process by refusing to provide any reasoning for rejecting sworn evidence; that the excusable neglect by lien claimant negates any showing of bad faith; and that defendant produced zero evidence of bad faith. At the time of this report, defendant had filed an answer to the Petition for Reconsideration.

**II.**
**FACTS**

Lien claimant filed its lien on 11/4/22. A lien trial was held on 10/3/23 on the lien of Medland Medical. The court issued its Findings and Order on 10/30/23 finding Medland Medical did not perform a medical-legal evaluation and its lien was disallowed in its entirety. Lien claimant filed a Petition for Reconsideration on 11/22/23.

On 1/22/24, the WCAB issued its Opinion and Order Granting Reconsideration and finding Medland Medical was entitled to reimbursement for its medical-legal services with the amount to be adjusted by the parties, and Medland Medical was not entitled to reimbursement for medical treatment services.

On 10/24/24, Medland Medical filed a Declaration of Readiness stating defendant failed to respond to its request for resolution. It further stated it received a check from defendant but the amount was incorrect. **Declaration of Readiness, EAMS Doc ID 54569004**. At the lien conference on 12/26/24, lien claimant failed to appear and defendant represented to the court that lien claimant had been paid per their agreement. **MOH, EAMS Doc ID 78740223**.

Lien claimant filed another Declaration of Readiness on 4/15/25. The DOR stated the following

PLEASE BE ADVISED THAT FOLLOWING THE OPINION AND ORDER

GRANTING RECONSIDERATION AND DECISION AFTER RECONSIDERATION IN FAVOR OF MEDLAND MEDICAL, THE DEFENDANT ISSUED A PAYMENT. HOWEVER, THE PAYMENT DID NOT CORRECTLY ACCOUNT FOR THE FULL AMOUNT DUE.ON OCTOBER 24, 2024, LIEN CLAIMANT FILED A DECLARATION OF READINESS (DOR), AND A HEARING WAS SET FOR DECEMBER 26, 2024. UNFORTUNATELY, THE WCJ TOOK THE MATTER OFF CALENDAR BASED ON THE DEFENDANTS REPRESENTATION THAT THE LIEN HAD BEEN RESOLVED PURSUANT TO AN AGREEMENT. THIS INFORMATION WAS INACCURATE, AS THERE IS STILL A BALANCE DUE. WE RESPECTFULLY REQUEST THE ASSISTANCE OF THE WORKERS COMPENSATION APPEALS BOARD (WCAB) TO FACILITATE THE RESOLUTION OF THIS MATTER AND ENSURE THAT THE LIEN IS PAID IN ACCORDANCE WITH THE PRIOR DECISION. **Declaration of Readiness, EAMS Doc ID 57408051**

It should be noted that lien claimant failed to state the reason for its non-appearance at the prior hearing for which it filed the DOR. Defendant filed an Objection to the DOR stating defendant paid pursuant to the agreement signed between Ms. Carolyn Davis, representative for Medland Medical, and defendant, which was attached to the Objection. **Defendant's Exhibit H**. At the lien conference on 6/19/25, parties set the matter for lien trial. On 7/28/25, Medland Medical filed a request to take the lien trial off calendar as the issue had been resolved. **Request for Order Taking Off Calendar, EAMS Doc ID 59175501**.

Defendant filed an Amended Petition for Costs and Sanctions on 12/4/25. The court issued a Notice of Intent to Award Costs on 12/11/25 to which lien claimant objected to stating, in part, that the check received from Travelers was not in accordance with the court's order; that in January of 2025, Ms. Davis and defendant both acknowledged the resolution of the lien, however, set the matter for lien trial, nonetheless; and that it was all due to administrative error. Based upon the objection to the Notice of Intent, the court set the matter for a hearing, and thereafter, the issue was set for trial.

At trial, lien claimant did not submit any exhibits into evidence. Parties submitted the issue with no testimony and only defendant's exhibits. After reviewing the evidence submitted and calculating the amount of time defendant spent making appearances on an issue that had been settled, the court issued costs payable to defendant in the amount of $979.20.

It is from this Findings and Award that lien claimant, Medland Medical, petitions for Reconsideration under *Labor Code* §5903.

## III.
## DISCUSSION
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**As to lien claimant's contention that the "severe personal bereavement, and Inadvertent Intra-Office Miscommunication" negates any showing of bad faith under Labor Code §5813, and that defendant produced zero evidence of bad faith, the court offers the following:**

The court took into consideration Ms. Davis' loss and did not award defendant the full amount of costs requested. Ms. Davis' loss, however, does not excuse lien claimant's frivolous filings and bad faith following the loss. Ms. Davis suffered her loss in July of 2024 at the same time the agreement had been reached. Lien claimant acknowledges receiving a check from defendant in July of 2024. Lien claimant did NOT contact defendant to find out what the check was for. Instead, lien claimant filed a Declaration of Readiness stating under penalty of perjury "Defendant has failed to respond to our request for resolution or settlement of balance owed on our medical legal." **Declaration of Readiness, EAMS Doc ID. 54569004**. Lien claimant did not appear at the December 2024 hearing. Lien claimant then filed another Declaration of Readiness representing to the court that defendant had provided incorrect information. At the June 19, 2025, hearing, almost a year after Ms. Davis loss, lien claimant set the matter for a lien trial. Ms. Davis appeared at the June lien conference. In January of 2025, she acknowledged the resolution of the lien. **Lien claimant's Petition for Reconsideration, pg. 16, lines 8-9**. Lien claimant caused an unnecessary lien conference and lien trial which was not excusable neglect.

Contrary to lien claimant's contention, defendant did produce evidence in its Petition for Costs, having to send representatives to hearings, complete a Pre-Trial Conference Statement, file petitions for unnecessary lien conferences and lien trials a year after the lien had been resolved.

What is most unfortunate is that lien claimant contradicts itself in its Petition for Reconsideration which was also verified under penalty of perjury. Lien claimant stated it first received notice of the resolution of its lien on June 2, 2025, yet it set the issue for trial on June 19, 2025. **Id at lines 10-12.** Lien claimant received notice of the lien being settled when it was served with the Minutes of Hearing from the December 2024 lien conference. Lien claimant neglected to contact defendant to verify if the statement made at the hearing was true. Instead, lien claimant wasted the time of defendant and the court by filing a misrepresented Declaration of Readiness. Lien claimant acknowledges its representative, Ms. Davis, had knowledge of the resolution of the lien on January 17, 2025. **Id. lines 8-9**. Lien claimant neglected to communicate with its own representative and defendant and instead filed frivolous declarations of readiness causing unnecessary delay.

## IV.
## RECOMMENDATION

It is the undersigned's recommendation that lien claimant's Petition for Reconsideration be denied and the WCAB uphold and affirm the Findings and Award of the undersigned judge dated 8/6/26.

For the foregoing reasons,

**IT IS ORDERED** that Lien Claimant's Petition for Reconsideration of the Findings and Award of August 6, 2026 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ CRAIG L. SNELLINGS, COMISSIONER**

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

**NOVEMBER 13, 2026**

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

**MARCO ANTONIO TORO SERVIN**
**PRUSSAK WELCH**
**DIMACULANGAN & ASSOCIATES**
**MEDLAND MEDICAL**

**DW/*pm***

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