

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3  
4 **FRANCISCO MARTINEZ,**

5 *Applicant,*

6 **vs.**

7 **MAINSTAY BUSINESS SOLUTIONS;**  
8 **CALIFORNIA SELF-INSURER'S SECURITY**  
9 **FUND, adjusted by METRO RISK**  
10 **MANAGEMENT,**

11 *Defendants.*

**Case No. ADJ6643295**

**(Santa Ana District Office)**

**OPINION AND ORDER**  
**GRANTING PETITION FOR**  
**RECONSIDERATION AND NOTICE OF**  
**INTENTION TO IMPOSE SANCTIONS**

12 Lien claimants Jenifer Zhong Acupuncture, Renee Kohanim Chiropractic, and Paramount  
13 Physicians Health Center seek reconsideration of an Order Dismissing Lien Claims or Lien Balances  
14 issued by the workers' compensation administrative law judge (WCJ) on April 1, 2014, and served on  
15 April 7, 2014, after the lien claimants failed to object to a Notice of Intention to Dismiss Lien Claims or  
16 Lien Balances issued on March 6, 2014, at the lien trial scheduled on those liens. The lien claimants  
17 contend that the WCJ erred in issuing the Order Dismissing their Lien Claims or Lien Balances.

18 The defendant did not file an answer. The WCJ filed a Report and Recommendation  
19 recommending that reconsideration be denied and further recommending that sanctions, costs and fees be  
20 imposed on the lien claimants.

21 Based on our review of the record and for the reasons stated in the WCJ's report, which we adopt  
22 and incorporate, we would deny reconsideration. However, at this time we grant reconsideration in order  
23 to issue a notice of intention to impose a sanction of up to \$300 against each lien claimant and each lien  
24 representative individually for filing a petition that appears to be frivolous within the meaning of Labor  
25 Code section 5813 and indisputably without merit within the meaning of Appeals Board Rule 10561(b).

26 The matter came up for lien trial on March 6, 2014, on the morning trial calendar. At the time of  
27 the hearing, there were no fully-executed Notices of Representation on file for the above-named lien

1 claimants. A hearing representative from BBE Management (Jonathan House) was physically present on  
2 behalf of these lien claimants, but again, there were no notices on file at the time of the hearing in  
3 compliance with Appeals Board Rule 10774.5, which requires a signature from each lien claimant, the  
4 entity representing the lien claimant, and the actual representative appearing. Under subparts (e)(5)(A)  
5 and (B) of that section, failure to comply with that requirement is a basis for finding that the lien claimant  
6 has not appeared at the hearing, and the lien claimant is “subject to all of the consequences of a failure to  
7 appear.” At that time the WCJ was empowered to issue a 10-day notice of intent to dismiss under  
8 Appeals Board Rule 10562(e)(1), and the WCJ did so. No lien claimant named in the notice of intent to  
9 dismiss the liens objected to the notice of intent to dismiss, nor did the purported lien representative(s)  
10 Jonathan House nor BBE Management.

11 We also note, in the filing of the Petition for Reconsideration, Tina Dyck (presumably on behalf  
12 of BBE Management and the lien claimants), violated WCAB Rule 10842(c), as Petitioner appended  
13 Notices of Representation to the Petition for Reconsideration. We note that the Notices filed with the  
14 Petition for Reconsideration are still not fully-executed, and therefore are not fully compliant with  
15 WCAB Rule 10774.5.

16 All parties must adhere to the rules of practice and procedure alike. Requiring parties to follow  
17 the rules is not a “technicality,” as Tina Dyck argues in the Petition for Reconsideration. Furthermore, it  
18 was a waste of the Board’s resources to respond to a Petition for Reconsideration when the lien claimants  
19 (and/or their purported representative(s)) had ample opportunity to object to the notice of intent when it  
20 issued, and chose to do nothing until after the WCJ issued the Order Dismissing the Lien Claims.

21 We issue the notice of intention to impose sanctions in order to afford the lien claimants and their  
22 representative(s) Jonathan House/Tina Dyck/BBE Management the opportunity to demonstrate good  
23 cause to the contrary.

24 For the foregoing reasons,

25 **IT IS ORDERED** that reconsideration of the Order Dismissing Lien Claims of April 1, 2014, be,  
26 and the same is **GRANTED**.

27 / / /





**STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION  
WORKERS' COMPENSATION APPEALS BOARD**

Jennifer Zhong Acupuncture, Paramount Physicians Medical Center  
And Renee Kohanim Chiropractic, Lien Claimants in Interest, in  
Re: Francisco Martinez vs. Mainstay Business Solutions;  
California Self-Insurer Security Fund c/o Metro Risk Management

JUDGE MYRLE R. PETTY

Case No. ADJ6643295  
San Bernardino District Office

**REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

By timely, verified Petition for Reconsideration, filed 4/16/2014, Petitioners, Jenifer Zhong Acupuncture, Renee Kohanim Chiropractic, and Paramount Physicians Health Center (hereafter lien claimants), by and through their purported representatives of record, BBE Management (Petition for Reconsideration signed by Tina Dyck, whose status as attorney or non-attorney is not known), seeks reconsideration of the three Orders Dismissing Lien Claim or Lien Balance issued herein on 4/1/2014 and filed and served on 4/7/14 as to these three lien claimants.

As of the date of this Report and Recommendation on Petition for Reconsideration, there has been no Answer to the Petition for Reconsideration filed by or on behalf of defendant.

**ISSUES PRESENTED**

1.  
Was it error to dismiss the three lien claims or  
lien balances in issue?

## INTRODUCTION

In each of the three orders complained of, the undersigned Workers' Compensation Administrative Law Judge found as follows:

“A Notice of Intention to Dismiss Lien Claim or Lien Balance in accordance with Rule 10210, 10301, 10770.1 &/or 10240 issued on 3/6/2014 and was served by the WCAB on 3/6/2014. No timely objection showing good cause was filed within the requisite time allotted (ten [10] days plus five [5] days for mailing per the Code of Civil Procedure).

GOOD CAUSE APPEARING,

IT IS HEREBY **ORDERED** that the lien claim or lien balance of [Renee Kohanim Chiropractic; Jennifer Zhong, LAC; Paramount Physicians Medical Center] be and hereby is **DISMISSED** with prejudice.”

## DISCUSSION

1.

Was it error to dismiss the three lien claims or lien balances in issue?

It was not error to dismiss the three lien claims or lien balances in issue insofar as at the time of the lien trial in issue (on 3/6/2014 at 8:30 a.m.), there was no Notice of Representation in EAMS pursuant to 8 CCR 10774.5, which mandates that all lien claimants file a Notice of Representation, a Notice of Change of Representation, or a Notice of Non-Representation, whichever applies. While it is true that Mr. Jonathan House was present asserting his appearance on behalf of BBE Management for these three lien claimants (Jennifer Zhong Acupuncture, Renee Kohanim Chiropractic, and Paramount Physicians Medical Center), there were no Notices of Representation on file, let alone Notice of Representation signed as required by 8 CCR 10774.5 (signed by each

lien claimant, signed by BBE Management and signed by Mr. House). As Rule 10774.5 (e) (5) (A) & (B) makes abundantly clear, failure to have the appropriate fully executed notice of representation or change of representation on file at or before the time of hearing, "...the lien claimant shall be deemed not to be represented even if a representative who purportedly has assumed representation appears;..." and "...if the lien claimant does not otherwise appear at the hearing, it shall be subject to all of the consequences of a failure to appear."

Since there were no required notices of representation on file at or before the hearing in question, Notices of Intention to Dismiss Lien Claim or Lien Balance issued as to each of the three lien claimants in question, which documents were filed and served by the WCAB on March 6, 2014. No objections whatsoever issued in response to the three Notices of Intention to Dismiss Lien Claim or Lien Balance and, after waiting an appropriate amount of time, the undersigned WCALJ issued three separate Orders Dismissing Lien Claim or Lien Balance as to each of these three lien claimants on April 1, 2014, filed and served by the WCAB on April 7, 2014.

Ignorance of the law is no defense. If lien claimants felt that dismissal of their liens was in some way erroneous or against the letter of the law or Rules of Practice and Procedure, each lien claimant should have filed timely objections to their respective Notice of Intention to Dismiss Lien Claim or Lien Balance. No such objection was filed by any lien claimant. They have chosen to further waste court time and resources by filing the instant single Petition for Reconsideration (one petition for all three lien dismissal Orders). After-the-fact, lien claimants did file what they purport to be Notices of Representation, but the undersigned would point out that these Notices of Representation (appended to the Petition for Reconsideration in violation of the Rules) is yet incomplete, insofar as each has not been fully executed as required by Rule 10774.5.

There is no good cause to grant reconsideration. In fact, there is ample good cause for the WCAB to consider imposing sanctions, fees and costs for filing a frivolous petition,

for attaching exhibits to a Petition for Reconsideration, and for further failing to comply with WCAB Rules by submitting insufficient and incomplete Notices of Representation.

### **RECOMMENDATION**

I recommend the Petition for Reconsideration, filed by BBE Management on behalf of lien claimants, Jennifer Zhong Acupuncture, Paramount Physicians Medical Center and Renee Kohanim Chiropractic on 4/16/2014 be **DENIED** on the merits.

It is further recommended that the WCAB impose sanctions, fees and costs jointly and severally against BBE Management and Jennifer Zhong Acupuncture, Paramount Physicians Medical Center and Renee Kohanim Chiropractic for frivolously filing a petition for reconsideration without good cause, for attaching exhibits to their petition for reconsideration in violation of the rules, and for failure to comply with 8 CCR 10774.5 by filing fully executed Notices of Representation in this matter.

Dated at San Bernardino, California  
April 16, 2014

A handwritten signature in black ink that reads "Myrle R. Petty". The signature is written in a cursive, flowing style.

**MYRLE R. PETTY**  
**WORKERS' COMPENSATION**  
**ADMINISTRATIVE LAW JUDGE**

Filed and served by mail on:  
On all parties on the  
Official Address Record.

Date: April 17, 2017  
By: S Lopez