

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3  
4 **Case No. ADJ2912747 (AHM 0106971)**

5 **JOSE MANUEL OCHOA,**

6 *Applicant,*

7 **vs.**

8 **CHECKMATE STAFFING;  
ZENITH INSURANCE,**

9 *Defendants,*

10 **FRONTIER MEDICAL, INC.; N-CARE, LLC,**

11 *Lien Claimants.*

**OPINION AND ORDER  
GRANTING PETITIONS FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

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13 Pinnacle Lien Services (Pinnacle) on behalf of lien claimants Frontier Medical, Inc., (Frontier)  
14 and N-Care, LLC, (N-Care) separately petition for reconsideration of the April 9, 2014 Order Dismissing  
15 Liens Per Reg § 10562 (Order) of the workers' compensation administrative law judge (WCJ), who  
16 dismissed the lien claims of both Frontier and N-Care for failing to appear at the lien conference on  
17 February 12, 2014, and not timely objecting to the notice of intention to dismiss the liens served by the  
18 WCJ on February 24, 2014 (NIT).<sup>1</sup>

19 Applicant claims to have sustained industrial injury while employed by general employer  
20 Checkmate Staffing on April 3, 2003. He earlier settled his claim against alleged special employer  
21 N'Gardia, LLC, by compromise and release for the lump sum payment of \$6,000, as approved by the  
22 WCJ on December 6, 2012.

23 In the petition filed on behalf of Frontier, attorney Jeffrey Trombacco declares that Pinnacle  
24 appeared through Melissa Hernandez as Frontier's hearing representative at the lien conference on  
25 February 12, 2014, and that she spoke with defendant's hearing representative Aaron Wylie at that time

26  
27 <sup>1</sup> In addition to the liens of Frontier and N-Care, the WCJ also dismissed the lien of CA Sleep Analysis as part of the April 9, 2014 Order, but that lien claimant did not petition for reconsideration of the Order.

1 before appearing on other matters in different courtrooms. Mr. Trombacco also asserts that Mr. Wylie  
2 represented to the WCJ that Frontier had failed to appear at the conference and requested issuance of the  
3 February 24, 2014 NIT. Mr. Trombacco further avers that Frontier timely filed an objection to the NIT  
4 through Pinnacle on March 10, 2014, as stated by Ms. Hernandez in a declaration under penalty of  
5 perjury attached to the petition.

6 As in the petition filed on behalf of Frontier, attorney Trombacco declares in the petition filed on  
7 behalf of NCare that it also appeared through Pinnacle and hearing representative Ms. Hernandez at the  
8 February 12, 2014 lien conference, and that Ms. Hernandez spoke with defendant's representative  
9 Mr. Wylie at that time before appearing on other matters in different courtrooms. Mr. Trombacco again  
10 asserts that Mr. Wylie represented to the WCJ that NCare had failed to appear at the conference and  
11 requested issuance of the February 24, 2014 NIT. Mr. Trombacco further avers that NCare timely filed  
12 an objection to the NIT through Pinnacle on March 10, 2014, as stated by Ms. Hernandez in a declaration  
13 under penalty of perjury attached to the petition.

14 Answers to the two petitions were received from defendant.

15 The WCJ provide a Report and Recommendation on Petitions for Reconsideration (Report)  
16 recommending that both petitions be dismissed as frivolous, but that the dismissal order reserve  
17 jurisdiction over the issue of Labor Code section 5813 sanctions so that their imposition can be addressed  
18 by the WCJ at the trial level.

19 After service of the WCJ's Report, Mr. Trombacco filed separate requests on behalf of Pinnacle  
20 for dismissal of each of the petitions. Those requests for dismissal are not granted. Instead,  
21 reconsideration is granted, and the WCJ's April 9, 2014 Order is affirmed as our Decision After  
22 Reconsideration for the reasons set forth in the Report, which is incorporated by this reference, and for  
23 the reasons below. In addition, jurisdiction is reserved over the issue of Labor Code section 5813  
24 sanctions as recommended by the WCJ in the Report as part of our Decision After Reconsideration so  
25 that the issue can be addressed by the WCJ in the first instance upon return of the case to the trial level.<sup>2</sup>

26 \_\_\_\_\_  
27 <sup>2</sup> We take notice that defendant filed a petition for sanctions, costs and fees on or about May 23, 2014.

1 **DISCUSSION**

2 The WCJ explains in her Report that she knew Ms. Hernandez had signed the appearance sheet at  
3 the lien conference on February 12, 2014, and that she received Pinnacle's objections to the NIT.  
4 However, she further explains that those actions by Pinnacle were of no legal effect because Labor Code  
5 section 4903.6(b) requires a hearing representative to file a letter of representation signed by the lien  
6 claimant within 5 business days, and no such Labor Code section 4903.6(b) letter of representation was  
7 ever filed in this case by Pinnacle on behalf of either lien claimant.<sup>3</sup> For that reason, the WCJ considered  
8 the lien claimants to be unrepresented and determined that they failed to appear at the lien conference and  
9 did not object to the NIT.

10 We affirm the WCJ's Order. The requirement of a representation letter is plainly set forth in  
11 Labor Code section 4903.6(b), and compliance with that requirement is necessary to assure that an agent  
12 is authorized in writing to provide representation and to assure that the WCAB and the parties are fully  
13 apprised of that fact.

14 Pinnacle has never filed letters of representation showing that it is authorized to act as hearing  
15 representative for either Frontier or NCare in this case. Pinnacle's failure to provide that necessary  
16 documentation before attempting to appear at the February 12, 2014 lien conference on behalf of the two  
17 lien claimants, and before filing the two petitions for reconsideration on April 23, 2014, and before filing  
18 the two requests to dismiss the petitions for reconsideration on May 5, 2014, is unexplained and may  
19 support the issuance of sanctions.

20 Moreover, Pinnacle is advised that a hearing representative's failure to conform to the procedural  
21 and substantive requirements of the workers' compensation statutes, the Rules of Practice and Procedure  
22 of the Appeals Board (Cal. Code Regs., tit. 8, §§ 10300-10999), the Rules of the Court Administrator  
23 (Cal. Code Regs., tit. 8, §§ 10210-10297) and/or Rules of the Administrative Director supports removal  
24

25 <sup>3</sup> Labor Code section 4903.6(b) provides in full as follows:  
26 "All lien claimants under Section 4903 shall notify the employer and the employer's representative, if any, and the employee  
27 and his or her representative, if any, and the appeals board within five working days of obtaining, changing, or discharging  
representation by an attorney or nonattorney representative. The notice shall set forth the legal name, address, and telephone  
number of the attorney or nonattorney representative." (Emphasis added.)

1 of the hearing representative's privilege of appearing before the WCAB as set forth in Labor Code  
2 section 4907.<sup>4</sup>

3 This not the first time that Pinnacle has acted in apparent contravention of the workers'  
4 compensation statutes and Rules of the Appeals Board. If Pinnacle does not act in conformity with the  
5 statutes and our Rules in the future, additional adverse consequences will result.

6 For the foregoing reasons,

7 **IT IS ORDERED** that the separate petitions filed by Pinnacle Lien Services on behalf of Frontier  
8 Medical, Inc., and N-Care, LLC, for reconsideration of the April 9, 2014 Order Dismissing Liens Per  
9 Reg § 10562 of the workers' compensation administrative law judge are **GRANTED**.

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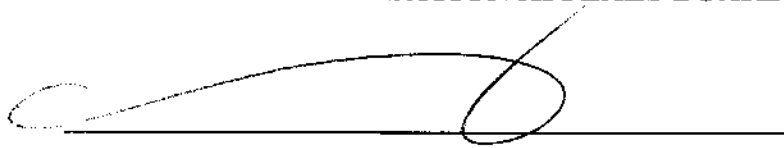
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23 <sup>4</sup> Labor Code section 4907 provides in full as follows:

24 "(a) The privilege of any person, except attorneys admitted to practice in the Supreme Court of the state, to appear in any  
25 proceeding as a representative of any party before the appeals board, or any of its workers' compensation administrative law  
26 judges, may, after a hearing, be removed, denied, or suspended by the appeals board for either of the following: (1) For a  
27 violation of this chapter, the Rules of the Workers' Compensation Appeals Board, or the Rules of the Administrative Director.  
(2) For other good cause, including, but not limited to, failure to pay final order of sanctions, attorney's fees, or costs issued  
under Section 5813.

(b) For purposes of this section, nonattorney representatives shall be held to the same professional standards of conduct as  
attorneys."

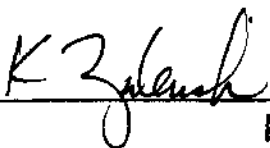
1 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Appeals Board that  
2 the April 9, 2014 Order Dismissing Liens Per Reg § 10562 of the workers' compensation administrative  
3 law judge is **AFFIRMED** with reservation of jurisdiction over the issue of possible Labor Code section  
4 5813 sanctions against Pinnacle Lien Services, Frontier Medical, Inc., and/or N-Care, LLC, and the  
5 matter is **RETURNED** to the trial level for further proceedings and decision on that reserved issue as the  
6 workers' compensation administrative law judge may deem appropriate in accordance with this decision.

7 **WORKERS' COMPENSATION APPEALS BOARD**

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10 **MARGUERITE SWEENEY**

11 **I CONCUR,**

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15 **KATHERINE ZALEWSKI**

16  
17 

18 **RONNIE G. CAPLANE**



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

20  
21 **JUN 20 2014**

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

24 **FRONTIER MEDICAL, INC.**  
25 **N-CARE, LLC.**  
26 **PINNACLE LIEN SERVICES**  
**CHERNOW & LIEB**

27 **JFS/abs**

**OCHOA, Jose Manuel**

STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board

CASE NUMBER: ADJ2912747

JOSE MANUEL OCHOA

CHECKMATE STAFFING,  
INC; ZENITH INSURANCE

WORKERS' COMPENSATION JUDGE: Nancy M. Gordon

DATE: 4/30/2014

**REPORT & RECOMMENDATION ON PETITIONS  
FOR RECONSIDERATION**

**I  
INTRODUCTION**

The applicant, Jose Manuel Ochoa, filed an application alleging injury AOE/COE while employed by Checkmate Staffing on 4/3/2003. On 4/19/2012, applicant's counsel filed a petition to join an alleged general employer. There was no ruling on that petition but the alleged special employer, N'Garnia, LLC and the applicant entered into a Compromise and Release for \$6,000.00 that was approved 12/6/2012.

A lien conference was held at 8:30am on 2/12/2014. There was no appearance by N Care or Frontier Medical. A notice of intention to dismiss those two liens was served 2/24/2014. As there was no good cause in the responses, the liens were ordered dismissed per CCR §10562 on 4/9/2014. The lien of N Care was withdrawn voluntarily on 4/17/2014. Two separate timely verified Petitions for Reconsideration were timely filed on 4/23/2014 as to both the Frontier Medical and the withdrawn N- Care lien.

## II. FACTS

A lien conference was held on 2/12/2014 at 8:30am. N Care and Frontier Medical are entered in the record as pro per lien claimants. No letters of representation were ever filed. The court entered a disposition on the case after 11:15am. No one presented themselves to this court by 11:15am on behalf of either N Care or Frontier Medical. As there was no appearance, the defendant requested that the court dismiss the liens for failure to appear. The court executed two dismissal orders with the provision that lien claimants would have 10 days to object. The court treated the document as notices.

At approximately 11:30am, Marlene Hernandez of Pinnacle Lien decided to appear for the 8:30am lien conference. I told her that several lien claimants all claimed that they all had evidence and wished to proceed to trial. I advised that she had not appeared and that I agreed to dismiss the liens but that she had her legal right to object. At no time did she offer any evidence either Frontier Medical or N Care ever retained the services of her employer, Pinnacle lien. Objections were filed. No letters of representation have never been filed. ~~The dismissal order was served by this court on 4/9/2014. The order was served directly on the providers as there was no evidence of Pinnacle's standing.~~

Mr. Bill Leuand of Pinnacle appeared at the 4/17/2014 trial. The court reminded him that the threshold issue was employment. He wrote that Pinnacle does not challenge the dismissal order as to N Care but would file a Petition for Reconsideration as to the Frontier Medical issue. He did not discuss the employment issue. He then left the hearing.

## III. DISCUSSION

There has been a tremendous problem of lien claimants signing in on an appearance sheets and then intentionally abandoning cases to delay dispositions. It is epidemic. There were numerous lien claimants in this case. The threshold issue in this case is employment. In the compromise & release, N'Garnia, LLC strongly denied it was a special employer. Checkmate Staffing had no workers

compensation insurance. Applicant's counsel never sought to join the UEBTF. There is no stipulation to employment by Checkmate Staffing.

When the court addressed this case as it approached 11:30am on 2/12/2014, it was advised that Ms. Hernandez had signed in but no one could find her. This court does not doubt she was somewhere in the building. No letter of representation was filed by Ms. Hernandez. Therefore, the fact that she left the court room hours before and no one could find her was not relevant. ~~There was no evidence she represented anyone.~~ There was no good cause to further delay the case. When she later approached the court after the parties left, there was still no record of a valid appearance. When Mr. Leuand appeared at the lien trial there was also no record of a valid appearance.

The numerous lien claimants who all claimed they wanted a trial to offer evidence of employment all admitted at trial that they had no such evidence and wanted to withdraw their liens. They were then withdrawn. The one exception was Dr. Onubah who simply chose not to appear for the trial. The court proceeded to trial on that lien.

The court reminded Mr. Leuand that even if it had been in error, he would have to have evidence of employment. He specifically represented that he had no objection to the dismissal of the lien of N Care and would withdraw it anyway. That withdrawal is noted on the 4/17/2014 appearance sheet. Mr. Leuand never filed a letter of representation either. He did not want to address the merits of the case or the standing issue. He simply stated he would file a Petition for Reconsideration as to the Frontier Medical lien.

The Petitions for Reconsideration represent that Ms. Hernandez spoke to the defense representative but fails to disclose her decision not to address the court for almost three hours after the case was set.

This court reviewed the unverified objections filed by Pinnacle prior to issuing the 4/9/2014 dismissal order. There is no issue as to the lien of CA Sleep Analysis. The order stated that there was no objection because Labor Code §4903.6(b) requires a letter of representation to be filed within 5 business days. If a lien representative has no evidence of being hired with a valid letter of



representation that includes the signature of the lien claimant, that lien claimant is to be treated as not appearing.

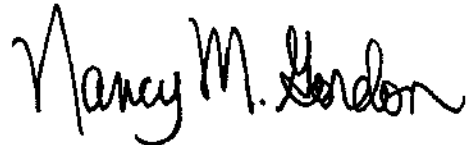
Pinnacle has now retained Jeffrey Trombacco, Esq. to file the petitions for reconsideration. They do not mention the 4/9/2014 dismiss order. The petitions are obviously in response to the 4/9/2014 order or they would be untimely and the petitions are definitely timely. He does not explain why he is filing a petition on the N Care lien.

As there was no record of Pinnacle lien representing any party or lien claimant to this case, the court will add it to the address record so that it may serve the Report & Recommendation on these Petitions for Reconsideration on Pinnacle Lien Corona.

**IV.**  
**RECOMMENDATION**

It is recommended that these frivolous Petitions for Reconsideration be denied and for the dismissal orders to be modified to reserve jurisdictions for sanctions pursuant to Labor Code §5813 to be addressed by this court.

DATE: 4/29/2014



**Nancy M. Gordon**  
WORKERS' COMPENSATION JUDGE