

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **ROGELIO CORNEJO,**

5 *Applicant,*

6 **vs.**

7 **YOUNIQUE CAFÉ, INC.; ZENITH
INSURANCE COMPANY,**

8 *Defendants,*

9
10 **WESTERN IMAGING SERVICES, INC.,**

11 *Lien Claimant.*

**Case No. ADJ9351964
ADJ9351965
(Los Angeles District Office)**

**OPINION AND DECISION
AFTER RECONSIDERATION
(Appeals Board en banc)**

12
13 **INTRODUCTION**

14 In order to further study the factual and legal issues in this case, the Appeals Board previously
15 granted the petition of lien claimant Western Imaging Services, Inc., (WIS) for reconsideration of the
16 September 14, 2015 Joint Findings And Award of the workers' compensation administrative law judge
17 (WCJ). Thereafter, to secure uniformity of decision in the future, the Chairwoman of the Appeals Board
18 upon a majority vote of its members, assigned this case to the Appeals Board as a whole for an en banc
19 decision.¹

20 In the September 14, 2015 decision the WCJ disallowed the lien claim of WIS based upon his
21 finding that "Business and Professions Code Section 22451 did not exempt lien claimant Western
22 Imaging Services from registration and bonding pursuant to Sections 22450 and 22455." In the
23 accompanying Opinion on Decision (Opinion), the WCJ wrote that WIS did not show it was an
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25 ¹ En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit.
26 8, § 10341; *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 313, fn. 5 [70
27 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418 [67 Cal.Comp.Cases 236]; see also
Govt. Code, § 11425.60(b).) In addition to being adopted as a precedent decision in accordance with Labor Code section 115
and Appeals Board Rule 10341, this en banc decision is also being adopted as a precedent decision in accordance with
Government Code section 11425.60(b).

1 “independent contractor” of a member of the State Bar as described in Business and Professions Code
2 section 22451(b), and for that reason lien claimant was required to be registered and bonded pursuant to
3 Business and Professions Code sections 22450 and 22455 in order to claim payment.²

4 WIS contends that the WCJ erred in disallowing its lien claim because it made a prima facie
5 showing that it provided the photocopying services as an independent contractor of a member of the State
6 Bar as described in Business and Professions Code section 22451(b) and for that reason Chapter 20 of
7 Division 8 of the Business and Professions Code, which includes Business and Professions Code sections
8 22450 and 22455, does not apply.

9 An answer was received from defendant.

10 The WCJ provided a Report And Recommendation On Petition For Reconsideration (Report)
11 recommending that reconsideration be denied.

12 As the Decision After Reconsideration, we hold that Chapter 20 of Division 8 of the Business and
13 Professions Code by its own terms does not apply to a lien claimant seeking to recover copy service fees
14 that are medical-legal expenses under Labor Code section 4620(a) when the lien claimant is an agent
15 and/or independent contractor of a member of the State Bar at the time the documents are photocopied.

16 We further hold that when a lien claimant makes an un rebutted prima facie showing that it is an
17 agent and/or independent contractor of a member of the State Bar at the time the documents are
18 photocopied, proof of compliance with the registration and bonding provisions of Business and
19 Professions Code sections 22450 and 22455 is not required

20 The WCJ’s September 14, 2015 decision is rescinded, and a new finding is entered that
21 Chapter 20 of Division 8 of the Business and Professions Code does not apply to WIS because it
22 photocopied the documents in this case as an agent or independent contractor of a member of the State
23 Bar.

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25 ² Business and Professions Code section 22451(b) exempts “[a]member of the State Bar or his or her employees, agents, or
26 independent contractors” from the registration requirements of Business and Professions Code section 22450, which in turn
27 provides in pertinent part as follows: “A professional copier is any person who for compensation obtains or reproduces
documents...and...has access to the information contained therein.” Business and Professions Code section 22455 requires
that a Business and Professions Code section 22450 certificate of registration be accompanied by a bond of five thousand
(\$5,000) dollars.

1 **FACTUAL AND PROCEDURAL BACKGROUND**

2 On March 10, 2014, applicant, through his attorney Jonathan C. Rosen, Esq., of the JCR Law
3 Group, Inc., filed two Applications for Adjudication of Claim. The first alleged that applicant sustained
4 a specific injury in the form of a hernia while working for defendant Younique Cafe, Inc., as a
5 dishwasher/maintenance person on December 24, 2011 (ADJ9351964). The second alleged that
6 applicant also sustained a cumulative industrial injury to multiple body parts while in that same employ
7 during the period from December 24, 2011 to February 27, 2014 (ADJ9351965).

8 Applicant's two claims were jointly settled by a compromise and release agreement with a lump
9 sum payment of \$18,000.00 as approved by order of a WCJ on September 2, 2014. As part of the
10 agreement, defendant agreed to "pay, adjust or litigate any and all liens filed according to Labor Code
11 § 4903.5, reserving any and all defenses, with the WCAB retaining jurisdiction in the event of a
12 dispute."³ Accompanying the agreement was a declaration by defendant's attorney stating that no liens
13 were on file at that time.

14 On or about November 7, 2014, WIS filed a lien claim for "copy service" in ADJ9351965 in the
15 amount of \$1,585.56. Liens for interpreter fees and other services were subsequently filed by others in
16 both cases.

17 On February 9, 2015, a different lien claimant filed a Declaration of Readiness to Proceed, and a
18 lien conference was held on April 13, 2015. WIS appeared, but the conference was continued due to the
19 additional liens that were filed.

20 A second lien conference was conducted on May 8, 2015. According to the pretrial conference
21 statement prepared on that date, WIS identified several documents related to its lien claim, including
22 copies of its invoices, copies of the original order from applicant's attorney, copies of three subpoenas
23 duces tecum, two dated March 18, 2014 and one dated April of 2014, copies of the declarations that
24 accompanied the subpoenas, declarations from custodians of records, a fee breakdown sheet, a March 18,
25 2015 declaration by applicant's attorney and an April 30, 2015 declaration by a WIS manager. The
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27 ³ Quotations converted from upper case to lower case.

1 separate form used to identify issues involving the WIS lien claim includes a checkmark on the line next
2 to the word “certification.” A lien trial was scheduled for September 4, 2015.

3 The EAMS record includes no Minutes Of Hearing or Summary Of Evidence from September 4,
4 2015. Instead, the record contains a September 4, 2015 “Joint Order Of Submission For Decision,”
5 (Order) which is signed by the WCJ but not by the parties. The Order recites that the parties agreed to
6 the “submission of this matter” based upon two factual stipulations, two evidentiary exhibits and the trial
7 briefs. The stipulations are written in the Order as follows:

8 1. Applicant Rogelio Cornejo, born 04/23/1979 alleged injuries arising out
9 of and in the course of employment while employed at Younic [*sic*] Café,
10 Inc., insured by Zenith Ins. Co. on 12/24/2011 (ADJ9351964) and during
11 the period 12/24/2011 - 02/27/2014 (ADJ9351965).

12 2. Lien Claimant Western Imaging Services, Inc., for all dates of service
13 shown in its billing, received requests from applicant’s attorney JCR Law
14 Group and obtained subpoena duces tecum, for obtained [*sic*] and delivered
15 all records and submitted billing to defendants.

16 The two “evidentiary exhibits” are described in the September 4, 2015 Order as a declaration of
17 applicant’s attorney dated March 18, 2015 (Lien Claimant’s Exhibit 1), and a declaration by a WIS
18 manager dated April 30, 2015 (Lien Claimant’s Exhibit 2). The Order concludes with the following:

19 IT IS ORDERED THAT this matter is SUBMITTED FOR DECISION as
20 of this day on the sole issue of whether Business and Professions Code
21 Section 22451 permits a corporate entity in the business of photocopying
22 private medical and other records to function in that capacity without
23 registering with (Section 22450) and posting a bond with (Section 22455)
24 the county clerk, as an ‘independent contractor’ of attorneys requesting
25 those records.

26 Trial briefs by both parties are received for consideration.

27 Lien Claimant’s Exhibit 1 is a March 18, 2015 letter from Jonathan C. Rosen, Esq., with the
letterhead of JCR Law Group, Inc. According to the official State Bar website, Jonathan Charles Rosen
(State Bar Number 207308) is an active member of the State Bar whose official address and telephone

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1 numbers are the same as shown on the March 18, 2015 letterhead for JCR Law Group, Inc.⁴ The letter is
2 addressed to “To Whom It May Concern,” and states in full as follows:

3 Please be advised that the Law Offices of Jonathan Rosen utilizes the
4 services of Western Imaging Services (‘WIS’) as one of the independent
5 contractor legal copy services of our office for the purpose of photocopying
6 documents/records on our Workers’ Compensation cases. The requested
7 locations are obtained via legally issued subpoenas and are deemed
8 necessary for the development of the Applicant’s claim in this matter. We
9 believe these documents are necessary from a discovery standpoint in that
10 they allow for the development of the Applicant’s case, as well as a
11 procedural standpoint in that these documents provide the necessary
12 information needed to fully explore and explain the Applicant’s case before
13 the WCAB. The designation of WIS as independent contractor is pursuant
14 to Business & Professions Code Section 22451(b).

15 If you have any questions or need additional information, please do not
16 hesitate to contact the undersigned.

17 As scanned into the EAMS record, Lien Claimant’s Exhibit 2 is an April 30, 2015 declaration
18 under penalty of perjury by Elizabeth Ramirez. In the declaration, Ms. Ramirez states that she is
19 employed as an office manager for WIS and has acted in that capacity since January 15, 2014. She
20 further avers in the declaration as follows:

21 On March 6, 2014, Applicant Attorney, Law Offices of Jonathan C. Rosen,
22 retained WIS to photocopy documents in furtherance of the applicant’s
23 workers’ compensation claim entitled Rogelio Cornejo Diego v. Younique
24 Cafe Inc, Case No.: ADJ9351965, ADJ9351964.

25 A true and correct copy of a letter confirming our authorization to perform
26 photocopying services for this law firm is attached hereto and incorporated
27 herein as ‘Exhibit A.’

Western Imaging Services, acting pursuant to legally issued subpoenas, and
as an Independent Contractor of Applicant’s attorney Law Offices of
Jonathan C. Rosen travelled to designated locations and photocopied the
documents that the applicant’s attorney requested to be copied.

Although the declaration by Ms. Ramirez references and incorporates an attached letter, the copy
of the declaration scanned into EAMS does not have the attachment.

The EAMS record also includes the August 21, 2015 brief by Christopher Fragoza, who identifies

⁴Pursuant to Evidence Code section 452(h), judicial notice is taken of the following State Bar web site as of December 8, 2015: <<http://members.calbar.ca.gov/fal/Member/Detail/207308>>.

1 himself in the brief as the assistant manager of WIS, and the September 3, 2014 trial brief by defendant's
2 attorney Mario Mejia, Esq.

3 The WIS brief, which is verified under penalty of perjury by Mr. Fragoza, provides additional
4 details about how the lien came to be filed, in pertinent part as follows:

5 Between the period of March 6, 2014 to November 6, 2014, Lien Claimant,
6 Western Imaging...provided photocopy services pursuant to work orders
7 for subpoena [of] records submitted to it by the Applicant's attorney, Law
8 Office of Jonathan C. Rosen (see attached Work Order from Applicant's
9 attorney, Law Office of Jonathan C. Rosen, to Western Imaging).

10 On November 7, 2014, Western Imaging Services, filed its' [sic] lien in the
11 amount of \$1,585.56 (One Thousand Five Hundred Eighty-Five Dollars
12 and Fifty-Six Cents). The original Amount charged was \$1,949.00 (One
13 Thousand Nine Hundred Forty-Nine Dollars and Zero Cents). To date,
14 Defendant, who is insured by Zenith-Woodland Hills, has paid \$363.44
15 (Three Hundred Sixty-Three Dollars and Forty-Four Cents), resulting in
16 the current amount of \$1,585.56 (One Thousand Five Hundred Eighty-
17 Five Dollars and Fifty-Six Cents) owed Western Imaging Services for the
18 services it provided in good-faith and per the request of the Applicant
19 through the Attorney of Record. (2:3-17.)

20 Attached to the brief by Mr. Fragoza, are copies of several items, including a card identifying
21 WIS as a "professional photocopier" registered with the County Clerk of Los Angeles pursuant to
22 Business and Professions Code Section 22450, apparently after the dates of service in the underlying lien
23 claim, a copy of the original work order from Mr. Rosen for documents copied by WIS, a copy of a page
24 from the Secretary of State web site showing WIS as an active registered California corporation, the
25 March 18, 2015 letter by Mr. Rosen received as Lien Claimant's Exhibit 1, and a copy of a June 23, 2015
26 Opinion And Decision After Reconsideration of the Appeals Board in *Ponce v. Lafayette Textiles*
27 (ADJ8577504).

28 Defendant's brief, which is verified under penalty of perjury by Mr. Mejia and is said to be
29 submitted in response to the brief by Mr. Fragoza, provides additional background information
30 concerning the lien claim, as follows:

31 Beginning shortly after the Application was filed, [the employer's insurer]
32 Zenith started receiving invoices from WIS. The invoices, which WIS has
33 listed as trial exhibits, contain the following information for location of
34 records; date of service; number of pages copied, if any; and amount
35 charged:

- 1 1. Zenith, 05/08/14, 55 pages, \$398.63.
 - 2 2. Younique Café, 04/02/14; 14 pages, \$290.52.
 - 3 3. Ameri Chiropractic, Inc., 04/03/14, 110 pages, \$513.10.
 - 4 4. WCIRB, 03/18/14, no records, \$161.00.
 - 5 5. EDEX, 05/22/14, no records, \$121.50.
 - 6 6. Secretary of State, 03/14/14, no records, \$119.25.
 - 7 7. Collection Fee (legal preparation and legal fee), 11/06/14, \$161.00.
 - 8 8. LC 4903.06 Fee (data entry and lien filing fee), 11/06/14, \$185.00.
- 9 Zenith erroneously paid some of the invoices in amounts that were less
10 than the face value. WIS filed a lien to recover what it claimed was the
11 balance due in the amount of \$1,585.56. (2:5-21.)

12 The record describes no evidence offered by defendant in rebuttal to the April 30, 2015
13 declaration of Elizabeth Ramirez, the March 18, 2015 letter by Mr. Rosen or the August 21, 2015 trial
14 brief declaration and exhibits of Mr. Fragoza that was “received for consideration” by the WCJ as part of
15 his Order.

16 On September 14, 2015, the WCJ issued his Joint Findings And Award as described above,
17 disallowing the WIS lien claim in full. In the accompanying Opinion, which is extensively quoted in the
18 Report, the WCJ expresses the view that the purpose of the Business and Professions Code section 22450
19 registration requirement is to protect the public and lien claimant’s position “requires a determination
20 that a victim of a breach of the duty to maintain...confidentiality...will be left without the remedy of
21 damages from the section 22455 bond,” and that “[i]f the ‘independent contractor’ contemplated by
22 [Business and Professions Code] section 22451 is a corporate entity engaged in the business of
23 photocopying records for multiple clients...the victim is relegated to seeking damages from the
24 unregistered and un-bonded professional photocopier only.” The WCJ further writes in the Report that
25 he disagrees with several Appeals Board panels that reversed decisions by him and other
26 WCJs disallowing the lien claims of WIS and others for lack of registration under essentially the same

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1 circumstances as in this case.⁵ He concludes by writing that Business and Professions Code section
2 22451, “cannot be inferred [to be] a loophole...for professional photocopiers regularly engaged in the
3 business of photocopying to escape registration and bonding.”

4 **DISCUSSION**

5 The WCJ concluded that defendant was not obligated to pay the claimed copy service fee because
6 WIS was not exempted by Business and Professions Code section 22451(a) from registration and
7 bonding as a professional photocopier pursuant to Business and Professions Code sections 22450 and
8 22455 at the time it photocopied the documents for applicant’s attorney.⁶ We disagree.

9 Labor Code section 4622 requires that a defendant pay “[a]ll medical-legal expenses for which
10 the employer is liable.” As provided in Labor Code section 4620(a), “a medical-legal expense means any
11 costs and expenses incurred by or on behalf of any party, ... which expenses may include ... *medical*
12 *records*, ... for the purpose of proving or disproving a contested claim.” (Italics added.) Copy service
13 fees incurred to obtain medical and other records are considered medical-legal expenses under Labor
14 Code section 4620(a) that may be recovered by the filing of a lien claim. (*Martinez v. Terrazas* (2013)
15 78 Cal.Comp.Cases 444 (Appeals Board en banc); *Vanderdoes v. County of Kern* 2015 Cal. Wrk. Comp.
16 P.D. LEXIS 118 (Appeals Board panel decision).)

17 A lien claimant’s right to recover a fee as a medical-legal expense is derivative of the employee’s
18 rights. (*Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd. (Pinkney)* (1994) 26
19 Cal.App.4th 789, 803 [59 Cal.Comp.Cases 461].) In seeking collection, a lien claimant must prove the
20 validity of the lien and must show that the services and fee are reasonable. (*Id*; *Kunz, supra*; *Torres*,

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22 ⁵ See, e.g. *Salgado v. Walter Weinstein* (ADJ8061663, September 16, 2015); *Casillas De Vazquez v. El Tapatio Market*
23 (ADJ8093832, September 24, 2015); *Cacique v. Metro Pad & Fusing* (ADJ7483398 etc, September 25, 2015); *Cantorán v.*
24 *Metro Pad & Fusing* (ADJ9093248, September 25, 2015); *Cervantes v. JBM Sport Truck and Accessories* (ADJ7787891,
25 September 25, 2015); *Rosales v. King Taco Restaurant* (ADJ8674944, September 29, 2015); *Garcia v. Exemplar Enterprise*
26 *ADJ8313132*, October 5, 2015); *Lopez v. Calpac Paintings and Coatings Acquisitions* (ADJ8254917, October 5, 2015);
27 *Trujillo v. Pama Management Co. / Nijjar Realty* (ADJ8552668, October 12, 2015); *Legaspi v. Uno Produce Market*
(ADJ8089263, October 28, 2015); *Carmona v. Sun Valley Products, Inc.* (ADJ8928907, October 29, 2015); *Diaz v.*
Sambrailo Packaging, Inc. (ADJ8387626, October 29, 2015); *Barrientos v. Saban Free Clinic* (ADJ8883051, November 3,
2015).

⁶ In disallowing the WIS lien claim, the WCJ did not address the reasonableness or value of the copy services underlying it.
We express no opinion on those issues, and they remain to be addressed in the first instance by a WCJ when the case is
returned to the trial level. (See, *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113 (Appeals Board en banc)
(*Torres*); *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588 (Appeals Board en banc) (*Kunz*).)

1 *supra*; *Tapia v. Skill Masters Staffing* (2008) 73 Cal.Comp.Cases 1338 (Appeals Board en banc); *Midas*
2 *Recovery Services v. Workers' Comp. Appeals Bd. (Garcia)* (1997) 62 Cal.Comp.Cases 537 (writ den.).)

3 For a lien to be valid, the lien claimant must also have had proper legal status to provide the
4 services for which the fee is claimed. (*Zenith Ins. Co. v. Workers' Comp. Appeals Bd. (Capi)* (2006) 138
5 Cal.App.4th 373 [71 Cal.Comp.Cases 374]; *Hand Rehabilitation Center v. Workers' Comp. Appeals Bd.*
6 *(Obernier)* (1995) 34 Cal.App.4th 1204 [60 Cal.Comp.Cases 289]; *Stokes v. Patton State Hospital* (2007)
7 72 Cal.Comp.Cases 996 (Appeals Board significant panel decision) (*Stokes*).) It is this requirement that
8 it appears the WCJ relied upon in disallowing the WIS lien.

9 Initially, we note that the fact that WIS was registered as a professional copy service with the
10 County Clerk of Los Angeles pursuant to Business and Professions Code section 22450 at the time of
11 trial is irrelevant to its lien claim for photocopying documents before it was registered.⁷ This
12 distinguishes the registration statute from other statutory provisions that establish curable technical
13 requirements for maintaining a cause of action, such as the fictitious business name statement
14 requirement of Business and Professions Code section 17918 that was addressed by the Court in
15 *Obernier, supra*.⁸ (See also, (*American Alternative Energy Partners II v. Windridge, Inc.* (1996) 42
16 Cal.App.4th 551 [failure to file a certificate of limited partnership did not deprive the partnership of
17 capacity to sue]; *Schantz v. Ellsworth* (1971) 19 Cal.App.3d 289 (*Schantz*) [real estate broker allowed to
18 recover commission notwithstanding use of fictitious name]; *Folden v. Lobrovich* (1957) 153 Cal.App.2d
19 32 [failure to file a fictitious business name statement a technical defect that does not defeat an otherwise
20 valid claim].)

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24 ⁷ Business and Professions Code section 22450 provides in pertinent part as follows: “A professional photocopier is any
25 person who for compensation obtains or reproduces documents authorized to be produced...and who, while engaged in
performing that activity, has access to the information contained therein. A professional photocopier shall be registered
pursuant to this chapter by the county clerk of the county in which he or she resides or has his or her principal place of
business, and in which he or she maintains a branch office.”

26 ⁸ Business and Professions Code 17918 provides in pertinent part as follows: “No person transacting business under the
27 fictitious business name contrary to the provisions of this chapter, or his assignee, may maintain any action... in any court of
this state until the fictitious business name statement has been executed, filed, and published as required by this chapter...”

1 Absent exemption pursuant to Business and Professions Code section 22451, registration and
2 bonding under Business and Professions Code sections 22450 and 22455 at the time documents are
3 photocopied could be construed to be a substantive requirement for recovering on a lien claim, as with
4 the certification that an interpreter must show in order to obtain payment, or the licensure or accreditation
5 that outpatient facilities and clinics must possess at the time services are provided. (*Guitron v. Santa Fe*
6 *Extruders* (2011) 76 Cal.Comp.Cases 228 (Appeals Board en banc) [interpreters]; *Stokes, supra*
7 [outpatient facilities and clinics]; cf. *Gandhi v. Workers' Comp. Appeals Bd. (Matus)* (2000) 65
8 Cal.Comp.Cases 719, 721 (writ den.) ["Thus, unlike *Schantz [supra]*, this case involves an explicit
9 regulation which prohibited petitioner from rendering professional services using a fictitious, false or
10 assumed name or any other name other than petitioner's own prior to the issuance of a fictitious name
11 permit"]; *Continental Medical Center of Paramount v. Workers' Comp. Appeals Bd. (Greene)* (2000) 65
12 Cal.Comp.Cases 162 (writ den.) [medical corporation not in compliance with Moscone-Knox
13 Professional Corporation Act not allowed to recover fee.]

14 However, the question of whether registration and bonding is required is not reached if Chapter
15 20 of Division 8 of the Business and Professions Code, which contains those provisions, does not apply
16 because the photocopying is done by "[a] member of the State Bar or his or her employees, agents, or
17 independent contractors" as set forth in Business and Professions Code section 22451(b).⁹

18 The fundamental rule of statutory construction is to effectuate the Legislature's intent. (*DuBois v.*
19 *Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 [58 Cal.Comp.Cases 286, 289].) In that regard,
20 the words of a statute provide the most reliable indicator. (*Id*; *Smith v. Workers' Comp. Appeals Bd.*
21 (2009) 46 Cal.4th 272, 277 [74 Cal.Comp.Cases 575].) However, it is also necessary to consider the
22 entire substance of the statute in order to construe the language in context and harmonize its different
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24 ⁹ Business and Professions Code 22451 provides in full as follows: "*This chapter does not apply to any of the following:*
25 (a) Any government employee who is acting in the course of his or her employment. (b) *A member of the State Bar or his or*
26 *her employees, agents, or independent contractors.* (c) Any person who is specially appointed by the court to obtain or
27 reproduce in order to transmit or distribute those records. (d) An employee or agent of a person who is registered under this
chapter. (e) Any custodian of records who makes his or her own copies. (f) Any certified shorthand reporter, official court
reporter, or stenotype operator who makes his or her own copies. (g) Any person licensed under Chapter 11.5 (commencing
with Section 7512) of Division 3 of the Business and Professions Code [private investigators] or his or her employees.
(h) The Office of the Secretary of State." (Italics added.)

1 parts. (*San Leandro Teachers Ass'n v. Governing Bd. of San Leandro Unified School Dist.* (2009) 46
2 Cal.4th 822, 831; see also *Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd. (Steele)* (1999) 19
3 Cal.4th 1182, 1194 [64 Cal.Comp.Cases 1].)

4 The WCJ concludes in his Opinion and Report that registration and bonding under Business and
5 Professions Code sections 22450 and 22455 are intended to protect the public from unscrupulous
6 providers, but we need not address that conclusion.¹⁰ The question before us involves the Business and
7 Professions Code section 22451(b) exception that applies when documents are photocopied by “[a]
8 member of the State Bar or his or her employees, agents, or independent contractors.”

9 In considering the purpose and scope of the Business and Professions Code section 22451(b)
10 exception it is important to recognize the significant professional responsibilities that accompany the
11 broad access to documents that members of the State Bar possess under other statutory provisions. An
12 attorney’s professional obligations provide assurance that the confidentiality of documents will be
13 preserved.

14 “An attorney at law is a member of an ancient, honorable and deservingly honored profession.
15 He is regarded as an officer of the court, of any court in which he appears.” (*People v. Mattson* (1959)
16 51 Cal.2d 777, 793; *Security Loan & Trust Co. v. Estudillo* (1901) 134 Cal. 166, 169.) “The lawyer’s
17 obligations as an officer of the court permit the court to call on the lawyer to perform duties which no
18 court could order citizens generally to do, including the obligation to observe codes of ethical conduct
19 not binding on the public generally.” (*In re Griffiths* (1973) 413 U.S. 717, 731 [93 S.Ct. 2851, 2859, 37
20 L.Ed.2d 910, 921].)

21 A member of the State Bar has a professional obligation to preserve the confidentiality of
22 information that is gathered on behalf of a client. (Rules Prof. Conduct, rule 3-100; Bus. & Prof. Code,
23 § 6068(e)(1); *Anderson v. Eaton* (1930) 211 Cal. 113.) The attorney’s duty to protect confidentiality
24 includes the duty to screen potential hires in order to avoid a breach of confidentiality. (See, *In re*
25 *Complex Asbestos Litigation* (1991) 232 Cal.App.3d 572, 592.) Failure to maintain client confidentiality

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27 ¹⁰ We do not endorse the WCJ’s reliance upon “the webpage of the California Association of Legal Support Professionals” as
evidence of legislative intent.

1 may subject an attorney to professional discipline. (Rules Prof. Conduct, rule 1-100 [“For a willful
2 breach of any of these rules, the Board of Governors has the power to discipline members as provided by
3 law].) It may also support private causes of action to recover damages for breach of fiduciary duty,
4 professional negligence, and breach of contract. (See e.g. *Oasis West Realty, LLC v. Goldman* (2011) 51
5 Cal.4th 811; *Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4th 1153.)

6 An attorney’s professional and civil obligations provide assurance that the confidentiality of
7 documents will be maintained when they are photocopied at his or her direction in the course of
8 providing representation. (See also, Civ. Code, § 2338 [“a principal is responsible to third persons for
9 the negligence of his agent in the transaction of the business of the agency, including wrongful acts
10 committed by such agent in and as a part of the transaction of such business, and for his willful omission
11 to fulfill the obligations of the principal”]; *Warshauer v. Bauer Construction Co.* (1960) 179 Cal.App.2d
12 44, 48 [agent can subject the principal to individual liability and indemnity claims based upon the agent’s
13 conduct or omissions]; *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 488 [same].)

14 As members of the State Bar, and in furtherance of their professional responsibilities, attorneys
15 are entitled by statute to unfettered access to certain documents. Of particular note, are provisions in the
16 Evidence Code and Code of Civil Procedure that requires the production of medical and business records
17 that an attorney demands through employees, agents or independent contractors pursuant to Business and
18 Professions Code section 22451(b).

19 Evidence Code section 1158 provides that the enumerated medical providers,¹¹ “shall make all of
20 the patient’s records...available for inspection and copying by the [patient’s] attorney at law or his, or
21 her, representative, promptly upon the presentation of the written authorization,” and further provides in
22 pertinent part as follows:

23 No copying may be performed by any medical provider or employer
24 enumerated above, or by an agent thereof, *when the requesting attorney*
25 *has employed...anyone identified in Section 22451 of the Business and*
Professions Code as his or her representative to obtain or review the

26 ¹¹ The providers listed in Evidence Code 1158 include “physician and surgeon, dentist, registered nurse, dispensing optician,
27 registered physical therapist, podiatrist, licensed psychologist, osteopathic physician and surgeon, chiropractor, clinical
laboratory bioanalyst, clinical laboratory technologist, or pharmacist or pharmacy, duly licensed as such under the laws of the
state, or a licensed hospital...”

1 *records on his or her behalf.* The presentation of the authorization by the
2 agent on behalf of the attorney shall be sufficient proof that the agent is the
3 attorney’s representative. (Italics added.)

4 Failure to comply with the requirements of Evidence Code section 1158 may subject the provider to a
5 private civil action for damages. (*Thornburg v. El Centro Regional Medical Center* (2006) 143
6 Cal.App.4th 198, 201-202.)

7 Similarly, Code of Civil Procedure section 2020.430(a) directs a nonparty’s custodian of records
8 or other qualified person to deliver documents requested by an attorney to the “deposition officer”
9 specified in the subpoena, and Code of Civil Procedure section 2020.420 expressly provides that the
10 deposition officer may be “*a person exempted from the registration requirements of that chapter under*
11 *Section 22451 of the Business and Professions Code.*” (Italics added; see also, *Unzipped Apparel, LLC v.*
12 *Bader* (2007) 156 Cal.App.4th 123, 131.)

13 These discovery statutes show that members of the State Bar are to have unencumbered access to
14 certain records and documents needed for proper representation of their clients, and further show that the
15 attorney’s authority applies when he or she acts through employees, agents, or independent contractors as
16 described in Business and Professions Code section 22451(b).

17 In his Report, the WCJ questions whether the evidence is sufficient to show that WIS was an
18 independent contractor, writing that “the term ‘independent contractor’ may have different legal
19 meanings and legal consequences when applying different statutes.” He further urges that the evidence
20 offered by WIS would not be definitive in demonstrating an independent contractor relationship in some
21 circumstances.

22 The question of whether an individual is properly characterized as an independent contractor or as
23 an employee has been the subject of extensive litigation and analysis. (See e.g. Lab. Code, § 3353; *State*
24 *ex rel. Dept. of California Highway Patrol v. Superior Court* (2015) 60 Cal.4th 1002, 1014 [80
25 Cal.Comp.Cases 227]; *S.G. Borello & Sons v. Department of Industrial Relations* (1989) 48 Cal.3d 341
26 [54 Cal.Comp.Cases 80]; *JKH Enterprises v. Dept. of Ind. Relations* (2006) 142 Cal.App.4th 1046 [71
27 Cal.Comp.Cases 1257]; *Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168 [44 Cal.Comp.Cases 134].)

1 However, there is no need to delve into the minutiae of distinctions between independent
2 contractors and employees in order to determine if the Business and Professions Code section 22451(b)
3 exemption applies, because the exemption extends to *both* independent contractors and employees of a
4 member of the State Bar. Regardless of whether the provider is an employee or independent contractor,
5 the Business and Professions Code section 22451(b) exemption applies.

6 Moreover, the Legislature’s intention to establish a broad exemption that eliminates the need for
7 consideration of the differences between “employees” and “independent contractors” is shown by the
8 inclusion of “agents” of a member of the State Bar as also qualifying for the exemption. It appears that
9 any individual or entity hired by a member of the State Bar to photocopy documents in the possession of
10 a third person acts as an agent of the attorney while doing that. (Civ. Code, § 2295 [“An agent is one
11 who represents another, called the principal, in dealings with third persons. Such representation is called
12 agency”].)

13 The Legislature’s application of the Business and Professions Code section 22451(b) exemption
14 to all “employees, agents, or independent contractors” of a member of the State Bar assures that a lawyer
15 obtains access to documents without having to confront objections based upon his or her relationship
16 with the photocopier, financial or otherwise. This broad standard furthers the administration of justice by
17 facilitating the prompt production of documents identified by the attorney.

18 The Legislature’s inclusion of “agents” within the Business and Professions Code section
19 22451(b) exemption also simplifies the analysis of whether Chapter 20 of Division 8 of the Business and
20 Professions Code applies, because once there is a *prima facie* showing that the documents were
21 photocopied at the direction and behest of a member of the State Bar, the only remaining question is
22 whether there is any contrary evidence.

23 When the facts are undisputed, the question of agency may be decided as an issue of law.
24 (*Schlake v. McConnell* (1927) 83 Cal.App. 725 (*Schlake*); *Whittaker v. Otto* (1961) 188 Cal.App.2d 619;
25 *Mantonya v. Bratlie* (1948) 33 Cal. 2d 120, 128-129; *Magnecomp Corp. v. Athene Co.* (1989) 209
26 Cal.App.3d 526, 536 (*Magnecomp*); cf. *Brokaw v. Black-Foxe Military Institute* (1951) 37 Cal.2d 274,
27 278.) In this regard, it has long been held that agency can be proven by declarations of the principal.

1 (*Schlake, supra; Magnecomp, supra.*) In addition, an agency is evidenced when the principal accepts the
2 benefits of the acts of the agent. (Civ. Code, §§ 2307 and 2310; *Mayfield v. Fidelity & Cas. Co. of New*
3 *York* (1936) 16 Cal.App.2d 611.)

4 In this case, the evidence includes the March 18, 2015 letter by Attorney Rosen identifying WIS
5 as his independent contractor for the purpose of photocopying documents in this case. (See *Schlake,*
6 *supra* [declaration of principal proves agency]; *Magnecomp, supra.*) The evidence also includes the
7 April 30, 2015 declaration of Ms. Ramirez, which corroborates the hiring of WIS by Mr. Rosen and his
8 acceptance of the benefits of the agency. (See, Civ. Code, § 2307 [“An agency may be created, and an
9 authority may be conferred, by a precedent authorization or a subsequent ratification”].) The stipulations
10 set forth in the WCJ’s September 4, 2015 Order further establishes that WIS received direction from
11 Mr. Rosen to photocopy documents and then provided the copies to him pursuant to his direction.

12 In addition, the declaration by Mr. Fragoza and attached exhibits that were “received for
13 consideration” by the WCJ as part of his September 4, 2015 Order provide additional support for a
14 finding that WIS was an agent or independent contractor of applicant’s attorney at the time the
15 documents in this case were photocopied.¹²

16 Defendant had notice before trial of all the evidence showing that WIS was hired by applicant’s
17 attorney to photocopy the documents, but it offered nothing in rebuttal. To the contrary, defendant
18 concedes in its answer that, “[c]learly WIS was an independent contractor and not an employee,” but
19 argues that WIS should not be considered an independent contractor “within the meaning” of Business
20 and Professions Code section 22451(b) because it provided “professional” photocopying services. (3:10-
21 4:7.) It appears the WCJ accepted that argument, as shown by his Report, in which he writes that the
22 Business and Professions Code section 22451(b) exemption should not apply to lien claimant because it
23 is “a professional photocopier corporate entity engaged solely in the business of photocopying records
24 for multiple clients.”

25
26 ¹² It is not clear from the WCJ’s September 4, 2015 Order if the declaration by Mr. Fragoza and its attachments were
27 “received” into evidence, or as an offer of proof, or otherwise. However, it unnecessary to further address this point in that the
“stipulations” and “evidentiary exhibits” identified in the Order provide prima facie evidence that WIS was an agent of a
member of the State Bar at the time the documents were photocopied.

1 We do not agree with the WCJ that an attorney's hiring of a professional to photocopy documents
2 requires forfeiture of payment of the resulting medical-legal expense. Such a result is contrary to the
3 broad exemption provided members of the State Bar and their agents by Business and Professions Code
4 section 22451(b) and would unnecessarily burden the administration of justice.

5 Under Business and Professions Code section 22451(b), a member of the State Bar may, within
6 the limits of his or her professional responsibilities and civil liability, hire *any* employee, agent, or
7 independent contractor to photocopy documents on his or her behalf, and this includes a professional
8 corporate entity engaged solely in the business of photocopying records for multiple clients. As
9 expressed in Business and Professions Code section 22451, Chapter 20 of Division 8 of the Business and
10 Professions Code "*does not apply*" when documents are photocopied by "*any* employees, agents, or
11 independent contractors of a member of the State Bar," and this includes a professional corporate entity
12 that engages solely in the business of photocopying records for multiple clients. (Italics added.) A lien
13 claimant that is exempt is not obligated to show that it was registered or bonded as described in Business
14 and Professions Code sections 22450 and 22455 in order to obtain payment of copy service costs as a
15 medical-legal expense because those statutory provisions are part of Chapter 20 of Division 8 of the
16 Business and Professions Code, which under Business and Professions Code section 22451 "does not
17 apply."

18 The Legislature intended to make a broad exemption from Chapter 20 of Division 8 of the
19 Business and Professions Code for members of the State Bar and their employees, agents and
20 independent contractors when it adopted Business and Professions Code section 22451(b). WIS made a
21 prima facie showing in this case that it was an agent or independent contractor of applicant's attorney,
22 who is a member of the State Bar, at the time it photocopied the documents on his behalf. No evidence
23 was offered that rebuts the showing made by WIS. Thus, Chapter 20 of Division 8 of the Business and
24 Professions Code did not apply to WIS when it photocopied the documents for applicant's attorney in
25 this case, and it is not obligated to show that it was registered or bonded at that time as described in
26 Business and Professions Code sections 22450 and 22455 as a condition of recovering on its lien claim.

27 ///

1 The WCJ's September 14, 2015 decision disallowing the lien claim of WIS is rescinded and a
2 new finding is entered that Chapter 20 of Division 8 of the Business and Professions Code does not apply
3 to WIS because it was an agent or independent contractor of a member of the State Bar when it provided
4 the photocopying services at issue. The case is returned to the trial level for further proceedings and
5 decision on the merits of the WIS lien.

6 For the foregoing reasons,

7 **IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals
8 Board that the September 14, 2015 Joint Findings And Award of the workers' compensation
9 administrative law judge is **RESCINDED**, and the following is **SUBSTITUTED** in its place:

10 **FINDINGS OF FACT**

11 1. ROGELIO CORNEJO born on April 23, 1979 while employed on December 24, 2011
12 (ADJ9351964) and during the period December 24, 2011 to February 27, 2014 (ADJ9351965) in the
13 State of California, by YOUNIQUE CAFE INC, whose workers' compensation insurance carrier was
14 ZENITH INSURANCE COMPANY alleged injury arising out of and occurring in the course of
15 employment.

16 2. Chapter 20 of Division 8 of the Business and Professions Code does not apply to Western
17 Imaging Services because it was an agent or independent contractor of a member of the State Bar,
18 Jonathan C. Rosen, Esq., as described in Business and Professions Code section 22451(b) when it
19 photocopied documents in this case.

20 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers'
21 Compensation Appeals Board that the case is **RETURNED** to the trial level for further proceedings and

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 a new decision by a workers' compensation administrative law judge concerning the lien of Western
2 Imaging Services, Inc., in accordance with this decision.

3 **WORKERS' COMPENSATION APPEALS BOARD**

4
5 /s/ Ronnie G. Caplane
6 **RONNIE G. CAPLANE, Chairwoman**

7 /s/ Frank M. Brass
8 **FRANK M. BRASS, Commissioner**

9 /s/ Deidra E. Lowe
10 **DEIDRA E. LOWE, Commissioner**

11 /s/ Marguerite Sweeney
12 **MARGUERITE SWEENEY, Commissioner**

13 /s/ Katherine A. Zalewski
14 **KATHERINE A. ZALEWSKI, Commissioner**

15 /s/ Jose H. Razo
16 **JOSÉ H. RAZO, Commissioner**

17
18
19
20 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

21 12/22/2015

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

24 **WESTERN IMAGING SERVICES, INC., ATTN: CHRISTOPHER FRAGOZA**
25 **JONATHAN C. ROSEN**
26 **CHERNOW & LIEB**

27 **JFS/abs**