WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CYNTHIA GARCIA, ***Applicant,*** **vs.** **ARUN ENTERPRISES dba SUBWAY; STATE FARM INSURANCE,** ***Defendants.***	**Case No. ADJ3821486 (VNO 0534738)** **OPINION AND ORDER GRANTING PETITION FOR REMOVAL AND DECISION AFTER REMOVAL**

Defendant requests removal from the August 21, 2013 Findings and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that: "(1) This board is without jurisdiction to adjudicate whether [lien claimant,] Tri-County Medical Group, Inc., (Tri-County) has violated the ban on the corporate practice of medicine and compel depositions of Maria Ruby Leynes, M.D., and Edward Komberg, D.C., and production [sic] of documents related thereto, as the jurisdiction over said claim lies solely with the Medical Board of California and the Superior Court, a court of record of general jurisdiction;" "(2) There is no good cause to grant defendant's Petition For Orders Compelling Deposition, Costs and Sanctions dated 4/3/2013;" and "(3) All other issues relevant to the disputed lien of Tri-County Medical Group, Inc., within the jurisdiction of this board, remain off-calendar with the parties to attempt informal resolution of said lien issues or to be addressed upon the filing of a DOR."

Previously, applicant's underlying claim of injury to multiple body parts while employed as a sandwich maker on July 27, 2006 was settled by a December 18, 2007 Order Approving Compromise and Release (OACR) for $29,000.00. Following additional proceedings, defendant filed a Declaration of Readiness to Proceed (DOR) on January 30, 2013 alleging a discovery dispute with lien claimant Tri-County. The discovery issue was tried on April 23, 2013 and resulted in the decision from which defendant requests removal herein.

Defendant contends that it will suffer significant prejudice and irreparable harm as a result of the WCJ's decision finding that the Workers' Compensation Appeals Board (WCAB) lacks jurisdiction to

adjudicate the present issues and to compel discovery. Defendant argues that it has the right to conduct discovery as to whether Tri-County violated the ban against the corporate practice of medicine and, if so, that violation would be a viable defense against liability on the lien.

Identifying themselves as third parties, Dr. Leynes and Dr. Komberg have filed an Opposition to Defendant's State Farm's Petition for Removal (Answer). The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny removal.

Based on our review of the record and for the reasons discussed below, we will grant removal, rescind the WCJ's decision, and return this matter to the trial level.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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, § 10843(a); see also *Cortez, supra; Kleemann, supra.*) The petitioner must also demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10843(a).) We are persuaded that defendant has established grounds for removal from a non-final discovery order wherein the WCJ failed to exercise jurisdiction over an issue in controversy properly before him as more fully explained below.

In its January 30, 2013 DOR, defendant stated that:

> "Defendant has made multiple attempts to take the deposition of chiropractor/lien claimant Edward Komberg of Tri-County Medical Group. Counsel for chiropractor Komberg refuses to allow Komberg to answer any questions with regard to the corporate practice of medicine bar which is the sole subject of Defendant's inquiry. A trial is required to define the allowable scope of discovery with regard to deposition and the production of documents...."
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> (DOR, 1/30/13, at p. 2.)

On April 10, 2013, defendant filed a Petition for Orders Compelling Deposition, Costs, and Sanctions. Therein, defendant asserts that (1) Dr. Leynes is the purported Medical Director of Tri-County and is a majority shareholder of the corporation and that Dr. Komberg is a 49% minority

shareholder; (2) the scope of proposed questions to be asked of Dr. Leynes and Dr. Komberg primarily relates to the structure, practice, policies and procedures of Tri-County; the roles of Dr. Leynes and Dr. Komberg in the corporation; issues of management of the medical practice; the role of any contracted management companies and financial compensation for same; the responsibilities of other physicians and/or chiropractors at Tri-County regarding management; and the relationships with outside vendors involving diagnostic studies, pharmaceuticals, durable medical equipment and similar issues; (3) the information defendant seeks by deposition and subpeona is directly relevant to the ban on corporate practice of medicine including Dr. Leynes' financial compensation as the majority owner, the costs associated with the purchase of that interest, and the compensation of Dr. Komberg as the minority owner; (4) the requested information is relevant to the assessment of whether Tri-County is complying with the ban on corporate practice of medicine.

Dr. Leynes and Dr. Komberg objected to defendant's Petition to Compel essentially arguing that (1) Tri-County's corporate structure and financial information is not relevant to the medical reasonableness of the treatment provided to applicant; (2) the ban on the corporate practice of medicine is governed by the Business and Professions Code; (3) defendant has no private right of action to enforce the ban on the corporate practice of medicine; (4) even if a private right of action to enforce exists, it does not lie within the jurisdiction of the WCAB but rather the Superior Court; and (5) the requested information violates Tri-County's right to privacy.

The matter proceeded to a hearing on April 23, 2013 at which time the only issue framed for trial was discovery in relation to Tri-County's $25,346.00 medical treatment lien.

In his Report, the WCJ stated that:

> As persuasively argued by Drs. Leynes and Komberg, this board is without jurisdiction to determine and adjudicate whether Tri-County Medical Group, Inc. has violated the ban on the corporate practice of medicine and compel production of documents related thereto. The jurisdiction over said disputed claim ultimately lies with the Medical Board of California and the Superior Court. Contrary to defendant's contentions, there are remedies available to the public where there has been a violation of the Medical Practice Act, including the ban on the corporate practice of medical by filing a complaint with the Medical Board and the Attorney General of the State of California. (Report, at p. 14.)

We disagree with the WCJ's finding that the WCAB lacks jurisdiction in this matter. The WCAB has exclusive jurisdiction over medical liens. (Lab. Code, §§ 5300(b), 5304; (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1204 [57 Cal.Comp.Cases 149].) This jurisdiction extends "over *any controversy* relating to or arising out of Sections 4600 to 4605 inclusive, unless an express agreement fixing the amounts to be paid for medical, surgical or hospital treatment as such treatment is described in those sections has been made between the persons or institutions rendering such treatment and the employer or insurer." (Lab. Code, § 5304, emphasis added.)

Moreover, as part of the burden to establish its right to reimbursement on a lien (Lab. Code, §§ 5705, 3202.5), a lien claimant "must also prove that its services were properly provided, meaning it complied with applicable licensure or accreditation requirements." (*Zenith Ins. Co. v. Workers' Comp. Appeals Bd. (Capi).* (2006) 138 Cal.App.4th 373, 377 [71 Cal.Comp.Cases 374].) In *Capi*, the Court of Appeal addressed the licensure and accreditation requirements for ambulatory surgical centers as provided in Health and Safety Code sections 1248(c), 1248.1 and 1248.8. 5. The trial judge had allowed two lien claims by Beach Cities Surgery Center and Pain Intervention Therapy of San Diego even though there was no proof in the record that either was licensed or accredited. The Appeals Board denied the insurer's petition for reconsideration and it appealed. In addressing these issues, the Court of Appeal found that the Legislature had recognized that many surgical procedures are performed in numerous outpatient settings and determined that, although the health professionals delivering the services are licensed, further quality assurance was needed to ensure that the services were safely and effectively performed. (*Capi, supra*, 138 Cal.App.4th at 376.) In support of the holding, the Court of Appeal cited *PM & R Associates v. Workers' Comp. Appeals Bd.* (2000) 80 Cal.App.4th 357, 370 [65 Cal.Comp.Cases 347] [holding that a lien claimant had the burden to prove its liens were for properly provided services, including whether it had complied with the provisions of Business and Professions Code section 2069 and the attendant regulations governing medical assistants]; *Hand Rehabilitation Center v. Workers' Comp. Appeals Bd.* (1995) 34 Cal.App.4th 1204, 1212–1213 [60 Cal.Comp.Cases 289] [holding that a lien claimant had the burden of proving a lien was for properly provided services, including documentation that properly licensed personnel supervised the therapy as required by official medical fee

schedule]; and *Continental Medical Center etc. v. Workers Comp. Appeals Bd.* (2000) 65 Cal.Comp.Cases 162, 164–165 [holding that a lien claimant medical center was not entitled to payment for medical treatment because it was not a professional corporation at the time of applicant's treatment].

In *Unique Healthcare Management, Inc., Wilmer Origel, D.C. v. Workers' Comp. Appeals Bd. (Alberdin)* (2007) 72 Cal. Comp. Cases 1404, (writ den.), the WCJ found that the WCAB has jurisdiction to consider all issues related to the payment of a medical treatment lien. The lien claimants filed a Petition for Reconsideration contending, in part, that "(1) the Labor Code does not give the WCAB jurisdiction to determine the validity of corporate documents issued by the California Medical Board and the California Secretary of State; (2) the Medical Board has sole authority to determine the validity of, and to issue, a fictitious name permit; (3) the Secretary of State has sole authority to determine the validity of articles of incorporation; (4) the WCAB has no jurisdiction under the Labor Code to determine whether a company has engaged in fraudulent practices or to interpret a contract between a management company and a medical corporation; (5) the WCAB has no jurisdiction to determine the validity or constitutionality of California Corporations Code provisions; [and] (6) the WCAB is not authorized under Labor Code § 5304 to adjudicate supplemental proceedings on the issues raised by SCIF." (*Alberdin, supra*, 72 Cal. Comp. Cases at p. 1406.) In its Opinion and Decision After Reconsideration, the Appeals Board cited the California Constitution, Article XIV, section 4; Labor Code sections 3600, 3602, 5304; *Vacanti v. State Compensation Insurance Fund* (2001) 24 Cal. 4th 800 [65 Cal.Comp.Cases 1402]; *Marsh & McLennan, Inc. v. Superior Court* (1989) 49 Cal. 3d 1 [54 Cal.Comp.Cases 265]; *PM&R, supra,* 80 Cal. App. 4th at p. 357; and *Capi, supra*, 138 Cal. App. 4th at p. 377 to support its holding that "the WCJ has jurisdiction to determine the validity of Lien Claimant's bills and liens, including jurisdiction to determine whether Med-1 was properly licensed when it provided medical services...." (*Id.* at 1406.) The lien claimants filed Petitions for Writ of Review and these were denied by the Court of Appeal. (*Id.* at 1407.)

Based on this authority, we find that the WCJ has jurisdiction to address the issues in this case including the issue of whether Tri-County has violated the Medical Practice Act's prohibition against the corporate practice of medicine (Bus. & Prof. Code, § 2400) and whether any such violation is a defense

against liability for Tri-County's lien.

As to discovery rights, "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.010; see also, e.g., *John B. v. Superior Court* (2006) 38 Cal.4th 1177, 1206; *LA Unified Sch. Dist. v. Trustees of the So. California IBEW-NECA Pension Plan* (2010) 187 Cal.App.4th 621, 627-628.) Furthermore:

> "[I]n accordance with the liberal policies underlying the discovery procedures, doubts as to relevance should generally be resolved in favor of permitting discovery. Evidence is relevant for discovery purposes 'if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement.' Evidence that is relevant for purposes of discovery need not be admissible; it will be relevant, and hence discoverable, if it might reasonably lead to other, admissible evidence."
>
> (*John B., supra,* 38 Cal.4th at p. 1206 [internal citations and quotation marks omitted].)

While a portion of the discovery defendant seeks appears to be relevant to presenting its defense, some appears to be overbroad. Therefore, we believe that the best course of action is to return this matter to the WCJ for the appointment of a special master. The special master is to be jointly selected by the parties or appointed by the WCJ if they are unable or unwilling to do so, and the fee is to be paid by defendant. The special master is directed to attend the depositions, conduct an in camera review of the disputed information and/or documents, and to provide recommendations to the parties and to the WCJ regarding the admissibility of disputed items. After the special master's recommendations are presented to the WCJ and the parties, any issues they have concerning it should be addressed during further trial proceeding and the WCJ should then issue a new decision consistent with this opinion.

Accordingly, based on the reasons stated herein, we will grant removal, rescind the WCJ's decision, and return this matter to the trial level.

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For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the August 21, 2013 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board, that the August 21, 2013 Findings and Order is **RESCINDED**, and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

DEIDRA E. LOWE

I CONCUR,

MARGUERITE SWEENEY

DEPUTY

NEIL P. SULLIVAN

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCT 28 2014

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

CARLSON & JAYAKUMAR LLP
GOLDMAN MAGDALIN & KRIKES (2)

PAG/sye

CASE NO. ADJ3821486 [VNO 0534738]

CYNTHIA GARCIA	v.	ARUN ENTERPRISES dba SUBWAY; STATE FARM INSURANCE
DATE OF INJURY:		JULY 27, 2006
WORKERS' COMPENSATION JUDGE:		RALPH ZAMUDIO
DATE:		OCTOBER 21, 2013

REPORT OF WORKERS' COMPENSATION JUDGE
ON PETITION FOR RECONSIDERATION

INTRODUCTION

Applicant, Cynthia Garcia, born 12/10/1983, while employed on July 27, 2006 as a sandwich maker at Huntington Park, California, by Arun Enterprises doing business as Subway, then insured for workers' compensation by State Farm Insurance, sustained injury arising out of and in the course of employment to the neck and back, and claims to have sustained injury arising out of and in the course of employment to the head, left leg, sleep, neurological and psychological. The applicant's case-in-chief settled by Compromise and Release approved on 12/18/2007. Among remaining disputed lien issues is that of Tri-County Medical Group, Inc.[1]

The lien matter came on the trial calendar solely to address a discovery dispute relating to defendant's Petition For Orders Compelling Deposition, Costs and Sanctions

[1] In preparation of the report and recommendation, the undersigned WCJ was successful in locating the board's legacy file which contains the Compromise and Release and Order Approving C&R dated 12/18/2007. At paragraph 8 of the C&R, it recites, "Defendants will pay, adjust, negotiate or litigate all timely filed liens." Among the enumerated liens in the accompanying lien affidavit is that of "Tri-County" and wherein the defendant declared it "paid 700.31 per OFMS."

dated 4/3/2013 requesting an order be issued compelling Tri-County Medical Group principals, Edward Komberg, D.C., and Ruby Leynes, M.D., respond to questions posed at deposition taken on 1/28/2013 of Dr. Komberg, and to be taken of Dr. Lynes, and to produce documents. At pages 2:4-19 of said petition, defendant outlined the scope of discovery sought to be compelled relating to the ban on the corporate practice of medicine. The lien claimant objected to the scope of discovery sought, and filed written opposition thereto.

At the lien discovery trial held on 4/23/2013 exhibits were received in evidence and the parties were allowed time in which to file post-trial briefs. Thereafter, a Findings and Order (Discovery Motion Re: Lien of Tri-County Medical Group, Inc.) issued on 8/21/2013 denying defendant's petition dated 4/3/2013 for an order compelling deposition, costs and sanctions, and finding, in pertinent part, this board is without jurisdiction to adjudicate whether Tri-County Medical Group, Inc. has violated the ban on the corporate practice of medicine and compel depositions of Maria Ruby Leynes, M.D., and Edward Komberg, D.C., and production of documents related thereto, as the jurisdiction over said claim lies solely with the Medical Board of California and the Superior Court, a court of record of general jurisdiction.

The defendant timely filed a verified petition for removal on 9/16/2013 of the Findings and Order dated 8/20/2013, served on 8/21/2013.

The defendant asserts that the discovery order, decision or action will result in significant prejudice and irreparable harm.

The defendant contends the WCAB has jurisdiction over the lien of Tri-County Medical Group, Inc., as well as discovery relating to said lien and the corporate practice of medicine ban. It argues the scope of discovery available to defendant in addressing

said disputed lien is broader than that found by the undersigned WCJ because the medical provider submitted to this board's jurisdiction by filing a lien for industrial medical treatment and whether the lien claimant violated the corporate practice of medicine ban is within this board's jurisdiction to determine in deciding whether to allow a lien claimant recovery of its lien before the WCAB. It contends the corporate practice of medicine ban is a viable defense available to defendant concerning the lien of Tri-County Medical Group, Inc., and it will suffer substantial prejudice and irreparable harm if it is not allowed to conduct discovery related to said defense as the Medical Board and Superior Court are without jurisdiction to adjudicate Tri-County's lien.

The lien claimant filed a detailed verified answer to the petition for removal disputing defendant's contentions. It argues compliance with corporate formation is not a prerequisite for an insurer's obligation to pay for medical services; the information sought by defendant's petition violate both Dr. Komberg's and Dr. Leynes' respective right to privacy; the "unfettered" discovery of corporate and financial documents is not permissible; the WCAB is not the correct venue to challenge whether a healthcare provider has complied with the "corporate ban."

FACTS

The applicant, Cynthia Garcia, born 12/10/1983, while employed on July 27, 2006 as a sandwich maker at Huntington Park, California, by Arun Enterprises dba Subway, then insured for workers' compensation by State Farm Insurance, sustained injury arising out of and in the course of employment to the neck and back, and claims to have sustained injury arising out of and in the course of employment to the head, left leg, sleep, neurological and psychological. The applicant's case-in-chief settled by Compromise and Release approved on 12/18/2007. Among the pending disputed liens

still at issue is a lien filed by Tri-County Medical Group, Inc., for medical treatment charges incurred between 8/31/2006 to 12/3/2007 in the total sum of $27,433, and after some adjustments, leaving a balance in dispute in the sum of $25,346.00.

On January 28, 2013, Edward Komberg, D.C., appeared for his deposition set at request of defendant. He was represented by counsel at said deposition. He testified he is licensed to practice chiropractic since 1984, never had any disciplinary actions taken against him by the Board of Chiropractors, that his job title at Tri-County is Chiropractor, did not recall if he had any other job titles there, did not know who at Tri-County would know if he had other job titles, and when asked questions by defense counsel about his role at Tri-County, about who is the Tri-County office manager, objections were posed by lien claimant's counsel on grounds of relevancy and privacy because the question posed lien claimant believed were not relevant to whether or not the applicant's treatment was reasonable and necessary. The witness was instructed not to answer. Addressing the objection and scope of discovery the following exchange occurred at the deposition between counsel for the parties:

> "MR. TURCHIN: All right. Are you not going to allow Dr. Komberg to answer any of the questions with regard to the scope of the deposition as noted in the Notice of Deposition?
>
> MS. NICHOLAS: He can answer questions as to the treatment of the applicant.
>
> MR. TURCHIN: I don't care about the treatment of the applicant. I'm here to inquire with regard to the corporate practice of medicine bar with regard to the - - with regard to Tri-County Medical Group and how they practice and their corporate structure and who is responsible for what, because if they are not practicing in compliance with the law, then they are not entitled to recover on their lien. There is an underlying issue.
>
> MS. NICHOLS: Okay. You have absolutely provided no law to back that up. The corporate ban on medicine, I am completely familiar with that. You have not connected the dots to what that has to do with

whether or not the treatment that was provided at Tri-County was reasonable and necessary. That's the standard for whether or not the insurance company is obligated to pay, not whether or not the corporate structure is properly done.

The purpose of that rule is to protect patients, not to allow insurance companies a reason to wiggle out of payments, so that's what you're using it for, so he can answer questions - - he provided you with the fictitious business statement, the application, so any questions you have on - - he can authenticate those for you. Those provide licensure information which is about as far as you can get on the corporate formation.

It's just not relevant, and you've provided no case law or statutes that back that up.

MR. TURCHIN: That is not true. I provided plenty of case law. I already have an order on this case to produce documents in order for deposition which didn't go forward because of the obstreperous position taken by your offices, and here we are again, and you are still doing it.

So we're going to cancel right now. I'm going to - - I'm just putting on notice I'm seeking sanctions . . ., and I am going to seek to compel all the scope of inquiry as noted in the notice of deposition.

If you're going to instruct your client not to answer on every question that I ask, it's a complete waste of time. And this goes - - I assume, then, that you're going to take the exact same position with regard to Dr. Lanus (phonetic); is that correct?

MS. NICHOLS: Absolutely correct. . . ." [Defendant's Exhibit C, Deposition of Edward Komberg, D.C., dated 1/28/2013 at pages

The defendant filed a Petition For Orders Compelling Deposition, Costs and Sanctions dated 4/3/2013 requesting an order be issued compelling Tri-County Medical Group principals, Edward Komberg, D.C., and Ruby Leynes, M.D., to respond to questions posed at deposition taken on 1/28/2013 of Dr. Komberg, and to be taken of Dr. Lynes, and to produce documents.

By its petition, the defendant avers "Ruby Leynes, M.D. is the purported Medical Director of Tri-County and is a majority shareholder of the corporation." It further notes, "Edward Komberg is a minority shareholder of the corporation." At page 2:4-19,

the defendant outlines the scope of discovery sought to be compelled relating to the ban on the corporate practice of medicine, and argues as follows:

> "The scope of proposed questions to be asked with regard to Leynes and Komberg is primarily related, but not strictly limited to, the structure, practice, policies and procedures of Tri-County and Leynes' role as the Medical Director of same as well as the role of Komberg, the 49% shareholder. The scope of questions also includes issues of management of the medical practice; the role of any contracted management companies and financial compensation for same; the responsibilities of other physicians and/or chiropractors at Tri-County regarding management; relationships with outside vendors involving diagnostic studies, pharmaceuticals, durable medical equipment and similar issues. Also key to the discovery of information directly relevant to the corporate practice of medicine bar is Dr. Leynes' financial compensation as the majority owner and the costs associated with the purchase of that interest as well as the compensation of chiropractor Komberg as the minority owner. All of the above information is critical and certainly relevant to the assessment of whether Tri-County is in fact complying with the corporate practice of medicine bar."

The lien claimant of record in this workers' compensation matter is Tri-County Medical Group. Prior to the filing of defendant's petition dated 4/3/2013, and following the deposition of Dr. Komberg taken on 1/28/2013, the attorney for Drs. Leynes and Komberg wrote to defense counsel on 1/30/2013 in an effort to meet and confer about the disputed depositions. The letter dated 1/30/2013 explained it was the lien claimant's position the corporate and financial information concerning Tri-County Medical Group, Inc. had nothing to do with whether or not State Farm Insurance was obligated to pay for the industrial medical treatment provided to the injured worker, Cynthia Garcia. Counsel for Drs. Leynes and Komberg further outlined their positions regarding the disputed scope of discovery, explaining at pages 1-2 of the letter dated 1/30/2013, as follows:

"...

On January 28, 2013, at the deposition of Dr. Komberg, I objected to your questions regarding the corporate status of Tri-County Medical Group, Inc. as such information is not related to whether the treatment provided to M. Garcia was medically necessary and reasonable. You indicated that the purpose of the deposition was to inquire about the corporate status of Tri-County Medical Group, Inc. and that you would not be asking about Ms. Garcia's treatment. I again asserted relevance and privacy objections and you suspended the deposition and indicated you would seek a motion to compel.

I also provided you with a copy of the objections to the deposition notice of Dr. Komberg that my office served via overnight mail on January 22, 2013. . . . I am also enclosing a copy of the documents that Dr. Komberg produced at the deposition. As you can see, the Fictitious Name Application and Statement of Information provide sufficient evidence that Tri-County Medical Group, Inc. is properly formed and licensed. You simply are not entitled to any further information regarding the corporate status. You claim that the ban on the corporate practice of medicine provides you license to delve into the corporate and financial structure and information concerning Tri-County yet you fail to cite to any case or statutory law. That is because there is no such authority. The ban on the corporate practice of medicine is not related to whether an insurer is responsible for paying for treatment provided to its injured worker. The substance of Tri-County's position is included in the enclosed objections."

Written objection to the defendant's petition to compel was filed by Dr. Maria Ruby Leynes and Edward Komberg, D.C., dated 4/18/2013. As noted above, among other things, Drs. Leynes and Komberg argue the corporate structure of the healthcare provider (Tri-County Medical Group, Inc.) is not relevant to the medical reasonableness of the treatment provided to the injured worker. At pages 4-7 of the written objection, Drs. Leynes and Komberg explain the ban on the corporate practice of medicine doctrine is part of the Moscone-Knox Professional Corporation Act, which governs professional corporations, including medical corporations like Tri-County (Cal. Corp. Code § 13400 et. seq.). They explain the doctrine is set forth in two sections of the

Medical Practice Act, the Business and Professions Code, Section 2052 that the practice of medicine without a valid license is unlawful (Cal. Bus. & Prof. Code, § 2052) and Section 2400 that "[c]orporations and other artificial entities shall have no professional rights, privileges, or powers." (Cal. Bus. & Prof. Code, § 2400) Drs. Leynes and Komberg explain at page 4 of the objection as follows:

> "These statutes together are interpreted as a ban on corporations practicing medicine by employing physicians because corporations and other artificial entities are not granted licenses and, therefore, have no professional rights, privileges, and powers. The limitations on the rights, privileges, and powers of corporate and other artificial entities are intended to prevent unlicensed persons from interfering with or influencing the physician's professional judgment. The reasoning behind this intention is that corporations cannot have the training, education, and personal characteristics that are needed to receive a medical license. In addition, corporations are unable to develop the relationship of trust and confidence that is necessary for the relationship between a professional and patient or client. Similarly, a corporation must not employ physicians because the physician's acts would then be attributable to the unlicensed employer. [footnote omitted.]
>
> Importantly, however, the ban explicitly does not apply to professional corporations. They are allowed to exist and employ licensees under the Medical Practice Act. [footnote omitted.] In fact, the Medical Practice Act provides that certain licensed persons can have an ownership interest in professional medical corporations so long as such interest is less than a 50% interest. [footnote omitted.] For example, chiropractors owning a share in a multi-specialty group must have an ownership interest less than 50%. This is the structure Tri-County uses — and has — even notifying the Medical Board of such.
>
> In fact, Tri-County provided a copy of Tri-County's Fictitious Name Permit Application ('FNP') which demonstrated that Dr. Komberg — a chiropractor — has a 49% ownership and Dr. Leynes has 51% ownership. [footnote omitted.] The Medical Board approved of this and issued the FNP. It, not State Farm, has jurisdiction to review and approve this application. [footnote omitted.] This fact alone — which was already and voluntarily provided to State Farm — provides evidence that Tri-

> County was legally operating during the medical treatment in question. This evidence also demonstrates that there is no basis for 'reviewing' corporate and financial documents of Tri-County that is the Medical Board's job which it has done."

Among other things, at pages 5-6 of their objection, Drs. Leynes and Komberg argue State Farm Insurance Company has no private right of action to enforce the ban on the corporate practice of medicine, and even if there was such a right, it would not lie within the jurisdiction of the WCAB, but rather the Superior Court. It also argues to the extent State Farm seeks "contracts, agreements, leases and rental agreements between Tri-County and any licensed physicians, contracts between Tri-County and any durable medical equipment providers, contracts between Tri-County and any pharmaceutical management companies, etc." the WCAB is not the proper venue to determine the contractual rights and obligations vis a vis one another, citing *Victor Valley Transit Authority v. Workers' Comp. Appeals Bd.* (2000) 83 Cal. App. 4th 1068 [65 Cal. Comp. Cases 1018].

Among other things, at pages 7-9 of the objection, Drs. Leynes and Komberg further argue the right to financial privacy precludes disclosure of Tri-County's corporate and financial information, and the State Farm discovery request violates Tri-County and Drs. Leynes and Komberg's respective rights to privacy, citing *Ameri-Medical Corp. v. Workers' Comp. Appeals Bd.* (1996) 42 Cal. App. 4th 1260, 50 Cal. Rptr. 2d 366 [61 Cal. Comp. Cases 149].

The defendant filed State Farm's Reply To Objections Of Chiropractor Komberg and Ruby Leynes, M.D. To Petition For Orders Compelling Deposition, Costs And Sanctions dated 4/23/2013, responding to the objection and proving written argument and points and authorities in support of the request for discovery order.

At the discovery trial held on 4/23/2013, the parties set forth stipulated facts and issues relevant to the pending disputed petition for discovery order and objection thereto. Documents were received in evidence as outlined at pages 3:14-5:2 of the Minutes of Hearing dated 4/23/2013, and judicial notice was taken of the decisions in *Victor Valley*, *supra*, and *Ameri-Medical Corp.*, *supra*.

At conclusion of the discovery trial, the defendant was given time to file post-trial supplemental brief, and Drs. Leynes and Komberg were given time in which to file post-trial reply brief following which the disputed discovery matter would stand submitted. The post trial briefs filed by defendant dated 5/6/2013 and by Drs. Leynes and Komberg dated 5/20/2013 were received and reviewed by the undersigned.

After reviewing the entire record, and giving due consideration to the written argument filed by the parties, the undersigned issue the findings and order now the subject of the defendant's petition for removal ruling the jurisdiction over said disputed claim ultimately lies with the Medical Board of California and the Superior Court as the WCAB is a court of record of limited jurisdiction and the scope of discovery sought by defendant's petition dated 4/3/2013 is beyond the jurisdiction of this board, overbroad and violates the right of privacy of Tri-County Medical Group, Inc., Maria Ruby Leynes, M.D., and Edward Komberg, D.C. The undersigned WCJ found good cause to deny defendant's petition to compel discovery dated 4/3/2013 and deny the petitions for sanctions, costs and attorney fees under Labor Code section 5813. It is from said findings and order defendant now seeks removal.

DISCUSSION

The defendant contends the discovery decision made is erroneous because the appeals board does have jurisdiction over the lien of Tri-County Medical Group, Inc., as

well as discovery relating to said lien and the corporate practice of medicine ban. It argues the scope of discovery available in addressing said disputed lien is broader than that found by the undersigned WCJ because the medical provider submitted to this board's jurisdiction by filing a lien for industrial medical treatment and whether the lien claimant violated the corporate practice of medicine ban is within this board's jurisdiction to determine in deciding whether to allow a lien claimant recovery of its lien before the WCAB. It contends the corporate practice of medicine ban is a viable defense available to defendant concerning the lien of Tri-County Medical Group, Inc., and that it will suffer substantial prejudice and irreparable harm if it is not allowed to conduct discovery related to said defense as the Medical Board and Superior Court are without jurisdiction to adjudicate Tri-County's lien.

By its petition for removal, at page 2:12-17, the defendant asserts:

> "The scope of proposed questions to be asked with regard to Leynes and Komberg is primarily related to the structure, practice, policies and procedures of Tri-County and Leynes role as the Medical Director of same as well as the role of Komberg, the 49% shareholder The scope of questions also includes issues of management of the medical practice; the role of any contracted management companies and financial compensation for same; the responsibilities of other physicians and/or chiropractors at Tri-County regarding management; relationships with outside vendors involving diagnostic studies, pharmaceuticals, durable medical equipment and similar issues. Also key to the discovery of information directly relevant to the corporate practice of medicine bar is critical and certainly relevant to the assessment of whether Tri-County is in fact complying with the corporate practice of medicine bar."

In support of its contention this board does have jurisdiction to adjudicate whether the medical provider violated the corporate practice of medicine ban the defendant cites a panel decision, *Harvard Surgery Center, et al v. Workers' Comp. Appeals*

Bd. (Yero) (2005) 70 Cal. Comp. Cases 1354, and a currently pending unresolved consolidated action in *Miriam Ureta v. Catego Corp., dba Burger King; State Farm Ins.* (ADJ142792) assigned to WCJ S. Michael Cole involving whether a medical provider has violated the corporate practice of medicine ban.

The defendant's citation to *Yero* offers minimal, if any, guidance on the question of jurisdiction since the issue of board jurisdiction over the corporate practice of medicine ban was not decided in that case because the panel ruled there were many other complex common issues raised in the consolidated lien cases in *Yero* that would necessitate similar discovery and the lien claimant seeking removal of the WCJ's discovery order failed to demonstrate it would suffer substantial prejudice or irreparable harm by the s ruling allowing discovery to be completed before determining whether the California Medical Board had exclusive jurisdiction over the issue.

Similarly, the defendant's citation to the pending consolidated action in *Ureta* offers no guidance since said consolidated action has not yet been finalized, and the order dismissing removal referenced by defendant in support of its contention the board by implication has asserted jurisdiction over the issue of corporate practice of medicine ban in *Urerta*, was issued on the sole basis the medical provider failed to timely file its petition for removal of the trial level WCJ discovery orders and hence the petition for removal was dismissed without ever reaching the issue of jurisdiction (even by implication).[2]

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[2] The defendant at page 12 of the petition for removal also cites a penal decision *Mendez-Correa v. Vevoda Dairy; Zenith Ins.* 2013 Cal. Wrk. Comp. P.D. LEXIS 171 as one where the undersigned trial WCJ "has run afoul of this issue of improperly limiting the jurisdiction of the WCAB over medical treatment issues." Nowhere in the board's Opinion and Decision After Reconsideration does it hold the undersigned trial WCJ improperly limited the board's jurisdiction over medical treatment issues in *Mendez-Correa*. In fact, the board affirmed the trial level decision made and only rescinded that

Here, the evidence shows the applicant sustained industrial injury on 7/27/2006 to the neck and back with additional parts-of-body injured being in dispute. The applicant apparently self-procured medical treatment to cure or relieve from the effects of the industrial injury for which a lien was filed by Tri-County Medical Group, Inc., for medical treatment charges incurred between 8/31/2006 to 12/3/2007 in the total sum of $27,433, and after some adjustments, leaving a balance in dispute in the sum of $25,346.00.

The evidence also shows Tri-County Medical Group, Inc. is a professional medical corporation registered with the State of California Secretary of State, and has filed a Fictitious Name Permit Application with the Medical Board of California noting Maria R. Leynes, M.D., a licensed physician, is the 51% shareholder, and Edward Komberg, D.C., a non-physician licensed chiropractor, is the 49% shareholder. The defendant seeks to depose Maria Ruby Leynes, M.D., and Edward Komberg, D.C., about, among other things, whether there has been a violation of the ban on the corporate practice of medicine.

As noted by lien claimant in its opposition to the defendant's petition for removal, relevant to defendant's the attempt to compel discovery regarding the corporate practice of medicine ban, the medical provider has submitted proof by its letter of 1/30/2012 the Fictitious Name Application and Statement of Information provide evidence that Tri-County Medical Group, Inc. is properly formed and licensed. This prima facie showing is evidence the medical provider has complied with the

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portion of findings of fact number 7 indicating the applicant obtained treatment outside of the MPN at his own expense pursuant to L.C. § 4605 by deleting the reference to "at his own expense under Labor Code section 4605" because the evidence did not establish the applicant "intended" to self-procure at this own expense. There was no issue of jurisdiction in *Mendez-Correa*.

licensing requirements under the Medical Control Act and Business and Professions Code, the burden of proof initially being with the medical provider they are properly licensed and accredited. (*Zenith Ins. Co. v. Workers' Comp. Appeals Bd. (Capi)* (2006) 138 Cal.App.4th 373 [71 Cal. Comp. Cases 374]; *Torres v. AJC Sandblasting; Zurich No. America* (2012) 77 Cal. Comp. Cases 1113, 1119-1120 (board en banc).)

The defendant seeks to depose Maria Ruby Leynes, M.D., and Edward Komberg, D.C., about, among other things, whether there has been a violation of the ban on the corporate practice of medicine and in doing so seeks to obtain information violating their respective right to privacy. When invited to make inquiry at the deposition of Dr. Komberg about medical treatment issues relevant to applicant's industrial injury provided by lien claimant, he defendant declared, "I don't care about the treatment of the applicant." Clearly, as astutely observed by lien claimant, it appears the defendant's purpose in pursing the discovery sought concerning any alleged violation of the corporate practice of medicine ban is to avoid liability for payment of medical treatment reasonably and necessarily incurred by the injured worker for which a lien has been filed by Tri-County Medical Group.

As persuasively argued by Drs. Leynes and Komberg, this board is without jurisdiction to determine and adjudicate whether Tri-County Medical Group, Inc. has violated the ban on the corporate practice of medicine and compel production of documents related thereto. The jurisdiction over said disputed claim ultimately lies with the Medical Board of California and the Superior Court. Contrary to defendant's contentions, there are remedies available to the public where there has been a violation of the Medical Practice Act, including the ban on the corporate practice of medical by filing a complaint with the Medical Board and the Attorney General of the State of

California. As explained by the Court of Appeal in *Stiger v. Arthur Moses Flippin* (2011) 201 Cal.App.4th 646, the Medical Board's investigative powers are broad and within its exclusive jurisdiction explaining, in pertinent part, as follows:

> "The Board is an administrative agency within the Department of Consumer Affairs. (citation omitted.) As our Supreme Court has explained, the Board, acting under various names, has been a 'key instrument' in the regulation and practice of medicine since its statutory creation in 1876. (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 7 [56 Cal. Rptr. 2d 706, 923 P.2d 1] (*Arnett*).) 'Since the earliest days of regulation the Board has been charged with the duty to protect the public against incompetent, impaired, or negligent physicians, and, to that end, has been vested with the power to revoke medical licenses on grounds of unprofessional conduct [citation].' (*Ibid*.) Consistent with its overall mission, the Board has been given statutory responsibility for, among other things, 'enforcement of the disciplinary and criminal provisions of the Medical Practice Act [(§ 2000 et seq.)]' and '[r]eviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the [B]oard.' ([Business & Professions Code] § 2004, subds. (a), (e).)
>
> To enable the Board to carry out its enforcement responsibilities, the Medical Practice Act 'broadly vests' the Board with investigative powers. (citation omitted.) 'Such investigatory powers have been liberally construed.' (citation omitted.) The Board's investigative powers with respect to disciplinary actions 'relating to' physicians licensed by the Board are exclusive. (§ 2220.5, sub. (a); see Lorenz v. Board of Medical Examiners (1956) 46 Cal.2d 684, 687-688 [298 P.2d 537]; P.M. & R Associates v. Workers' Comp. Appeals Bd. (2000) 80 Cal.App.4th 357, 363 [94 Cal. Rptr. Ed 887] (PM & R Associates).)."

As explained by lien claimant in the answer to the petition for removal, "Compliance with a healthcare provider's form of business organization does not negate Insurer's obligation to pay for medical services." (*California Physicians' Serv. v. Aoki Diabetes Research Inst.,* (2008) 163 Cal.App.4th 1506, 1514). The defendant confesses it does not care about the treatment of the applicant. Having been given opportunity to

make inquiry of Dr. Komberg at his deposition about areas relevant to the reasonableness and necessity of the industrial medical treatment provided to Ms. Garcia by Tri-County Medical Group, Inc., the defendant refused to ask questions relevant thereto and instead has chosen to pursue a tactic it incorrectly believes will absolve it of any liability for payment of the medical treatment by insisting the medical provider answer questions and provide documentation concerning the corporate practice of medicine in the hope of discovering a violation based on nothing more than mere speculation – the purpose being to avoid any liability for payment of reasonable medical treatment. The lien claimant persuasively argues at pages 3-5 of the answer to the petition for removal, the defendant's assumptions are misplaced as follows:

> "In *California-Physicians' Services,* the insurer sought to avoid payment to healthcare providers because the corporation was not properly formed, and thus engaged in the corporate practice of medicine.[fn. omitted.] The providers' corporation, ADRI, was initially formed as a nonprofit corporation. It expanded to provide clinical care, but did not reform as a medical corporation. The insurer, after its insureds received thousands of dollars of treatment from ADRI, sought to avoid paying anything under its contract with ADRI because of ADRI's corporate status. The Court ruled for ADRI, finding that any illegal structure in the business organization cannot somehow give the insurer a windfall benefit: 'We conclude that any illegality in ADRI's form of business organization does not negate [the insurer's] contractual obligation to pay for ADRI's services'[fn. omitted.] and that the insurer 'would be unjustly enriched if 'allowed to retain the value of the benefits bestowed by plaintiff without compensating him.' [fn. omitted.]
>
> In fact, the Court felt that ADRI was in fact engaged in the impermissible corporate practice of medicine, but that was insufficient to not enforce the insurer's obligations. [fn. omitted.] It ruled that the corporate-practice doctrine is to protect patients, not insurers: 'The ban on the corporate practice of medicine is meant to protect patients, not health care service plans... [the insurer] would be unjustly enriched if it were allowed to retain the benefit of services bestowed on its subscribers

without compensating ADRI.'[fn. omitted.] In drawing this conclusion, the California Court looked to other states and relied on a Minnesota ruling that states: '[p]ermitting insurance companies to avoid liability under their insurance contracts does little to protect patients from the "specter of lay control over professional judgment."

For obvious reasons, California Physicians' Services directly applies here. State Farm seeks, essentially, to use corporate-formation and control issues to avoid their liability, for already-rendered, medically-necessary treatment. Further, State Farm has absolutely no evidence to suggest that Tri-County is not in compliance with corporate formation rules. State Farm is simply fishing for a loophole to avoid its obligations to pay and searching for any problem it can find - despite the fact that the Medical Board has never filed an Accusation against Tri-County for problems with its corporate formation. State Farm impermissibly seeks confidential, proprietary information regarding Tri-County's corporate structure that is irrelevant to State Farm's obligation to pay.[fn. omitted.] Thus, there is no ground for State Farm to obtain such private and confidential information and no prejudice results from dismissing State Farm's Petition."

The WCAB is a court of record of limited jurisdiction. The scope of discovery sought by defendant's petition dated 4/3/2013 is beyond the jurisdiction of this board, overbroad and violates the right of privacy of Tri-County Medical Group, Inc., Maria Ruby Leynes, M.D., and Edward Komberg, D.C., as explained by the lien claimant at pages 5-7 of the answer to the petition for removal, as follows:

"Defendant's document requests and 'deposition categories' impermissibly seek private and confidential information about third-parties and its employees, -without any protections for the privacy of the third parties.[fn. omitted.] Much of the information at issue here is statutorily protected, private information, requiring a balance that tilts strongly toward protecting the privacy interests of the third parties. This is because financial information is clearly protected by California's constitutional right to privacy. Article 1, Section 1 of the California Constitution specifies that a person's privacy is an inalienable right, and that even highly relevant, non-privileged information may be shielded from discovery if its disclosure would impair a person's "inalienable" right of privacy provided by the Constitution.[fn. omitted.]

> Courts have consistently ruled that financial information is protected by this privacy right and that protection extends to corporations.[fn. omitted.] Notwithstanding this, State Farm seeks the privileged corporate and financial documents from *individuals*.[fn. omitted.] State Farm has still failed to demonstrate the purported relevance of the documents and information it seeks. As noted above, the ban on the corporate practice of medicine does not permit an insurer 'unfettered access' to a healthcare provider's privileged financial and corporate documents simply because the insurer 'questions' whether the healthcare provider has complied with the ban on the corporate practice of medicine. Therefore, the court should deny State Farm's Petition."

The WCAB is a court of record of limited jurisdiction. Given this record, there is good cause to deny defendant's petition to compel discovery dated 4/3/2013, and the petitions for sanctions, costs and attorney fees as there is no good cause to impose sanctions under Labor Code section 5813.

RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the petition for removal be DENIED.

Dated:
Filed and Served by mail on above date on all interested parties/liens on the Official Address Record.
By: _____
Millie Rios

_____
RALPH ZAMUDIO
WORKERS' COMPENSATION JUDGE