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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ROBIN CHORN, Plaintiff and Appellant, v. EDMUND G. BROWN et al., Defendants and Respondents.	B256117 (Los Angeles County Super. Ct. No. BC528190)

APPEAL from an order of the Superior Court of Los Angeles County, William F. Highberger, Judge. Affirmed.

Matthew D. Rifat for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Kathleen A. Kenealy, Chief Assistant Attorney General, Kristin G. Hogue, Assistant Attorney General, Joel A. Davis and Donna M. Dean, Deputy Attorneys General, for Defendants and Respondents.

Appellant Robin Chorn, M.D. (Chorn) appeals the trial court's order denying his motion for preliminary injunction. Appellant sought to enjoin enforcement of recently enacted workers' compensation legislation governing medical provider lien claims, contending the resulting statutory revisions violated the California Constitution. The statutory changes were enacted as part of Senate Bill 863 (SB 863) (2011-2012), and became effective January 1, 2013. (Stats. 2012, ch. 363, §§ 63, 64, 70.) The amendments at issue revise Labor Code section 4903[1] to impose a $100 lien activation fee to be paid on pending medical lien claims filed before January 1, 2013 but activated for adjudication after that date; impose a $150 lien filing fee to be paid on all medical lien claims filed after January 1, 2013; and require that payments on lien claims be made only to the medical provider and not to an assignee, except under special circumstances.

The court denied Chorn's motion, finding that section 5955 deprived it of subject matter jurisdiction to consider appellant's challenge to the revisions of section 4903 (the statute). The sole issue raised by this appeal is whether the trial court correctly determined that section 5955 deprived the court of subject matter jurisdiction to determine the constitutionality of the statute and enjoin its enforcement. We find the California Supreme Court's decision in *Greener* (*Greener v. Workers' Compensation Appeals Board* (1993) 6 Cal.4th 1028 (*Greener*)) barring the superior court's exercise of jurisdiction under 5955 to be dispositive. We therefore affirm.

BACKGROUND

Chorn is a licensed physician and surgeon who provides medical services to workers' compensation applicants. On November 20, 2013, he filed a class action complaint against defendants Christine Baker, in her official capacity as director of the California Department of Industrial Relations (DIR), Ronnie Caplane, in her official capacity as chair of the Workers' Compensation Appeals Board (appeals board), and Destie Overpeck, in her official capacity as acting administrative director of the

[1] All further statutory references are to the Labor Code unless otherwise indicated.

California Division of Workers Compensation (DWC) (respondents).[2] Chorn contended that the subdivisions of section 4903 imposing medical lien activation and filing fees (§§ 4903.05, 4903.06) and restrictions on payment of awards to assignees (§ 4903.8) violated Article I, sections 3, 7, and 9 and Article XIV, section 4 of the California Constitution. He further alleged that the adoption of emergency regulations to implement the lien activation fee provision violated the California Administrative Procedure Act. (Gov. Code § 11340 et seq.)

Chorn sought a declaration that the challenged statutory provisions violated the California Constitution and that the adoption of regulations implementing the lien activation fees violated the Administrative Procedure Act. He also sought a preliminary and permanent injunction enjoining respondents from enforcing the statute's lien activation and filing fee provisions. Finally, he sought disgorgement of and repayment of lien activation and filing fees, reinstatement of liens that have been dismissed or cancelled because of failure to pay lien activation or filing fees, actual damages, and attorneys' fees.

On January 21, 2014, Chorn filed a motion for preliminary injunction to enjoin respondents from enforcing the challenged statute. Respondents opposed the motion, arguing the superior court lacked jurisdiction under section 5955 (as construed by *Greener, supra*, 6 Cal.4th at p. 1028) to grant the injunction and, regardless, Chorn had failed to meet the requirements for a preliminary injunction.

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[2] Appellant also named as defendants Edmund G. Brown, Jr., in his official capacity as Governor of California, and Kamala D. Harris, in her official capacity as Attorney General of California, but voluntarily dismissed them before filing his motion for preliminary injunction.

The superior court held that it lacked jurisdiction to consider Chorn's challenge to the statute and denied the motion without considering the merits. Chorn timely appealed.

DISCUSSION

I. Overview of the Workers' Compensation System and The Challenged Statutory Provisions

A. Workers' Compensation Lien Claims

"Article XIV, section 4 of the California Constitution gives the Legislature 'plenary power . . . to create[] and enforce a complete system of workers' compensation.'" (*Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 810 (*Vacanti*).) Pursuant to this authority, the Legislature enacted the Workers' Compensation Act (WCA)—"a comprehensive statutory scheme governing compensation given to California employees for injuries incurred in the course and scope of their employment. (§ 3201 et seq.)" (*Vacanti*, *supra*, 24 Cal.4th at p. 810.) The DWC, a division of the DIR, administers the workers' compensation laws. (§§ 56, 60, 110, subd. (c), 133.) Within the DWC, the appeals board exercises the judicial function of adjudicating claims. (§ 111, subd. (a).)

Under the WCA, "an employee injured in the workplace may request workers' compensation benefits by delivering a claim form to the employer within 30 days of the injury. (See §§ 5400, 5401.) Benefits include compensation for medical treatment and other services 'reasonably required to cure or relieve [the employee] from the effects of [his or her] injury.' (§ 4600; see also § 3207.) The employee may also obtain compensation for medical-legal evaluations necessary to establish his or her entitlement to benefits. (§ 4621.) If the employer's workers' compensation insurer accepts coverage, then the insurer substitutes for the employer and assumes liability for benefits owed to the employee under the WCA. (§§ 3755, 3757.)"[3] (*Vacanti*, *supra*, 24 Cal.4th at p. 810.)

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[3] "The underlying premise behind this statutorily created system of workers' compensation is the '"compensation bargain."' (*Shoemaker* [*v. Myers* (1990)] 52 Cal.3d [1,] 16 [].) Pursuant to this presumed bargain, 'the employer assumes liability for industrial personal injury or death without regard to fault in exchange for limitations on

Third parties who perform statutorily enumerated services and incur enumerated expenses for the benefit of injured employees may file liens secured by the proceeds of the employee's potential claims. (§§ 3207, 4903; *Vacanti, supra*, 24 Cal.4th at p. 811.) These parties, including medical providers such as Chorn, may file lien claims for the cost of their services directly with the appeals board, which has exclusive jurisdiction over such lien claims (§§ 5300, subd. (b), 5304; *Perrillo v. Picco & Presley* (2007) 157 Cal.App.4th 914, 930 (*Perrillo*)).[4]

A medical provider with a lien claim "is a 'party in interest' to the [appeals board] proceeding (*Independence Indem. Co. v. Indus. Acc. Com.* (1935) 2 Cal.2d 397, 408 []), and receives full due process rights, including an opportunity to be heard (see *Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789, 803-804 [])." (*Vacanti, supra,* 24 Cal.4th at p. 811.) In addition, lien claimants have an independent right to prove their claims in proceedings separate from those between the injured employee and employer. (§ 4903.4; *California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd*. (2012) 203 Cal.App.4th 1328, 1343.)

B. The Challenged Statute

In 2012, the Legislature enacted SB 863 to, among other things, reform the lien claim system.[5] Chorn challenges § 4903's provisions governing lien activation fees, lien filing fees, and restrictions on payment of awards to assignees.

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the amount of that liability. The employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of industrial injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort.' (*Ibid.*)" (*Vacanti, supra*, 24 Cal.4th at p. 811.)

[4] The appeals board "may order the amount of any lien claim, as determined and allowed by it, to be paid directly to the person entitled, either in a lump sum or in installments." (§ 4904, subd. (c).) The WCA also vests the appeals board with discretion to determine the reasonableness of the claimed amount (§ 4906), and the priorities among lien claimants (§ 4903).

[5] The legislative history of SB 863 depicts a system that was "out of control." (Sen. Rules Com., Off. Of Sen. Floor Analyses, analysis of Sen. Bill No. 863 (2011-2012 Reg.

The amended statute imposed a lien activation fee of $100, to be paid to the DWC, for pending lien claims filed before the bill's effective date of January 1, 2013.[6] (§ 4903.06, subd. (a)(1).) Before it was enjoined, the statute required a claimant to provide proof of payment of the activation fee with its declaration of readiness to proceed, and if no declaration was filed, it required the claimant to pay the activation fee before commencement of the lien conference to avoid dismissal.[7] (§ 4903.06, subd. (a)(4).) The statute required claimants with pending liens to pay the activation fee by

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Sess.) as amended August 30, 2012, at p. 16.) The legislative analysis stated that there presently were hundreds of thousands of backlogged lien claims, possibly more than one million. (*Ibid.*) It described an environment in which courts were overwhelmed and "lien abuse" was common, where medical providers and third parties who purchased old receivables from providers commonly filed frivolous lien claims and used the delays in the system to leverage excessive settlements. (*Ibid.*) The legislative analysis stated that SB 863 proposed enactment of activation and filing fees to deter lien abuse and frivolous lien claims. (*Id.* at pp. 16-17.)

Respondents asked the trial court to take judicial notice of this and other legislative history of SB 863. The court declined to do so because it considered the legislative history to be irrelevant to its decision. We agree that the legislative history is not of "substantial consequence to the determination" of our decision, but we take judicial notice of the Senate Rules Committee analysis of SB 863 on our own motion to provide historical context. (Evid. Code §§ 452, subd. (c), 459, subds. (a) & (c); *In re J.W.* (2002) 29 Cal.4th 200, 211.)

[6] On November 12, 2013, the United States District Court for the Central District of California issued a preliminary injunction enjoining enforcement of the lien activation fee provisions of section 4903.06, effective November 19, 2013. (*Angelotti Chiropractic, Inc. v. Baker*, (C.D. Cal. 2013) 78 Cal.Comp.Cases 1218.) That decision is on appeal before the Ninth Circuit.

[7] A declaration of readiness to proceed is a request for a hearing at an appeals board district office. (Cal. Code Regs., tit. 8, § 10301, subd. (i).)

A lien conference is a proceeding held "for the purpose of assisting the parties in resolving disputed lien claims or claims of costs filed as liens or, if the dispute cannot be resolved, to frame the issues and stipulations and to list witnesses and exhibits in preparation for a lien trial." (Cal. Code Regs., tit. 8, § 10301, subd. (aa).)

January 1, 2014 to avoid dismissal of their claims by operation of law. (§ 4903.06, subd. (a)(5).)

The statute also imposes a filing fee of $150, to be paid to the DWC, for new lien claims filed on or after January 1, 2013. (§ 4903.05, subd. (c)(1).) Any lien submitted for filing without a filing fee is invalid regardless of whether the appeals board accepts it for filing. (§ 4903.05, subd. (c)(2).)

In addition, section 4903.8, subdivision (a)(1) creates restrictions on payment of medical liens to assignees. Under this subdivision, "[a]ny order or award for payment of a lien . . . shall be made for payment only to the person who was entitled to payment for the expenses . . . at the time the expenses were incurred, and not to an assignee unless the person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee." At the time Chorn commenced his action, section 4903.8 did not specify whether it applied to enforceable assignments made prior to the statute's effective date of January 1, 2013. The Legislature amended section 4903.8, effective January 1, 2015, to clarify that it "does not apply to an assignment that was completed prior to January 1, 2013, or that was required by a contract that became enforceable and irrevocable prior to January 1, 2013." (§ 4903.8, subdivision (a)(2).)

II. Subject Matter Jurisdiction

Chorn contends the trial court erred in concluding it lacked subject matter jurisdiction to consider his constitutional challenges to the statute under section 5955 and *Greener*, *supra*, 6 Cal.4th at p. 1028. "Where the propriety of an order granting a preliminary injunction '"depends upon a question of law . . . the standard of review is not abuse of discretion but whether the superior court correctly interpreted and applied [the] law, which we review de novo."' [Citation.]" (*Strategix, Ltd. v. Infocrossing West, Inc.* (2006) 142 Cal.App.4th 1068, 1072.) Subject matter jurisdiction is a matter of law. (*Robbins v. Foothill Nissan* (1994) 22 Cal.App.4th 1769, 1774.) Accordingly, we review the trial court's ruling de novo.

Section 5955 provides, "No court of this state, except the Supreme Court and the courts of appeal to the extent herein specified, has jurisdiction . . . to restrain, enjoin, or interfere with the appeals board in the performance of its duties but a writ of mandate shall lie from the Supreme Court or a court of appeal in all proper cases." In *Greener*, the California Supreme Court construed section 5955 and held that a superior court lacked subject matter jurisdiction over an action to declare provisions of the WCA invalid under the California Constitution where such relief would interfere with the appeals board in the performance of its duties. (*Greener, supra*, 6 Cal.4th at pp. 1032-1033, 1040-1044.)

In *Greener*, the plaintiffs—unlicensed attorneys—commenced a superior court action for declaratory and injunctive relief against the appeals board. The action challenged the constitutionality of amendments to the WCA that terminated the power of the appeals board to make awards of, and allow liens for, attorneys' fees to applicant representatives who were not attorneys. (*Greener, supra*, 6 Cal.4th at p. 1033.) Plaintiffs sought a declaration that the amendments were invalid under the federal and state constitutions. (*Ibid.*)

The court first addressed whether, in light of section 5955, the Legislature intended to reserve solely to the courts of appeal and the Supreme Court jurisdiction to entertain challenges to the constitutional validity of provisions of the workers' compensation law. (*Greener, supra*, 6 Cal.4th at p. 1037.) The court concluded that it did. The court stated that the California Constitution confers on the Legislature "'plenary power, unlimited by any provision of this Constitution,' to establish a system of workers' compensation" including the power to create a system for trial and resolution of workers' compensation disputes. (*Ibid.*, quoting Cal. Const. art. XIV, § 4.) The court accordingly concluded that the jurisdictional provisions of article VI of the California Constitution, which grant original jurisdiction to superior courts over most cases, [8] were inapplicable to

[8] Article VI, section 10 of the California Constitution provides, "The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The

workers' compensation disputes.[9] (*Greener*, *supra*, 6 Cal.4th at p. 1037.) The court further noted that section 3.5 of article III of the California Constitution withholds from administrative agencies the power to determine the constitutional validity of a statute.[10] (*Id.* at p. 1038.) The court accordingly concluded that the appeals board must comply with the statutes the plaintiffs sought to challenge until an appellate court has considered and upheld a constitutional challenge to the statutes. (*Ibid.*)

The *Greener* court specifically addressed whether, under section 5955, "the superior court has subject matter jurisdiction over a declaratory relief action seeking an adjudication of the constitutional validity of a workers' compensation statute." (*Greener*, *supra*, 6 Cal.4th at pp. 1040-1041.) The court noted that section 5955 "is modeled after, and almost identical to, section 67 of the Public Utilities Act" (see Pub. Util. Code, §

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appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction. [¶] Superior courts have original jurisdiction in all other causes."

[9] We thus reject Chorn's contention that section 5955 conflicts with the California Constitution's grant of original jurisdiction to the superior courts. Because the Legislature has exercised its power under article XIV of the California Constitution in providing for workers' compensation judges and the appeals board, the jurisdictional provisions of article VI "have no application in the workers' compensation system" and do not conflict with section 5955. (*American Psychometric Consultants Inc. v. Workers' Comp. Appeals Bd.* (1995) 36 Cal.App.4th 1626, 1638, citing *Greener*, *supra*, 6 Cal.4th at p. 1041.)

[10] Article III, section 3.5 of the California Constitution provides, "An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: [¶] (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional; [¶] (b) To declare a statute unconstitutional; [¶] (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations."

1759).[11] (*Greener, supra*, 6 Cal.4th at p. 1041.) The *Greener* court followed *Sexton v. Atchison, T. & S. F. Ry. Co.* (1916) 173 Cal. 760 (*Sexton*), in which the California Supreme Court construed section 67 of the Public Utilities Act. (*Greener*, *supra*, 6 Cal.4th at p. 1041.) The *Sexton* court stated that "'[t]he plain design of [section 67 of the Public Utilities Act] was to prevent any interference with the [Railroad Commission] by the courts, except as prescribed by the act itself, in the performance of any duty defined by the act. . . . The clear intent of the provision as a whole is to place the commission, insofar as the state courts are concerned, in a position where it may not be hampered in the performance of any official act by any court, except to the extent and in the manner specified in the act itself. To the extent deemed necessary to accomplish this, the jurisdiction of the state courts is limited by the provision, that of the superior court apparently being entirely taken away, except as to certain actions specially authorized by the act itself . . . .'" (*Greener*, *supra*, 6 Cal.4th at p. 1042, quoting *Sexton*, *supra*, 173 Cal. at p. 764, italics omitted.) The *Sexton* court concluded that under section 67 of the Public Utilities Act, "'[t]he superior court has no power to enjoin the commissioners, or to render any judgment . . . that would "interfere" with them in the performance of the official duties purported to be cast upon them by the Public Utilities Act . . . .'" (*Greener*, *supra*, 6 Cal.4th at p. 1042, quoting *Sexton*, *supra*, 173 Cal. at pp. 764-765.)

The *Greener* court adopted this rationale and applied it to section 5955. It stated that, if granted, the relief sought by the plaintiffs would interfere with the appeals board's ability to perform the duty imposed on it by the amended statutes to restrict awards and liens for unlicensed attorneys representing applicants. (*Greener*, *supra*, 6 Cal.4th at pp. 1042-43.) The court accordingly concluded that the plaintiffs' constitutional challenge to

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[11] Section 67 of the Public Utilities Act provided, "'No court of this state (except the supreme court to the extent herein specified) shall have jurisdiction . . . to enjoin, restrain or interfere with the [Railroad Commission] in the performance of its official duties; provided, that the writ of mandamus shall lie from the supreme court to the commission in all proper cases.'" (*Greener*, *supra*, 6 Cal.4th at p. 1041 fn. 10, italics omitted.)

the amendments was not within the subject matter jurisdiction of the superior court. (*Id.* at p. 1044.)

We are bound by *Greener*, and it is dispositive here.[12] In this action, an injunction enjoining respondents from enforcing the challenged provisions of the statute would interfere with the appeals board's performance of its duties, just as the declaratory relief sought in *Greener* would have done. An order enjoining enforcement of the lien activation and filing fee provisions of the statute would interfere with the appeals board's duty to dismiss lien disputes for which no activation or filing fee had been paid. In addition, an order enjoining enforcement of the statute's restrictions on payment of awards to assignees would interfere with the appeals board's statutorily imposed duty to restrict such awards.

Accordingly, under section 5955 and *Greener*, the superior court here lacked subject matter jurisdiction to grant such an injunction. The courts of appeal and Supreme Court have exclusive jurisdiction over Chorn's challenge to the validity of the statute.[13]

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[12] Even though *Greener* squarely applies here, Chorn fails to discuss it and cites to it only for the well-established principle that the appeals board is not authorized to hear constitutional challenges to provisions of the workers' compensation laws. Because he did not file a reply brief, Chorn also did not address respondents' discussion of *Greener*. Chorn's failure to address directly applicable, binding precedent is especially puzzling, given that he discussed *Greener* in his motion for preliminary injunction and the court relied on *Greener* in its order denying the motion.

[13] Chorn contends the superior court's conclusion that it lacked subject matter jurisdiction, and that only the courts of appeal and Supreme Court have jurisdiction over his challenge, places him in a "catch-22" in which no effective relief is available. We disagree. The *Greener* court concluded that the plaintiffs could seek relief through a petition for writ of mandate if they were able to satisfy a court of appeal that mandamus was appropriate under Code of Civil Procedure section 1085. On June 2, 2015, Chorn filed a petition for writ of mandate, prohibition and/or other appropriate relief in the court of appeal, case number B264440. We take judicial notice of Chorn's petition pursuant to the parties' stipulation.

DISPOSITION

The trial court's order is affirmed. Respondents are awarded their costs on appeal.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.