WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARIO GONZALEZ (DECEASED), ***Applicant***

vs.

ALTECH MACHINING, INC.; MIDDLESEX INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ11830567
San Diego District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION; GRANTING PETITION FOR REMOVAL, AND DECISION AFTER REMOVAL

Applicant seeks reconsideration of the July 16, 2026 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that the reports of applicant's consulting physician were medical-legal in nature and could not be submitted for review by the Qualified Medical Evaluator (QME). The WCJ also found that the reports of defendant's consultant were epidemiological reports and that the reports could be submitted for review by the QME.

Applicant contends that the excluded reports are part of the relevant medical record and are not substantively dissimilar from the reports of defendant's consultant. Applicant contends that both applicant's and defendant's experts have rendered medical opinions, and that the important distinction herein is whether the reporting can be submitted to the QME for review rather than whether the reporting is admissible at trial.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we dismiss the petition as seeking reconsideration in response to a nonfinal order, or in the alternative, that we deny the petition as seeking removal on the grounds that it does not establish significant prejudice or irreparable harm to applicant.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons discussed

below, we will dismiss the petition as one seeking reconsideration, grant the petition to the extent it seeks removal, rescind the F&O, and substitute new orders that allow the reporting of both Drs. Harrison and Anderson-Mahoney to be submitted to the QMEs for review.

FACTS

Applicant claimed injury to his internal body systems, including liver, causing death, while employed as a metal finisher/parts cleaner, by defendant Altech Machining, Inc., from March 15, 2005 to October 17, 2018. Defendant denies injury arising out of and in the course of employment (AOE/COE).

The parties have selected Ira Fishman, M.D., to act as the QME in internal medicine. The WCJ's Opinion on Decision provides the relevant medical and medical-legal background as follows:

> Dr. Fishman provided a diagnosis of multiple conditions suffered by Mr. Gonzalez, but Dr. Fishman did not provide an analysis of industrial versus non-industrial causation for the conditions identified in the report. (Joint Exhibit 101, pp. 4547.)
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> Dr. Fishman's deposition was taken on August 4, 2020. (Joint Exhibit 105.) Dr. Fishman testified that most of the conditions he identified in his initial report were nonindustrial; however, there were a few conditions that could be industrially related. (Joint Exhibit 105, 8:15-14:15.) Dr. Fishman testified that further information and an evaluation by a neurologist was needed to provide an opinion on causation. (Joint Exhibit 105, 13:24-14:15.)
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> Dr. Bruce Lasker is the Qualified Medical Evaluator in this case in the area of neurology. (Joint Exhibit 107, p. 1.) Dr. Lasker first evaluated Mr. Gonzalez on August 4, 2020. (Joint Exhibit 107, p. 1.) Dr. Lasker concluded that from a neurological standpoint, Mr. Gonzalez was suffering from a probable cognitive impairment, a probable peripheral neuropathy, hearing loss, and probable disequilibrium and incoordination. (Joint Exhibit 107, p. 28.) Dr. Lasker's report states he cannot provide a definitive diagnosis and a definitive opinion on causation without further testing and referral to an ear, nose, and throat doctor. (Joint Exhibit 107, pp. 29-30.)
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> Dr. Fishman issued a supplemental report dated August 31, 2020, stating that he wanted to review the diagnostic testing results and Dr. Lasker's final neurologic analysis in order to finalize his internal medicine medical-legal conclusions. (Joint Exhibit 102, p. 2.)

As set forth above, Mr. Gonzalez passed away on May 23, 2021. (Application for Adjudication of Claim (Death Case), EAMS Doc. I.D. No. 37826938.) Following Mr. Gonzalez's death, Dr. Lasker issued a supplemental report dated July 17, 2021. (Joint Exhibit 108.) Dr. Lasker again stated that he could not provide a definitive opinion regarding industrial causation for a number of reasons, including a lack of information regarding the amount of exposure and duration of exposure Mr. Gonzalez had to the solvents in question. (Joint Exhibit 108, pp. 3-5.)

Dr. Fishman issued a supplemental report dated December 13, 2021. (Joint Exhibit 103.) Dr. Fishman's report discusses the extensive documentation provided to him by defendant's attorney. (Joint Exhibit 103, pp. 4-34.) Dr. Fishman ultimately opined that Mr. Gonzalez may have sustained an industrial injury to his liver, if Mr. Gonzalez's testimony is credible that he only used a paper mask from 2006 through 2013 while experiencing prolonged daily exposure to industrial solvent fumes. (Joint Exhibit 103, p. 38.) Dr. Fishman indicated that he was not commenting on causation regarding Mr. Gonzalez's death because he had not been asked to comment on the issue by the parties. (Joint Exhibit 103, p. 38.)

Dr. Lasker's deposition was conducted on March 23, 2022. (Joint Exhibit 109.) He testified that he could not provide a definitive opinion regarding industrial causation based on the information available to him at the time. (Joint Exhibit 109, 33:17-35:7.) Dr. Lasker testified that it would be helpful to review an epidemiology report addressing the chemicals Mr. Gonzalez was exposed to and the relationship between that exposure and his medical condition. (Joint Exhibit 109, 34:2-13.)

Dr. Fishman's deposition was taken a second time on April 28, 2022. (Joint Exhibit 106.) Dr. Fishman testified that based on the information currently available, he could not conclude with a reasonable degree of medical probability that Mr. Gonzalez's liver condition was related to his employment at Altech. (Joint Exhibit 106, 95:21-96:4.) Dr. Fishman testified that he was willing to perform medical research regarding the chemicals identified on the Material Safety Data Sheets in this matter. (Joint Exhibit 106, 99:23-100:25.) Dr. Fishman also testified that a report from an epidemiologist would be helpful and he would be willing to review such a report. (Joint Exhibit 106, 101:11-102:3.) Applicant Griselda Gonzalez obtained two reports from Robert Harrison, M.D., dated August 25, 2025, and February 2, 2026. (Exhibits 1 & 2.) Dr. Harrison's February 2, 2026, report contains 383 pages of attachments. (Exhibit 2, pp. 6-388.)

Defendants obtained two reports from Pamela Anderson-Mahoney, Ph.D., dated June 16, 2025, and October 29, 2025. (Exhibits A & B.) Dr. Anderson-Mahoney's June 16, 2025 report contains 10 pages of attachments. (Exhibit A, pp. 5-14.)

(Opinion on Decision, at pp. 4-6.)

On May 26, 2026, the parties proceeded to trial and framed for decision the issues of whether the reports of Dr. Harrison and Dr. Anderson-Mahoney could be sent to QME Dr. Fishman. Neither party offered witness testimony, and the WCJ ordered the matter submitted for decision on the same day. (Minutes of Hearing, dated May 26, 2026, at p. 1:25.)

On July 16, 2026, the WCJ issued the F&O, determining in relevant part that Robert Harrison, M.D., "is not a treating or consulting physician in this matter," and that the two reports issued by Dr. Harrison constituted medical-legal reports. (Findings of Fact Nos. 1, 2.) The WCJ likewise found that Pamela Anderson-Mahoney, Ph.D., "is not a treating or consulting physician," but that the reports of Dr. Anderson-Mahoney were epidemiology reports rather than medical-legal reports. (Findings of Fact Nos. 4, 5 & 6.) The WCJ ordered that the reports of Dr. Anderson-Mahoney could be submitted for review by the QME, while the reports of Dr. Harrison could not.

The WCJ's Opinion on Decision noted that Dr. Harrison's reports issued under applicable Administrative Director (AD) Rules pertaining to medical-legal reporting and corresponding billing codes. (Opinion on Decision, at p. 8.) The WCJ also observed that Dr. Harrison's reporting substantively addressed and analyzed the issue of whether applicant sustained injury AOE/COE. (*Id.* at p. 10.) The WCJ also observed that inasmuch as applicant had passed away on May 23, 2021, Dr. Harrison never personally evaluated applicant and consequently any reports issued thereafter were not that of a consulting or treating physician. (*Ibid*.) On the other hand, the WCJ determined that Dr. Anderson-Mahoney was an epidemiologist rather than a physician, that her two reports did not address medical causation and were not medical-legal in nature, and that both evaluating QMEs has indicated they would benefit from reviewing epidemiological reporting. (*Id.* at p. 12.)

Applicant's Petition contends that Labor Code[1] section 4062.3(a)(2) allows Dr. Harrison's reporting to be submitted to the QME because it is a medical record relevant to the determination of a medical issue. (Petition, at p. 4:13.) Applicant further asserts "[t]he reports of Dr. Harrison and Dr. Anderson-Mahoney were both obtained to assist the PQME with medical-legal issues, including causation, rendering them substantially similar and nullifying barring one and not the other." (*Id.* at p. 5:1.) Applicant also observes that the salient issue is not whether the reporting of

[1] All further references are to the Labor Code unless otherwise noted.

Dr. Harrison would be admissible in trial proceedings, but whether the reporting may be submitted to the QMEs for their review. (*Id.* at p. 8:6.)

The WCJ's Report notes that insofar as applicant challenges an interlocutory discovery order, the appropriate remedy is a removal petition under section 5310, rather than a petition seeking reconsideration under section 5900. (Report, at p. 3.) Because applicant has not established irreparable harm or significant prejudice necessary to sustain a removal petition, the WCJ recommends we dismiss the petition or deny it on the merits.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to 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.
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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 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 August 17, 2026, and 60 days from the date of transmission is October 16, 2026. This decision is issued by or on October 16, 2026, so that we have timely acted on the Petition as required by 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 17, 2026, and the case was transmitted to the Appeals Board on August 17, 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 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 August 17, 2026.

II.

A petition for reconsideration may properly be taken only 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 [163 Cal. Rptr. 750, 45 Cal.Comp.Cases 410, 413].) An order may also be "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 [97 Cal. Rptr. 2d 418, 65 Cal.Comp.Cases 650, 650-651, 655-656].)

Threshold issues include, for example, whether a workers' compensation injury arises out of and in the course of employment (Lab. Code, § 3600); the presumption of compensability (Lab. Code, § 5402); jurisdiction of the appeals board; whether there exists an employment relationship; or the statute of limitations. (*Maranian*, *supra*, 81 Cal.App.4th at pp. 1080–1081; *Safeway*, *supra*, at pp. 533, 537, fn. 4.) However, "[t]he fact that an issue is significant or important to the litigation is not sufficient to support a finding that it is a threshold issue." (*Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249, 1256 [219 Cal. Rptr. 3d 654].) The Court in *Maranian* also noted that "whether an issue may later become moot after a full determination of benefits does not

determine the availability of review under the statutory scheme." (*Maranian*, *supra*, 81 Cal.App.4th at p. 1075, fn. 5.)

In this case, the WCJ's decision does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a "final" decision and the petition for reconsideration will be dismissed.

However, we conclude that because the decision implicates fundamental due process rights of the parties, we will treat the petition as one seeking removal and evaluate the petition on that basis. In addition, "[r]emoval is the appropriate procedural avenue to challenge a decision regarding disputes over what information to provide to the QME and ex parte communication with the QME." (*Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1805 (Appeals Board en banc).)

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).)

III.

The parties have placed in issue whether the reporting of Dr. Harrison and Dr. Anderson-Mahoney may be submitted to the existing QMEs in this matter. The WCJ has determined that the reporting of Dr. Anderson-Mahoney may be submitted for review by the QMEs while the reporting of Dr. Harrison may not. Neither party challenges the WCJ's determination as to the reports of Dr. Anderson-Mahoney, and we therefore turn to the question of whether the reports of Dr. Harrison may be submitted for QME review.

Section 4062.3 permits medical and non-medical records to be provided to the QME and provides the procedures that must be followed by the parties prior to submitting such records may be provided. (Lab. Code, § 4062.3.) Subdivision (a) provides:

> (a) Any party may provide to the qualified medical evaluator selected from a panel any of the following information:
>
> > (1) Records prepared or maintained by the employee's treating physician or physicians.
> > (2) Medical and nonmedical records relevant to determination of the medical issue.

(Lab. Code, § 4062.3(a).)

Here, the parties have framed for decision the limited issue of *whether medical records may be submitted for review to the properly obtained QMEs in internal medicine and neurology*. There is no dispute that the reporting of both Dr. Harrison and Dr. Anderson-Mahoney constitutes "medical and nonmedical records relevant to the determination of the medical issue" for which both Drs. Fishman and Lasker have been selected as QMEs.

We also observe that QME Dr. Fishman has indicated in deposition testimony that the submission of records relevant to the complex medical-legal issues presented would be helpful to his ultimate determination, as follows:

> Q. Okay. Do you believe that it would be assistive at this point in time if you were provided additional med-legal research as it specifically relates to all of the chemicals on the Material Safety Data Sheets?
> A. Sure. I can never rule out that -- this just came up in my deposition earlier this week, similar problem. I can't rule out that, you know, by doing additional medical research I might uncover new information, so...
> Q. Okay. You also testified earlier that your specialty is not toxicology. Do you think it would be beneficial to have a toxicologist review the Material Data Safety Sheets and provide you with their analysis?
> A. I don't think so. I've done plenty of toxicology cases in my career, but -- so no, I don't believe so.
> Q. So you would prefer just to have research provided to you so that you can review the articles yourself?
> A. Correct. Or I can perform the research myself, yes.
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> …
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> Q. Okay. Doctor, would you be willing to review an epidemiology report on the issue?
> A. Of course. I do epidemiology studies review all the time, many, many, many, many, many cases. I review -- I do a lot of cancer causation and public safety, hundreds and hundreds of cases. So I review those kinds of reports all the time.

(Ex. 106, Transcript of Deposition of Ira Fishman, M.D., dated April 28, 2022, at p. 100:5.)

Insofar as the issue posed by the parties at trial was whether the reporting of Drs. Harrison and Anderson-Mahoney could be submitted to the existing QMEs for review, we are persuaded that the submission of these records is statutorily permissible under section 4062.3(a), and that the QMEs should be permitted to reach their own conclusions as to the weight each of the reports is accorded.

We also note that review of the reporting solicited by both applicant and defendant may support the QMEs in formulating reporting that constitutes substantial medical evidence. It is well established that decisions by 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].) To constitute substantial evidence ". . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97].) Here, the submission of the reporting of both Drs. Harrison and Anderson-Mahoney may prove relevant to the determination of the complex medical-legal issues in this matter and may ultimately assist the QMEs in producing reporting that constitutes substantial medical evidence.

In summary, we observe that section 4062.3(a) permits the submission of medical and nonmedical records to QMEs. We are thus persuaded that the reporting of Dr. Harrison, like that of Dr. Anderson-Mahoney, may appropriately be submitted to the QME for review and comment. We observe that the QMEs have both indicated their willingness to review additional medical documentation relevant to a complex issue of medical causation, and that the submission of medical records to the QME may assist the medical-legal evaluators in reaching a decision that constitutes substantial medical evidence.

Accordingly, having evaluated applicant's petition as one seeking removal, we find good cause to grant the petition, rescind the F&O, and substitute an order allowing the reports of both Dr. Harrison and Dr. Anderson-Mahoney to be submitted to QME Dr. Fishman.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the July 16, 2026 Findings and Order is **DISMISSED**.

IT IS FURTHER ORDERED that applicant's July 30, 2026 Petition for Removal of the decision of July 16, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the decision of July 16, 2026 is **RESCINDED**, with the following **SUBSTITUTED** therefor:

ORDER

1. IT IS HEREBY ORDERED that the August 25, 2025, and February 2, 2026 reports of Robert Harrison, M.D., may be sent to Qualified Medical Evaluator Ira Fishman, M.D.
2. IT IS HEREBY ORDERED that the June 16, 2025, and October 29, 2025 reports of Pamela Anderson-Mahoney, Ph.D., may be sent to Panel Qualified Medical Evaluator Ira Fishman, M.D.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
PATICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 16, 2026

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

GRISELDA GONZALEZ
VERDIECK CHAMBERS
DIETZ GILMOR & CHAZEN

SAR/abs

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