

KEGEL, TOBIN & TRUCE
INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/CLIENTS

FROM: JOE TRUCE

DATE: March 18, 2004

RE: LEGAL OBLIGATION OF APPLICANT TO SIGN
DEPOSITION UNDER PENALTY OF PERJURY

This memorandum is a follow-up to my memo dated August 15, 2003 in which I enclosed a Findings and Award by Judge Keigo Obata, Workers' Compensation Judge, in the case of Amy Mitchell v. Christopher Michael Salon & Spa and Farmer's Insurance Exchange in which Judge Obata held that a Labor Code §5710 deposition attorneys fee is not payable until the deposition is both transcribed and signed by the applicant under penalty of perjury.

In rebuttal to the Trial decision by Judge Obata, the Board has now issued its Opinion and Decision After Reconsideration in the case of John Lett v. LACMTA; Travelers Insurance Co. filed March 5, 2004 in which the Board held that there is no legal requirement either under Labor Code §5710 or Code of Civil Procedure 2025(q)(1) requiring an applicant to sign his deposition under penalty of perjury.

In a decision authored by the Chairman of the Appeals Board, Merle Rabine, the Board held as follows:

"Moreover, even assuming that the substantive provisions of the Code of Civil Procedure are applicable to workers' compensation proceedings, Code of Civil Procedure Section 2025(q)(1) provides that the deponent 'may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by now signing it,' and that if 'the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved..."

The real issue here involves a criminal case entitled People v. Post (2001) 94 Cal. App. 4th 467, 66 CCC 1503 in which the Court of Appeal held that an applicant could not be prosecuted for perjury or false statements made at his deposition unless the applicant actually signed his deposition.

The court in Post held that "while Mrs. Post could not convicted of perjury in violation of Penal Code Section 118 when she did not sign her deposition transcript, she could be convicted of attempted perjury..." The panel decision by the Appeals Board would appear to trump the Trial decision of Judge Obata and unfortunately the Board has a point, i.e. there is no requirement either

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in Labor Code §5710 or in the Code of Civil Procedure requiring that a witness sign his and/or her deposition under penalty of perjury. As noted by the Board, the original unsigned deposition can certainly be used for impeachment at the workers' compensation hearing but cannot be evidence in a prosecution for perjury.

WJT:dab

