

## **ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES**

For past installments of the *George the Bartender* series, please visit our web site at <http://www.kttlaw.us/memos.html>

### **RE: GEORGE THE BARTENDER AND THE PREDICAMENT PRESENTED BY NEW LABOR CODE SECTION 4903.6(d) OR *LIEN CLAIMANTS FINALLY GET A “W”*<sup>1</sup>**

#### **FROM THE LOBBY BAR AT THE HYATT:**

As I made my way to the Lobby Bar after a hard day of denying benefits I contemplated visions of Kim, the Hyatt’s breathtakingly beautiful cocktail waitress, serving me cocktail of choice, a Beefeater’s Martini straight up with two olives.<sup>2</sup>

As I entered the bar and approached my usual seat I could hear an argument brewing at the other end of the bar. Looking over in that direction I saw the primary actors in this spat were the Lien brothers, Lenny and Larry, and Frank Falls, noted defense attorney.<sup>3</sup>

After settling in with my Beefeater’s Martini I quickly realized that I would have no peace unless I went over to quell this burgeoning dispute. I ordered a round of drinks for the three of them and made my way over.

The uproar died down as I approached. We exchanged the usual pleasantries and their drinks arrived shortly after. Frank began to fill me in on the current kerfuffle. There had been a hearing earlier that today involving the Lien brothers and Frank’s largest client, Integrity Insurance Company.

Frank stated that at the hearing the Lien brothers were representing a health plan rather than physician (as defined by the California Labor Code), as is their custom.

As per their usual tried and true practice Lenny and Larry Lien made a demand for service of all medical reports. I knew from past experience that the Lien brothers always request the service of medical reports at a lien conference so that they can request a continuance to review the medical reports.

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<sup>1</sup> For those new patrons to the Lobby Bar, George the Bartender’s workers’ compensation case involves an injury to his elbow, lateral epicondylitis (tennis elbow), sustained from the repetitive serving of martinis to me. If there ever was an admitted industrial injury, this is it!

<sup>2</sup> A Beefeater’s martini, straight up, is best served at 38° Fahrenheit.

<sup>3</sup> The Lien brothers had recently incorporated themselves under a new name: Hassle Free Liens. I appreciated the irony of their new name. Their business cards proudly read “No Liens Too Big, No Liens Too Small!”

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Of course they never actually reviewed the reports, but that didn't stop them from requesting them every time. Their objective was to obtain the continuance as the more continuances meant the more expensive it became for the defendant to litigate. This tactic usually resulted in a settlement for the Lien brothers.

In rebuttal to the demand of the Lien brothers for services of medical reports Frank advised that he had raised California Labor Code §4903.6(d). This section provides in relevant part as follows:

With the exception of a lien for services provided by a physician as defined in Section 3209.3, no lien claimant shall be entitled to any medical information, as defined in subdivision (g) of Section 50.05 of the Civil Code, about an injured worker without prior written approval of the appeals board. Any order authorizing disclosure of medical information to a lien claimant other than a physician shall specify the information to be provided to the lien claimant and include a finding that such information is relevant to the proof of the matter for which the information is sought.

Frank told me that when the Lien brothers made their Petition to Compel Service of Medical Legal Reports (handwritten) at the conference the Workers' Compensation Judge (WCJ) ruled that the petition was not timely and denied said petition and continued the matter for trial.<sup>4</sup>

Notwithstanding the timeliness issue, the Board has recently ruled on this new Senate Bill 863 issue.

In the Panel decision *Wendy Kayl v. The Vitamin Store, Chubb Group of Insurance Companies* (ADJ6854515/ADJ6854519) 2013 Cal. Wrk. Comp. P.D. LEXIS 464, filed on October 11, 2013, the Board noted that the petition for an order compelling the defendant to serve medical reports on a non-physician must show good cause.

This case involved The 4600 Group and their client, Aetna-Traditional.

The Board, in holding that the petition of The 4600 Group established good cause stated in relevant part as follows:

Here, Aetna-Traditional stipulates that it is a health plan. Therefore, *section 4903.6(d)* applies here. Applicant's case has been settled, and LC bears the burden of proof that applicant's injuries arose out of and occurred in the course of her employment and that the medical services for which it has paid on behalf of

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<sup>4</sup> The denial by the Workers' Compensation Judge (WCJ) of lien claimant's written request (albeit in long hand) has never really been addressed by the Board to my knowledge. The question may soon be addressed as to whether or not a lien claimant has to file a timely petition showing good cause for the obtaining of medical records. Here our fictional WCJ ruled that the petition was not timely as it was filed at the hearing.

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applicant were reasonably and necessarily required to cure or relieve from her injury. In order to sustain this burden of proof, LC must have access to the medical reports and medical-legal reports obtained by applicant and defendant in the course of litigation of this claim. Therefore, we rescind the Order dated June 6, 2013, and we order defendant to serve The 4600 Group with copies of all medical reports and all medical-legal reports obtained during the litigation of case numbers ADJ6854519 and ADJ6854515.

The Board reached a similar decision in its Panel decision in *Howard Allen v. Universal Bank, Insurance Company of the West* (ADJ7830879) 2013 Cal. Wrk. Comp. P.D. LEXIS 406 filed on August 28, 2013.<sup>5</sup>

**DISCLAIMER:**

All characters at the Lobby Bar aside from George, Kim and I are fictional and the storyline is simply a product of my warped imagination.

However, the Board has now addressed one of the new issues raised by Senate Bill 863 and has interpreted Labor Code §4903.6(d) although it would not appear that the issue of timeliness of a Petition to Compel Service of Medical Reports has been brought to the attention of the Board.

In its two logical and well-reasoned decisions in *Kayl* and *Allen* the Board has correctly noted that lien claimants bear the burden of proof on issues such as injury AOE/COE, parts of body injured and the reasonableness of medical treatment. Therefore, you can bet most petitions, especially timely petitions, by non-physician lien claimants will be granted.

Make mine a double, George.

-Joe Truce

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<sup>5</sup> The Panel decisions in *Kayl* and *Allen* can be obtained via e-mail request.