Interventional Pain Management v. Workers' Compensation Appeals Board

2001 | Cited 0 times | California Court of Appeal | November 26, 2001

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

Petitioners Interventional Pain Management and Galileo Surgery Center (collectively IPM) provided medical treatment to an employee injured during the course of her employment. The Workers' Compensation Appeals Board (WCAB) denied IPM's lien for $39,545 on the ground that the services provided were not reasonable and necessary to cure or relieve the effects of industrial injury. We reverse and remand for further proceedings.

FACTS

Linda Stratton suffered an admitted industrial industry to her spine and upper extremities on May 2, 1997. She returned to work the day after the injury occurred and worked for a year until she became totally disabled by increased pain. She was treated by Dr. Rose, a chiropractor. He referred her to Dr. Williams for a neurological examination. Dr. Williams performed an MRI scan on September 7, 1997, and opined that Stratton was not a candidate for surgery. Stratton also was examined by her family doctor, Dr. O'Brien. In July 1997, Dr. O'Brien filed a first report of injury as her primary treating physician. Stratton filed a claim with the WCAB on July 16, 1998, for injury to her back and neck.

Commencing September 1998, Dr. O'Brien reported monthly on Stratton's condition. He described her symptoms as including headache, spasms and pain in her neck and back, and pain and weakness in her upper extremities. When conservative treatment failed to improve her condition, he referred her to Dr. Kissel for a neurological examination. Dr. Kissel examined her on November 23, 1998. Stratton told him that she continued to have the symptoms she had reported to Dr. O'Brien. Dr. Kissel recommended X-ray and MRI of the cervical spine and physical therapy. On January 5, 1999, Dr. Kissel found little change in her symptoms. He noted that the physical therapy was strenuous, at times increasing her neck pain and muscle spasms, but he recommended that she continue therapy for an additional six weeks. Dr. O'Brien continued to monitor her progress. His monthly reports through May 2000 noted little improvement in her condition, except some reduction in spasm and increase in range of motion in July, July and August 1999.

Dr. Schwartz, an orthopedic surgeon and the insurer's qualified medical examiner, examined Stratton

on April 8, 1999. She reported the same symptoms to him as she had to Dr. O'Brien and Dr. Kissel. She also told Dr. Schwartz that her pain was aggravated by certain head movements as well as by lifting, carrying, pushing and pulling. Dr. Schwartz found her permanent and stationary as of the date of his examination. He diagnosed Stratton with "some palpable spasm in the cervical spine area [and] . . . a disc protrusion at the C5-6 level." He recommended "[a]additional treatment should focus on a strengthening exercise program. The patient should be seen by a physician . . . who could provide a prescription for medication to quiet her acute symptoms which may include oral steroids. She should then progress to an independent strengthening exercise program. Other treatment in the future may include medication, therapy and injection. [¶] [T]he primary form of treatment should be that of strengthening the neck in order to protect the weakened area, thereby diminishing symptomatology."

Dr. Ovadia, an orthopedic surgeon and Stratton's qualified medical examiner, examined her on October 4, 1999. He reported that she complained of "constant pain in her neck which increases with activities and can be associated with radiation into both arms (the left more so) as well as muscle spasms. Right arm pain generally does not go down past the elbow. She states that she has weakness in her left arm and hand associated with numbness. She also describes large knots in her neck, intermittent headaches, and pain in her mid back. In order to relieve her pain she uses a heating pad, hot baths, ice packs, and a Sander's cervical home traction unit. With exercise she sometimes experiences a flare up in symptoms." His treatment recommendations were "that Ms. Stratton undergo electrodiagnostic testing in an effort to firm up that diagnosis [of thoracic outlet symptoms] . . . [and] that Ms. Stratton have the benefit of a formal thoracic outlet physical therapy program over a period of six to eight weeks. Additional treatment could include prescriptive medication, possibly trigger point injections, and/or cervical epidural injections. It is unlikely that this lady will require more than conservative treatment."

Dr. O'Brien's November 30, 1999, report noted that "[s]he is continuing to use a home traction unit which continues to give her some short term relief and she will be allowed to continue this. We have received authorization for pain management consultation and will plan to make arrangements for this."

Dr. O'Brien referred Stratton to Dr. Levitan at IPM. Dr. Levitan examined her on January 12, 2000, and issued a report outlining his treatment plan, which included "epidural steroid injection and possibly a cervical facet joint block for amelioration of her left neck and trapezius pain." Dr. Levitan made at least three written requests to the insurer for authorization of the treatment. In a letter dated January 19, 2000, he described Stratton's condition as follows: "[S]he has severe neck pain radiating throughout the left upper extremity. . . . The patient is significantly disabled by her pain which is getting worse. She has been utilizing Soma, Fiorinal and has recently needed Darvocet added to her regimen."

After reviewing Dr. Levitan's reports, Dr. Schwartz issued a supplemental report on February 17,

2000, stating: "He . . . recommended cervical epidural steroid injections and possible facet joint blocks. . . . [¶] . . . I am somewhat perplexed with the suggestion that the patient should be exposed to further interventional treatment. . . . I certainly do not believe that a series of injections is likely to be of any lasting benefit to Ms. Stratton unless there is some indication of significant exacerbation of her condition. [¶] As I previously indicated, I have not seen Ms. Stratton since April 1999. Thus, I am not aware of her current status. . . . [¶] I would not want to expose Ms. Stratton to a great deal of interventional treatment, including multiple blocks or other types of injection without there being any definitive indication that she would obtain lasting benefit."

Dr. Levitan saw Stratton on March 17, 2000. With respect to Stratton's current condition, the report states: "Worsening headache pain, radiating from the cervical spine to the occipital region together with new onset of cluster type headaches in the bilateral retro-orbital areas. The patient has been medicating herself with Maxalt, however, this has caused epistaxis on several occasions, complicating her management."

Although Dr. Levitan received no authorization from Stratton's employer, he proceeded with his treatment plan and Stratton was given a series of cervical epidural steroid injections on March 20 and 30, and April 6, 2000. Dr. Levitan's April 19, 2000, report states: "The patient reports decreased pain since undergoing her two cervical epidural steroid injections."

Dr. Schwartz re-examined Stratton a week later on April 25, 2000. His report states that Stratton was on an exercise program for three or four months to strengthen her upper extremities and that "[t]here was significant improvement." The report notes that Stratton "had a series of three injections in the back of her head and neck area, the last being on April 6, 2000. The patient indicates that following these injections, there was some improvement. The symptoms gradually increased thereafter. While she is still somewhat improved from the injection, she has noticed that some of that improvement has gradually dissipated." The report states that Stratton said "she is somewhat improved from previously. She has continued pain that interferes with her activities. This increases to a markedly restrictive level two to three days a week. The pain is maintained at this level with considerable restriction of activities. She no longer uses her cervical collar."

Dr. Schwartz concluded that "her status is unchanged from that described in my Permanent and Stationary report of April 8, 1999. While the patient's symptoms, if anything, are slightly less severe, I would conclude that the subjective factors of disability as described in my report of April 8, 1999 continue to be appropriate. [¶] [I]t was my recommendation that Ms. Stratton participate in a strengthening exercise program. This was carried out and was the only form of treatment that appears to have provided any significant lasting benefit to the patient. At this point, I believe that the focus of any further treatment should be on that type of program. [¶] . . . I do not believe that further injections, blocks, or other types of interventions are likely to be of any benefit to Ms. Stratton. While the injections she has received from Doctor Levitan have provided brief partial improvement, this has not been lasting. The patient clearly points out that the benefits of the injections gradually

deteriorate. I would therefore reserve such treatment, whether injections, brief course of chiropractic care or physical therapy with modalities to treat any acute exacerbation of symptoms in the future. This may be of some significant value in reducing the patient's acute symptoms, returning them to their current level."

Dr. Levitan examined Stratton on May 17, 2000. His report states that "she reports continued good relief in general of her occipital and upper neck pain after undergoing cervical epidural steroid injection and occipital nerve blockage, six weeks ago."

WCAB Proceedings

On May 24, 2000, IPM filed and served a notice and request for allowance of lien and itemized statement with the WCAB. The lien amount of $39,545 includes charges for the three injections, as well as myelograms and other diagnostic tests and office visits. Stratton's workers' compensation claim was settled on August 31, 2000, by stipulation. With respect to future medical care, the stipulation states: "There is need for medical treatment to cure or relieve from the effects of said injury. Future medical care as outlined by Dr. Ovadia in his 10-4-99 report." The stipulation also states that the liens of IPM would be "negotiated and adjusted by the defendants outside of the Stipulation with Request for Award" and that defendants would hold Stratton harmless "only to the extent that these liens are found by the Workers' Compensation Appeals Board upon trial to be reasonable and reimbursable to the lien claimants . . . as the cost of reasonable and reimbursable non-duplicative medical/legal, and reasonable and reimbursable self-procured treatment related to the industrial injuries claimed herein."

The hearing on IPM's lien was held on October 26, 2000. At that time, the parties stipulated that if Stratton were called to testify she would testify that she was sent to IPM by her primary treating doctor, Dr. O'Brien; "that she had a series of three injections that were performed by [IPM]; that she received a reduction in her complaints for a period of approximately five days after the first injection, but had very little relief as a result of the other two injections." No testimony was taken or exhibits received into evidence.

The workers' compensation judge (WCJ) denied IPM's lien on October 31, 2000, finding that "[a]pplicant did not reasonably and necessarily self-procure the medical treatment rendered by [IPM]." The WCAB denied IPM's petition for reconsideration adopting the WCJ's report and recommendation on reconsideration as its own without further comment. In its petition for review, IPM alleges that the WCJ/WCAB's denial of the lien is not supported by substantial evidence. In a supplement to the petition, IPM alleges that it was denied due process because the WCJ was biased. The insurance company's answer asserts the decision is supported by substantial evidence and that the claim of bias cannot be considered by this court because the filing of a supplement to petition was not authorized by the WCAB.

DISCUSSION

"'In considering a petition for writ of review of a decision of the WCAB, this court's authority is limited. This court must determine whether the evidence, when viewed in light of the entire record, supports the award of the WCAB. This court may not reweigh the evidence or decide disputed questions of fact. . . .'" (Mote v. Workers' Comp. Appeals Bd. (1997) 56 Cal.App.4th 902, 909.) However, the court is "not bound to accept the Board's factual findings where . . . on a case-by-case examination we discern an inequitable result when the record is examined for fairness, reasonableness and proportionality in the overall scheme of the workers' compensation law and the purposes sought to be accomplished by that law." (Bracken v. Workers' Comp. Appeals Bd. (1989) 214 Cal.App.3d 246, 254.)

A decision of the WCAB must be supported by substantial evidence in light of the entire record. (Lamb v. Workmen's Comp. Appeals Bd. (1974) 11 Cal.3d 274, 280-281; Bracken v. Workers' Comp. Appeals Bd., supra, 214 Cal.App.3d at p. 255.) "[W]hen the Board relies upon the opinion of a particular physician in making its determination, it may not isolate a fragmentary portion of his report or testimony and disregard other portions that contradict or nullify the portion relied on; it must give fair consideration to all of his findings." (City of Santa Ana v. Workers' Comp. Appeals Bd. (1982) 128 Cal.App.3d 212, 219; Bracken, at p. 255.) A medical opinion that assumes an incorrect legal theory does not constitute substantial evidence. (Hegglin v. Workmen's Comp. App. Bd. (1971) 4 Cal.3d 162, 169.)

A decision of the WCAB either denying or granting a petition for reconsideration must "state the evidence relied upon and specify in detail the reasons for the decision." (Lab. Code, § 5908.5 [1] ; City of Santa Ana v. Workers' Comp. Appeals Bd., supra, 128 Cal.App.3d at p. 219.) If the evidence relied upon and the reasons stated for the decision do not support it, the decision must be annulled. (Goytia v. Workmen's Comp. App. Bd. (1970) 1 Cal.3d 889, 893, 898; City of Santa Ana, at p. 219.)

The employer is required to provide such medical treatment as is reasonably necessary to cure or relieve the employee's distress from the effects of the industrial injury. (Lab. Code, § 4600 [2] ; McCoy v. Industrial Acc. Com. (1966) 64 Cal.2d 82, 87.) An employer also will be held responsible for an employee's self-procured treatment when the employer affirmatively consents to or otherwise acquiesces in the treatment selected by the employee. (Myers v. Ind. Acc. Com. (1923) 191 Cal. 673, 679-680; Cypress Ins. Co. v. Workers' Comp. Appeals Bd. (Bertram) (1976) 41 Cal.Comp.Cases 341 (writ den.) [3] ; 1 Hanna, Cal. Law of Employee Injuries and Workers' Compensation (rev.2nd ed. 2001) § 5.05[10][c], pp. 55-40-5-43.) Reimbursement will not be denied by the mere fact that the treatment procured by the employee proved unsuccessful. (Foremost Dairies v. Industrial Acc. Com. (1965) 237 Cal.App.2d 560, 577.)

To recover on a lien for medical treatment, the provider must show that the treatment was necessary to cure or relieve the effects of the industrial injury. (§ 4600; PM&R Associates v. Workers' Comp.

Appeals Bd. (2000) 80 Cal.App.4th 357, 370.) Smyers v. Workers' Comp. Appeals Bd. (1984) 157 Cal.App.3d 36, 41, sets forth a factual test for determining whether medical treatment is reasonable and necessary: "Is there a medical recommendation or prescription that certain services be performed for petitioner?" (See also A. White Inc. v. Workers' Comp. Appeals Bd. (2000) 65 Cal.Comp.Cases 835 (writ den.) [WCAB allowed lien for medical treatment provided to applicant when treatment was prescribed by the treating physician and there was no showing that the treatment was unnecessary or unreasonable].) In finding that Dr. Levitan's services were not reasonable and necessary, the WCJ/WCAB isolated fragments of Dr. Schwartz's and Dr. Ovadia's reports and disregarded other portions of these reports to reach its conclusions. The WCJ appears to have disregarded Dr. O'Brien's and Dr. Kissel's reports entirely.

The WCJ's opinion on decision states: "In his report of 8 April 1999, Dr. Schwartz indicated the applicant should have strengthening exercise program, and for acute exacerbation some other modalities might be necessary. [¶] Dr. Ovadia, in his report of 4 October 1999, essentially, indicated that applicant should stop testing but essentially indicated the applicant would require nothing more than conservative treatment. Dr. Schwartz, in his report of 17 February 2000, indicated that the applicant should not have interventional treatment and also indicated that injections would not likely to be of lasting benefit which is certainly consistent with the proffered testimony of the applicant. [¶] Based on this record, the undersigned must conclude that applicant did not reasonably and necessarily self-procure the medical treatment that is in issue . . . ."

The WCJ failed to consider that portion of Dr. Schwartz's April 8, 1999, report which states: "Other treatment in the future may include ... injection." Similarly, the WCJ disregarded that portion of Dr. Ovadia's October 4, 1999, report which states: "Additional treatment could include . . . trigger point injections, and/or cervical epidural injections." The WCJ failed to consider that portion of Dr. Schwartz's February 17, 2000, report stating: "I certainly do not believe that a series of injections is likely to be of any lasting benefit to Ms. Stratton unless there is some indication of significant exacerbation of her condition. . . . I would not want to expose Ms. Stratton to a great deal of interventional treatment, including multiple blocks or other types of injection without there being any definitive indication that she would obtain lasting benefit." The WCJ also failed to note that Dr. Schwartz had not examined Stratton since April 8, 1999, and offered his opinion even though he admitted he "was not aware of her current status."

The WCJ's report and recommendation on reconsideration consists of quotes from Dr. Ovadia's October 4, 1999, opinion, and Dr. Schwartz's April 25, 2000, opinion as follows:

"Applicant's examining physician, Daniel Ovadia, in a report dated 4 October 1999 stated: [¶] 'With respect to the thoracic outlet symptoms which I have noted today, I would recommend that Ms. Stratton be referred to Dr. Tom Jones in Santa Barbara for a second opinion regarding this diagnosis. I would also advise that Ms. Stratton undergo electrodiagnostic testing in an effort to firm up that diagnosis. Those tests should be performed by a qualified electromyographer who is capable of

stimulating Erb's point. I would also recommend that Ms. Stratton have the benefit of a formal thoracic outlet physical therapy program over a period of six to eight weeks. Additional treatment could include prescriptive medication, possibly trigger point injections, and/or cervical epidural injections. It is unlikely that this lady will require more than conservative treatment.'"

"Dr. Donald Schwartz examined the applicant and prepared a report dated 25 April 2000 and stated: [¶] 'I note that in one of Dr. Levitan's reports, he suggested that I advised against any further treatment of Ms. Stratton. This is incorrect. The fact is, it was my recommendation that Ms. Stratton participate in a strengthening exercise program. This was carried out and was the only form of treatment that appears to have provided any significant lasting benefit to the patient. At this point, I believe that the focus of any further treatment should be on that type of program.'

"'In view of the patient's improvement associated with the minimal amount of exercise she is carrying out, I believe that if she were given some brief instruction and then progressed to an independent gym program, this would make a difference in the long-term with regard to her condition. I explained this to Ms. Stratton and she was very receptive to this approach. I do not believe that further injections, blocks, or other types of interventions are likely to be of any benefit to Ms. Stratton. While the injections she has received from Dr. Levitan have provided brief partial improvement, this has not been lasting. The patient clearly points out that the benefits of the injections gradually deteriorate. I would therefore reserve such treatment, whether injections, brief course of chiropractic care or physical therapy with modalities to treat any acute exacerbation of symptoms in the future. This may be of some significant value in reducing the patient's acute symptoms, returning them to their current level.'

"'In short, the undersigned believes that the record simply does not support the treatment that was, in fact rendered by lien claimant was reasonable and necessary. Dr. Schwartz, in an earlier report of 8 April 1999 noted that additional treatment would best be served by having the applicant in a strengthening exercise program. The proffered testimony of the applicant was to the effect that the treatment gave little benefit and while that does not always mean such treatment was necessarily unreasonable and unnecessary, it is a factor to be considered.'"

This analysis suffers from flaws similar to those in the opinion on decision. Dr. Ovadia's report expressly stated that injections could be a possible form of treatment. Similarly, Dr. Schwartz's April 25, 2000, report indicated that injections could be helpful in the future to alleviate acute symptoms. In that report Dr. Schwartz acknowledged that Dr. Levitan's injections had provided Stratton with some pain relief.

The WCJ also failed to recognize that the statements in Dr. Schwartz's reports on which he relied most heavily--that at some unspecified time after he examined her in April 1999, Stratton began a "strengthening exercise program using elastic bands for the upper extremities . . . for three to four months," that "[t]here was significant improvement" and that strengthening exercises was "the only

form of treatment that appears to have provided any significant lasting benefit to the patient"--are not supported by the record.

The record shows that Stratton began a physical exercise program as recommended by Dr. Kissel in November 1998. In January 1999, Dr. Kissel reported that Stratton had "no significant change in her cervical symptomatology. The physical therapy was somewhat strenuous and did set her back with her neck pain and muscle spasm." Stratton's treating physician, Dr. O'Brien, saw no change in Stratton's symptoms for the following six months. In fact, in March 1999, he noted that "[s]he has been unable to tolerate the weight routine ... and has discontinued this." In April 1999, when Dr. Schwartz first examined Stratton, she complained of "constant neck pain that interferes with her functioning" with pain radiating into her left arm and becoming "markedly restrictive" three to four days a week. The medical evidence indicates that more than six months of physical therapy had done nothing to improve her condition.

The only improvement that was reported in Stratton's condition in 1999 was in Dr. O'Brien's June, July and August reports. These reports indicated only slight improvement, and none of them attributed the noted improvements to physical therapy or exercise.

When Dr. Ovadia examined Stratton in October 1999, she still complained of constant neck pain radiating into both arms, muscle spasms, headaches and back pain. She continued to use a heating pad, hot baths, ice packs and a home traction unit to relieve her pain. However, with respect to exercise, she reported that she "sometimes experiences a flare up in symptoms."

Dr. O'Brien's November 30, 1999, report did not mention any improvement in her condition from exercise or physical therapy. He indicated only that she received "some short term relief" from using the home traction unit. At that time, Dr. O'Brien also noted that authorization had been received for pain management consultation--an indication that the conservative treatments Stratton had been receiving for the past two and one-half years were not satisfactory in relieving her pain.

There is no evidence in the record substantiating Dr. Schwartz's claim that strengthening exercises improved Stratton's condition.

Dr. Schwartz's April 25, 2000, report also is internally inconsistent. After initially stating that Stratton received "significant improvement" from strengthening exercises, he states that she had to take a six-week break from her vocational rehabilitation program between June and October 1999 due to aggravation of symptoms and that she states she is "somewhat improved from previously" but that "[s]he has continued pain that interferes with her activities." Later in the report, Dr. Schwartz states: "While the patient's symptoms, if anything, are slightly less severe, I would conclude that the subjective factors of disability as described in my report of April 8, 1999 continue to be appropriate."

In that report Dr. Schwartz acknowledged that Dr. Levitan's injections gave Stratton some relief and

that he would prescribe injections to relieve "acute" symptoms. Dr. Schwartz does not explain what he means by "acute" symptoms or why Stratton's three-year battle with constant and increasing pain despite "conservative therapies" would not qualify as "acute." He also does not explain the statement in his April 8, 1999, report that Stratton should see a physician who could prescribe medication, including oral steroids, "to quiet her acute symptoms" before beginning a strengthening exercise program.

In addition to being factually unsupported, Dr. Schwartz's opinions do not constitute substantial evidence because they apply an incorrect legal standard. (Hegglin v. Workmen's Comp. App. Bd., supra, 4 Cal.3d at p. 169.) His position, apparently adopted by the WCJ and WCAB, is that treatment that does not result in "lasting" benefits does not meet the reasonable and necessary standard. This is incorrect. It was established early in the history of workers' compensation law that treatment to "relieve" as well as to "cure" is to be furnished, including palliative care where the employee has suffered a permanent disability incapable of cure or improvement. (Fidelity Etc. Co. v. Dept. of Indus. Relations (1929) 207 Cal. 144, 150.) In this regard, the court in Smyers v. Workers' Comp. Appeals Bd., supra, 157 Cal.App.3d at page 42, footnote 3, noted: "This rule is . . . harmonious with the general description of the section 4600 right offered by the major treatise authors. According to Hanna, compensable medical treatment includes 'all measures directed toward the cure or relief of the effects of the industrial injury. . . .' [Citations.] Herlick agrees. Employers are bound to furnish adequate medical care, and '[t]reatment is not adequate if . . . it does not include . . . all measures indicated to cure or relieve.' [Citation.] . . . Both authors also state that palliative measures are compensable. [Citations.] To palliate is '[t]o mitigate; to reduce the severity of; to relieve slightly.' (Stedman's Medical Dict. (4th unabr. law. ed. 1976) p. 1018.)" (Italics omitted.) (See also Kyles v. Workers' Comp. Appeals Bd. (1987) 195 Cal.App.3d 614, 622 [employer must furnish treatment even when record shows that it would only be partially effective in relieving or curing an employee's industrial injury].)

Dr. Schwartz admitted that Dr. Levitan's injections relieved Stratton's pain at least "slightly." This is consistent with Stratton's reports to Dr. Levitan and with her stipulated testimony that her pain decreased after the injections. Thus, it is undisputed that Dr. Levitan's treatment was "palliative" and compensable.

Moreover, the WCJ/WCAB failed to give any weight to the fact that there was a medical recommendation by Stratton's treating physician that she see Dr. Levitan for pain management and that Dr. Ovadia recommended that Stratton be given myelograms, thus meeting the Smyers test of "reasonable and necessary" treatment. Finally, the WCJ/WCAB erred in its blanket denial of IPM's lien because the record shows the insurer had authorized at least the initial consultation. (Myers v. Ind. Acc. Com., supra, 191 Cal. at pp. 679-680; Cypress Ins. Co. v. Workers' Comp. Appeals Bd. (Bertram) (1976) 41 Cal.Comp.Cases 341 (writ den.); 1 Hanna, Cal. Law of Employee Injuries and Workers' Compensation, supra, § 5.05[10][c] [employer also will be held responsible for employee's self-procured treatment when the employer affirmatively consents to or otherwise acquiesces in the

treatment selected by the employee].)

The result reached by the WCAB also is inconsistent with the policy of the workers' compensation law. "Labor Code section 3202 provides that division 4 of the Labor Code, which includes Labor Code section 4600, shall be liberally construed to extend benefits to industrially injured workers, and the Supreme Court has stated that the Legislature intended that Labor Code section 4600 be liberally construed in favor of the worker's right to obtain reimbursement." (Rodriguez v. Workers' Comp. Appeals Bd. (1994) 21 Cal.App.4th 1747, 1758.) Prompt receipt of adequate medical treatment for an industrial injury is a fundamental premise and requirement of the workers' compensation system. (§ 4600.) Without prompt payment of medical treatment expenses, the right of injured employees to prompt and adequate medical treatment is seriously jeopardized. To this end, the law permits the provision of treatment to injured workers on a lien basis where an employer refuses to provide the treatment. (§ 4903.) Treatment provided on a lien basis avoids such undesirable consequences to society as an injured worker going without needed medical treatment or burdening public resources. (CNA Insurance Companies v. Workers' Comp. Appeals Bd. (Lerich) (1997) 62 Cal.Comp.Cases 1145 (writ den.).)

Our decision makes unnecessary any discussion of the issue of bias raised in IPM's supplement to petition. We note, however, that the supplement is not properly before the court because it does not comply with California Code of Regulations, title 8, section 10848. [4]

Our review of the entire record indicates that there is no substantial evidence supporting the WCJ/WCAB's conclusion that IPM's services were not reasonable and necessary to cure or relieve the effects of Stratton's industrial injury. The WCAB's order denying reconsideration is annulled and the matter remanded to the WCAB with directions to grant the petition for reconsideration and conduct further proceedings to determine a reasonable fee.

NOT TO BE PUBLISHED.

We concur:

GILBERT, P.J.

YEGAN, J.

1. All statutory references are to the Labor Code.

2. Section 4600 states in part: "Medical . . . treatment . . . that is reasonably required to cure or relieve from the effects of the injury shall be provided by the employer."

3. Decisions of the WCAB reported in California Compensation Cases are citable as authority, although they are not

binding on this court. (Wings West Airlines v. Workers' Comp. Appeals Bd. (1986) 187 Cal.App.3d 1047, 1053, fn. 4.)

4. This regulation provides, "When a petition for reconsideration has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board. Supplemental petitions or pleadings or responses other than the answer, except as provided by this rule, shall neither be accepted nor deemed filed for any purpose . . . ." (Cal. Code Regs., tit. 8, § 10848.)