

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

Case No. ADJ1631052 (ANA 0405611)

LUISA ISABEL RODRIGUEZ,

Applicant,

vs.

**KELLY SERVICES, Permissibly Self-Insured,
Administered by ESIS,**

Defendants,

**COMPREHENSIVE OUTPATIENT
SURGERY CENTER and TECHNICAL
SURGERY SUPPORT,**

Lien Claimants.

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Defendant Kelly Services seeks reconsideration of the Findings of Fact issued by the workers' compensation administrative law judge (WCJ) on March 29, 2019. As relevant herein, the WCJ found that declarant Patrick Christoff was competent to sign Labor Code section 4903.8(d) declarations on behalf of lien claimants Comprehensive Outpatient Surgery Center (COSC) and Technical Surgery Support (TSS) (collectively lien claimants).¹

Defendant contends that: 1) lien claimants filed their section 4903.8(d) declarations untimely; and 2) Mr. Christoff did not have personal knowledge of the facts set forth in the declarations to sign them on behalf of lien claimants.

Lien claimants did not file an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the

¹ All further statutory references are to the Labor Code unless otherwise specified.

1 Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed
2 below, we will affirm the Findings of Fact.

3 **FACTUAL BACKGROUND**

4 The parties stipulated that applicant, while employed on June 1, 2007, by Kelly Services,
5 sustained injury arising out of and in the course of employment to applicant's low back, and claimed to
6 have sustained injury to applicant's neck, left leg, left hip, psyche, head, bilateral shoulders, and sleep
7 disorder. (Minutes of Hearing (MOH) and Summary of Evidence (SOE), November 20, 2018, p. 2:5-8.)

8 On September 1, 2017, Mr. Christoff executed a section 4903.8(d) declaration on behalf of lien
9 claimants. In both declarations, Mr. Christoff declared under penalty of perjury that "the services or
10 products described in the bill for services or products were actually provided to the injured employee";
11 and that "the billing statement . . . truly and accurately describes the services and products that were
12 provided to the injured employee."²

13 At lien trial on November 20, 2018, the only issue addressed was the validity of lien claimants'
14 section 4903.8(d) declarations filed on September 1, 2017. (MOH/SOE, November 20, 2018, p. 2:12-13.)
15 Mr. Christoff testified over two days on November 20, 2018, and March 5, 2019.

16 Mr. Christoff testified that he has worked for COSC since 2003 as an attorney, and he collects
17 liens for COSC and TSS. His job duties included understanding billing procedures and codes, reviewing
18 and negotiating bills, and reviewing surgical and medical reports, which includes over 10,000 operative
19 reports. He reviewed these reports to have an understanding of what was billed for what service for each
20 case. He also spoke to pain management doctors to get an understanding of the medical services that had
21 been provided and billed to negotiate billing. (MOH/SOE, November 20, 2018, p. 4:21-5:12.)

22 Mr. Christoff testified that he was familiar with decompression procedures, which were
23 performed by COSC in this case. Mr. Christoff indicated that applicant had multiple decompression
24 procedures and facet blocks done at multiple levels in the back and neck as detailed in Dr. Williams'
25

26 ² Defendant argues that we cannot take judicial notice of Mr. Christoff's declarations. We note that Mr. Christoff's
27 declarations were filed with lien claimants' liens. Therefore, Mr. Christoff's declarations are part of the record of proceedings.
(Cal. Code Regs., tit. 8, § 10750.) Accordingly, we may take judicial notice of Mr. Christoff's declarations. (See Evid. Code, §
452(d).)

1 reports. During his trial testimony, Mr. Christoff went through in detail COSC's invoice, explaining the
2 meaning of the CPT codes. (MOH/SOE, November 20, 2018, pp. 6:25 – 7:14.)

3 At trial, Mr. Christoff stated that he reviewed the operative reports to ensure that the description
4 of the services in the operative reports matched the services that were billed in the invoice. Mr. Christoff
5 testified that he relied on the information in the operative reports to determine the accuracy and
6 specificity of the actual billing to ensure that they were the same and matched each other. Mr. Christoff
7 explained that he received education on decompression procedures as well as training on bill review
8 practices; he has reviewed over 10,000 bills. Mr. Christoff testified that he reviewed medical and surgical
9 reports prior to signing his section 4903.8(d) declarations on September 1, 2017. (MOH/SOE, November
10 20, 2018, p. 5:13-7:19.)

11 After being presented with his section 4903.8(d) declaration for COSC at trial, Mr. Christoff
12 testified that his declaration was accurate. Mr. Christoff also testified that he reviewed TSS's billing and
13 the operative reports before executing his declaration for TSS. (MOH/SOE, March 5, 2019, p. 2:11-20.)

14 On cross-examination, Mr. Christoff testified that he did not have any formal training or
15 classroom instruction on CPT coding; did not attend any seminars in bill review; and did not recall being
16 in the operating room for any of the procedures that were billed. Mr. Christoff testified that he based his
17 declaration on the doctor's chart notes, and the doctor declared under penalty of perjury that the services
18 were provided on that date. (MOH/SOE, March 5, 2019, p. 2:23-3:7.)

19 DISCUSSION

20 I.

21 For the first time, on reconsideration, defendant raises the issue of the timeliness of lien
22 claimants' section 4903.8(d) declarations. We note that the timeliness issue is defendant's burden, and
23 defendant should have affirmatively raised this issue at trial. Because this issue was not previously
24 raised, we consider it waived and will not consider it on reconsideration. (See *Cottrell v. Workers' Comp.*
25 *Appeals Bd.* (1998) 63 Cal.Comp.Cases 760, writ denied; *Sonoma County Office of Education v.*
26 *Workers' Comp. Appeals Bd. (Pasquini)* (1998) 63 Cal.Comp.Cases 877, writ denied; *Paula Insurance*
27 *Co. v. Workers' Comp. Appeals Bd. (Diaz)* 62 Cal.Comp.Cases 375, writ denied.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II.

The liens at issue are for medical treatment apparently prescribed by applicant's treating physician as reasonable and necessary to cure or relieve the effects of this disputed industrial claim. (See Lab. Code, §§ 4600 and 4903(b).) Medical treatment liens in workers' compensation cases have been the subject of both decisional law and legislative action. In 2002, the Appeals Board issued a decision in which it held that where a lien claimant is litigating the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured employee and must prove by a preponderance of the evidence all of the elements necessary to the establishment of its lien, (*Kunz v. Patterson Floor Company, Inc. (Kunz)* (2002) 67 Cal. Comp. Cases 1588 (Appeals Bd. en banc); see also, *Tapia v. Skill Master Staffing* (2008) 73 Cal. Comp. Cases 1338 (Appeals Bd. en banc).)

Controversy over the proliferation of medical treatment liens has resulted in significant legislative reform over the past several years. Senate Bill 863 (Stats. of 2012, ch. 363) and Senate Bill 1160 (Stats. of 2016, ch. 868) are two examples of such reform measures.

At issue in this matter is the declaration requirement set forth in section 4903.8(d), which became effective on January 1, 2013, as part of Senate Bill 863. It provides, in relevant part:

At the time of the filing of a lien . . . supporting documentation shall be filed including one or more declarations under penalty of perjury by a natural person or persons competent to testify to the facts stated, declaring both of the following:

(1) The services or products described in the bill for services or products were actually provided to the injured employee.

(2) The billing statement attached to the lien truly and accurately describes the services or products that were provided to the injured employee.
(Lab. Code, § 4903.8(d).)

Here, Mr. Christoff's section 4903.8(d) declarations comply with section 4903.8(d) in that he declared under penalty of perjury the facts found in subsections (d)(1) and (d)(2). Therefore, the burden shifted to defendant to prove that Mr. Christoff's section 4903.8(d) declarations were invalid.

Defendant argues that lien claimants' 4903.8(d) declarations are invalid because Mr. Christoff is not competent to testify to the facts in his declarations; in particular, Mr. Christoff does not have "personal knowledge that the billing statement accurately describes the products/services provided to the

1 injured employee and that those products/services were actually performed.” (Petition for
2 Reconsideration, April 23, 2018, p. 4:24-5:10.) Based on Mr. Christoff’s trial testimony, defendant
3 argues that Mr. Christoff does not have personal knowledge because “he has no recollection of being in
4 the operating room during any of the operative procedures, that he has no recollection of discussing this
5 case with the doctor who performed the services, and that his recollection for the declaration came from a
6 review of the billing, chart notes, and reports. Mr. Christoff has absolutely no personal knowledge about
7 whether the services were actually performed and properly billed. All of Mr. Christoff’s knowledge came
8 from other sources and thus constitutes hearsay. Mr. Christoff has no independent knowledge that the
9 services actually occurred.” (Petition for Reconsideration, *supra*, at p. 10:1-7.) In support of its argument,
10 defendant also cited to our prior Appeals Board panel decisions in *Fuerte v. SLA Enterprises* (2018) 2018
11 Cal. Wrk. Comp. P.D. LEXIS 328, 10-11, and *Ramos v. Tri-State Employment Services* (2018) 2018 Cal.
12 Wrk. Comp. P.D. LEXIS 342, 10-11.³

13 We agree with defendant that section 4903.8(d) requires the declarant to be a natural person
14 competent to testify to the matters asserted in the declaration. Although section 4903.8(d) does not define
15 exactly what is meant by the phrase, “competent to testify,” we find guidance in Evidence Code section
16 702, which provides:

17 (a) Subject to Section 801, the testimony of a witness concerning a particular matter is
18 inadmissible unless he has personal knowledge of the matter. Against the objection of a
19 party, such personal knowledge must be shown before the witness may testify concerning
20 the matter.

21 (b) A witness’ personal knowledge of a matter may be shown by any otherwise admissible
22 evidence, including his own testimony.
(Evid. Code, § 702.)

23 ³ Appeals Board panel decisions, unlike *en banc* decisions, are not binding on other Appeals Board panels and WCJs. (See
24 *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel
25 decisions are citeable authority and may be considered to the extent their reasoning is persuasive, particularly on issues of
contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76
Cal.Comp.Cases 228, fn. 7 (Appeals Board En Banc); *Griffith v. Workers’ Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260,
1264, fn. 2, [54 Cal.Comp.Cases 145].)

26 In *Fuerte* and *Ramos*, the defendants raised as an issue the validity of lien claimants’ section 4903.8(d) declarations. Our
27 decisions in *Fuerte* and *Ramos* do not provide any guidance because we returned the matter back to the trial level to allow the
defendants to provide evidence regarding the competency, or lack thereof, of the declarants. (*Fuerte, supra*, at p. 13; *Ramos, supra*,
at p. 12.) Here, Mr. Christoff testified at trial regarding his competency to make the statements in his section 4903.8(d)
declarations.

1 Therefore, the person making a section 4903.8(d) declaration must have personal knowledge of
2 the matters set forth in the declaration. For our purposes, the declarant must have personal knowledge
3 that the billing statement accurately describes the services/products provided to the applicant, and that
4 those services/products were actually provided.

5 While there is no disagreement that Mr. Christoff was not present for any of the medical
6 procedures, this does not necessarily preclude or prevent him from competently testifying about the
7 medical services that were actually performed or properly billed. While Dr. Williams' surgical and
8 medical reports are hearsay, we disagree with defendant that our decision cannot be based on hearsay
9 evidence.

10 It is well known that workers' compensation judges are not bound by statutory or common law
11 rules of evidence or procedure. (Lab. Code, § 5708.) Section 5708 allows the appeals board or workers'
12 compensation judges to make "inquiry in the manner, through oral testimony and records, which is best
13 calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of
14 this division." (*Ibid.*) It is up to the workers' compensation appeals board to determine the weight to give
15 to hearsay evidence. (*Sada v. Industrial Acci. Com.* (1938) 11 Cal.2d 263, 268 [1938 Cal. LEXIS 296].)
16 Furthermore, hearsay evidence must be evidence of a substantial character from which the WCAB "may
17 deduce a reasonable inference." (*Pacific Employers Ins. Co. v. Industrial Acci. Com.* (1941) 47
18 Cal.App.2d 494, 500 [1941 Cal.App. LEXIS 1196].)

19 Here, Mr. Christoff's knowledge of lien claimants' medical services was based, in part, on Dr.
20 Williams' medical reports, which Dr. Williams declared and signed under penalty of perjury. We note
21 the significance of declarations, which are authorized by Code of Civil Procedure section 2015.5.⁴ The
22 rationale for permitting a declaration under penalty of perjury in lieu of testimony under oath is that the
23

24 ⁴ Code of Civil Procedure section 2015.5 states: "Whenever, under any law of this state or under any rule, regulation, order or
25 requirement made pursuant to the law of this state, any matter is required or permitted to be supported, evidenced, established,
26 or provided by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the
27 same ... such matter may with like force and effect be supported, evidenced, established or provided by the unsworn
statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by him
or her to be true under penalty of perjury, is subscribed by him or her, and (1), if executed within this state, states the date and
place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that is so
certified or declared under the laws of the State of California. . . ." (Code Civ. Proc., § 2015.5.)

1 potential for application of criminal sanctions of perjury where material facts declared to be true are, in
2 fact, not true or are not known to be true provides a sufficient deterrent against false and/or unknowing
3 declarations. (*In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214; *Ancora-Citronelle Corp. v.*
4 *Green* (1974) 41 Cal.App.3d 146, 150.) Dr. Williams' medical reports, which he declared were true and
5 correct under penalty of perjury, are of substantial character to deduce that Dr. Williams performed the
6 medical services in his reports.

7 Additionally, Mr. Christoff testified about his extensive experience collecting liens on behalf of
8 COSC and TSS. Mr. Christoff was familiar with the billing and coding procedures of lien claimants; he
9 reviewed over 10,000 operative reports as well as surgical and medical reports; and he demonstrated a
10 firm understanding of the medical procedure performed by Dr. Williams.

11 Based on the facts of this case, we conclude that Mr. Christoff is competent to testify to the facts
12 stated in his section 4903.8(d) declarations.

13 Accordingly, we will affirm the WCJ's Findings of Fact.

14 / / /

15 / / /

16 / / /

17 / / /

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

26 / / /

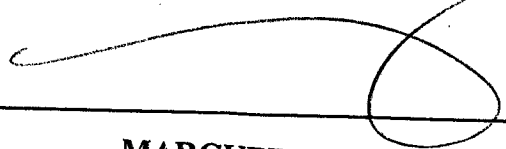
27 / / /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration that the WCJ's March 29, 2019 Findings of Fact is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD



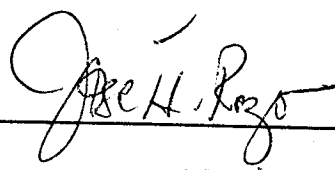
MARGUERITE SWEENEY

I CONCUR,

CHAIR



KATHERINE ZALEWSKI



JOSÉ H. RAZO



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCT 28 2019

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

**COMPREHENSIVE OUTPATIENT SURGERY
LUISA ISABEL RODRIGUEZ
SILVERMAN & MILLIGAN
TECHNICAL SURGERY SUPPORT
WALL MCCORMICK
ZA MANAGEMENT**

ABSmS

SS/oo

RODRIGUEZ, Luisa Isabel

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

Case No. ADJ1631052 ANA 0405611

LUISA ISABEL RODRIGUEZ,

Applicant,

vs.

**KELLY SERVICES, Permissibly Self-Insured,
Administered by ESIS,**

Defendants,

**COMPREHENSIVE OUTPATIENT
SURGERY CENTER and TECHNICAL
SURGERY SUPPORT,**

Lien Claimants.

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Reconsideration has been sought by defendant with regard to the decision filed on March 27, 2019.

Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration will be granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

For the foregoing reasons,

IT IS ORDERED that Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that pending the issuance of a Decision After Reconsideration in the above case, all further correspondence, objections, motions, requests and communications *relating to the petition* shall be filed only with the Office of the Commissioners of the Workers' Compensation Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA

1 94102) or its Post Office Box address (P.O. Box 429459, San Francisco, CA 94142-9459), and shall not
2 be submitted to the district office from which the WCJ's decision issued or to any other district office of
3 the Workers' Compensation Appeals Board, and shall not be e-filed in the Electronic Adjudication
4 Management System (EAMS). Any documents relating to the Petition for Reconsideration lodged in
5 violation of this order shall neither be accepted for filing nor deemed filed.

6 / / /

7 / / /

8 / / /

9 / / /

10 / / /

11 / / /

12 / / /

13 / / /

14 / / /

15 / / /

16 / / /

17 / / /

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

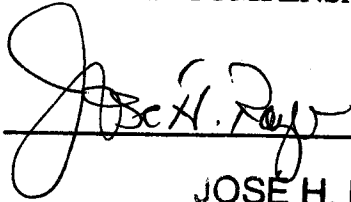
25 / / /

26 / / /

27 / / /

1 All trial level documents not related to the Petition for Reconsideration shall continue to be e-
2 filed through EAMS or, to the extent permitted by the Rules of the Administrative Director, filed in paper
3 form.¹ If, however, a proposed settlement is being filed, the petitioner for reconsideration should
4 promptly notify the Appeals Board because a WCJ cannot act on a settlement while a case is pending
5 before the Appeals Board on a grant of reconsideration. (Cal. Code Regs., tit. 8, § 10859.)
6

7 **WORKERS' COMPENSATION APPEALS BOARD**

8 
9

10 **JOSE H. RAZO**

11 **I CONCUR,**

12 
13 **MARGUERITE SWEENEY**

14 **CONCURRING, BUT NOT SIGNING**

15 **CHAIR**

16 **KATHERINE ZALEWSKI**



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

18 **JUN 24 2019**

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

21 **LUISA ISABEL RODRIGUEZ**
22 **WALL MCCORMICK BAROLDI & DUGAN**
23 **ZA MANAGEMENT**

24 
25 **oo**

26 ¹ Such trial level documents include, but are not limited to, declarations of readiness, lien claims, trial level petitions (e.g.,
27 petitions for penalties, deposition attorney's fees), stipulations with request for award, compromise and release agreements,
etc.)

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

CASE NUMBER: ADJ1631052

LUISA ISABEL
RODRIGUEZ

-vs.-

KELLY SERVICES;
ACE; permissibly self-insured, administered
by ESIS,

COMPREHENSIVE OUTPATIENT SURGERY
CENTER and TECHNICAL SURGERY
SUPPORT,

WORKERS' COMPENSATION LAW JUDGE: Pamela A. Stone

REPORT AND RECOMMENDATION OF
CALIFORNIA WORKERS' COMPENSATION JUDGE ON PETITION FOR
RECONSIDERATION

I.

INTRODUCTION

Defendant has filed a timely verified Petition for Reconsideration. For the reasons set forth below, this Petition should be denied.

II.

STATEMENT OF FACTS

The matter was set for Lien Trial before the undersigned Judge on the issue of whether Patrick Christoff, a licensed attorney who represents the lien claimants Technical Surgery Support and Comprehensive Outpatient Surgery Center, may sign his name to the LC4903.8 (d) declaration.

Mr. Christoff testified at Trial that prior to signing the declarations, he reviewed medical reports from the providers which were signed under penalty of perjury and the billings in the cases. Mr. Christoff's office is located in the same building as the providers and he testified that although he was not present for the procedures/services he is readily familiar with them.

Defendant argues that the declaration is invalid as Mr. Christoff was not present during any of the procedures or services. Defendant asserts that Mr. Christoff does not have personal knowledge of the services rendered as he was not there.

Mr. Christoff directed his signature be affixed to each of the declarations for both lien claimants. Mr. Christoff is aware of billing coding and how services are charged.

The Court found that Labor Code § 4903.8 (d) requires a person competent to testify to the facts shall file the declaration. The Court found based on Mr. Christoff's testimony that he is familiar with billing coding, reviewed reports signed by the providers under penalty of perjury, and is familiar with the procedures performed and that he was qualified to sign the declarations on behalf of the lien claimants.

The Court did not address the issue of timeliness of the filing of the liens as it was not raised at trial or mentioned in defendant's Trial Brief. It was the Court's understanding that all issues other than the signing of the declaration were off-calendar.

It is from this finding that defendants have petitioned for reconsideration

III.

CONTENTIONS

1. That the Court erred in finding the Patrick Christoff was qualified to sign the LC4903.8 declarations.
2. That Judicial Notice is not appropriate (The Court did not take Judicial Notice of proposed evidence in this Trial).
3. The declaration was untimely.

IV.

DISCUSSION

The issue before the Court was whether Mr. Christoff, a licensed attorney who represents Outpatient Surgery Center and Technical Surgical Support, is a person with, “competent,” to sign the LC 4903.8(d) declaration on behalf of his clients.

Mr. Christoff testified at Trial that he is the attorney for the lien claimants and that his office is located in the same building as the lien claimant offices. Mr. Christoff is familiar with billing coding and the services provided by the lien claimants.

Mr. Christoff personally read the medical reports, which were signed under penalty of perjury by the providers and the billing in each case and thereafter directed his signature to be affixed to the declarations.

Petitioner raised the issue of Judicial Notice in his Petition. There was no request of the Court to take Judicial Notice of any documents. The Court did take the declarations into evidence as they were relevant on the issue before the Court. Therefore the Court does not believe she needs to address this further at this time.

Petitioner raised timeliness of the declaration as an issue on reconsideration. It was this Court’s understanding that all issues other than whether Mr. Christoff was qualified to sign the declarations on behalf of Comprehensive Surgery Center and Technical Surgery Support are deferred and off-calendar (See Minutes of Hearing dated November 20, 2018).

The Court reviewed the Trial Brief of defendant after receiving the Petition and did not note timeliness of the declaration was raised or addressed.

In reviewing Labor Code § 4903.8(d), the Court noted that the person who may sign the declaration is a person who is competent to testify to the facts stated. The code section does not state that the person who performs the services shall sign the declaration.

This Court interprets this to mean that a person such as Mr. Christoff who has personally reviewed medical reports signed under penalty of perjury as well as billing in each case for each lien claimant is a person qualified as, "competent," to sign the declaration.

In reviewing the case of Luis Fuerte vs. SLSA Enterprises 2018 Cal. Wrk. Comp. P.D. LEXIS 328, the Court first notes that this is not a significant panel decision. The case indicates that the person signing the declaration must have personal knowledge that the billing statement accurately describes the products/services provided to the injured worker and that the products/services were actually provided.

Mr. Christoff testified at Trial as to why he is competent to sign the declaration. The Fuerte case allows for establishing competency at a later date if it becomes an issue.

The Fuerte case goes onto indicate that it was the defendant's burden as the party challenging the declaration to provide evidence that the declarant was not competent. Defendant did not provide any such evidence at Trial.

The Court stands by her finding that it would be unduly burdensome to require the provider to review each billing and medical report and expect only him or her to sign the declaration. The Court found that a person, "competent," as to the matters contained in the declaration may sign the declaration.

V.

RECOMMENDATION

In light of the forgoing, it is respectfully recommended that defendant's Petition for Reconsideration be denied.

DATE: May 3, 2019

P. Stone

Pamella A. Stone

WORKERS' COMPENSATION JUDGE

SERVICE MADE ON THE PARTIES LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD

On: May 3, 2019

By: P.V.

WALL, McCORMICK, BAROLDI & DUGAN, APC
ZA MANAGEMENT