WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSE GUITRON,

Applicant,

vs.

SANTA FE EXTRUDERS; and STATE COMPENSATION INSURANCE FUND,

Defendant(s).

Case No. ADJ163338 (LAO 0873468)

OPINION AND DECISION AFTER RECONSIDERATION (EN BANC)

The Appeals Board granted the petition for reconsideration of lien claimant, E&M Interpreting (E&M), to allow time to study the record and applicable law. The workers' compensation administrative law judge (WCJ) had found, in his October 1, 2010 Findings, Award and Order Re: Lien of E&M Interpreting (FA&O), that the interpreting services rendered by E&M on June 20, 2006, and February 9, 2007, were reasonably required to cure or relieve the effects of applicant's industrial injury, and that the remainder of E&M's unpaid services were not reasonable or necessary. On reconsideration, E&M contends the WCJ erred in denying most of its lien for interpreting services provided during applicant's medical treatment. Because of the important legal issues regarding the right to payment for interpreting services during medical treatment, and to secure uniformity of decision in the future, the Chairman of the Appeals Board, upon a majority vote of its members, assigned this case to the Appeals Board as a whole for an en banc decision. (Lab. Code, § 115.)[1]

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[1] En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10341; *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 313, fn. 5 [70 Cal.Comp.Cases 109, 120, fn. 5]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236, 239, fn. 6] (*Gee*).) In addition to being adopted as a precedential decision in accordance with Labor Code section 115 and WCAB Rule 10341, this en banc decision is being adopted as a precedential decision in accordance with Government Code section 11425.60(b).

For the reasons discussed below, we hold the following:

1) pursuant to the employer's obligation under Labor Code section 4600[2] to provide medical treatment reasonably required to cure or relieve the injured worker from the effects of his or her injury, the employer is required to provide reasonably required interpreter services during medical treatment appointments for an injured worker who is unable to speak, understand, or communicate in English;

2) to recover its charges for interpreter services, the interpreter lien claimant has the burden of proving, among other things, that the services it provided were reasonably required, that the services were actually provided, that the interpreter was qualified to provide the services, and that the fees charged were reasonable.

In reaching our holding on an interpreter lien claimant's burden of proof, we emphasize that the discussion which follows is not all-inclusive and that, in any given case, the lien claimant also might be required to carry its burden with respect to issues we have not addressed, including but not limited to the issue of injury arising out of and in the course of employment, if contested. The methods we discuss are neither exclusive nor mandatory.

BACKGROUND

Applicant sustained an admitted injury to his left elbow and psyche, while employed on April 14, 2006, as a machine operator by Santa Fe Extruders, the insured of defendant, State Compensation Insurance Fund (SCIF). His case in chief was resolved by Compromise and Release (C&R) for $22,000. The Order approving the C&R issued on June 11, 2008.

On June 21, 2010, a trial was held on E&M's $13,988.00 lien — the unpaid amount of its billing for Spanish interpreting services provided at medical examinations, chiropractic treatments, and physical therapy treatments from June 20, 2006, through February 9, 2007. The issues framed by the parties were 1) whether E&M's interpreting services were reasonably required to cure or relieve the effects of applicant's industrial injury, and 2) whether SCIF must pay for E&M's

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

interpreting services. The WCJ also noted in the Minutes of Hearing SCIF's arguments that some of the services were rendered in connection with work conditioning, that some were rendered in connection with physical therapy visits beyond the 24-visit cap,[3] and that the interpreters were not certified. Two additional issues, the reasonable value of the services rendered and E&M's entitlement to penalties and interest, were bifurcated and deferred, with jurisdiction reserved.

No testimony was taken at trial, but various exhibits were admitted. SCIF introduced into evidence its claims adjuster's objection to lien claimant's billing, which stated that the billings were for self-procured medical treatment, that the treatment and the charges were not reasonable or necessary, that the interpreting services were for an examination that SCIF had objected to, and that the treating doctors are not part of SCIF's medical provider network. SCIF also introduced its Individual Payment Reports, which included "Reviewer's Comments" explaining why particular billings were not paid — for example, that there was no record of medical treatment occurring on the date billed by the interpreter, and that there was insufficient documentation of the medical necessity for an interpreter at the treatment visit.

The parties filed post-trial briefs on two issues: 1) whether SCIF is liable for interpreting services rendered at physical therapy appointments and chiropractic manipulations, and 2) whether interpreters for medical treatment must be "certified" or "qualified," and whether there is a material difference between the two.

E&M argued in its brief that applicant was entitled to the services of a qualified interpreter during medical treatment appointments, pursuant to section 4600 and Administrative Director (AD) Rule 9795.3 (Cal. Code Regs., tit. 8, § 9795.3).

SCIF argued that interpreter fees are allowable only in connection with medical-legal expenses or evaluations, and not in connection with physical therapy and chiropractor visits. SCIF reviewed the various statutes and regulations authorizing interpreter services and pointed out that

[3] Labor Code section 4604.5(d)(1) limits an employee to no more than 24 chiropractic, occupational therapy, and physical therapy visits for each injury occurring on or after January 1, 2004, with exceptions for additional authorized treatment and post-surgical treatment.

none authorizes interpreter services at medical appointments that are strictly for treatment. SCIF argued that, even if such services are found to be reasonable and necessary for medical treatment, the interpreter should be required to provide the information required by section 4628(b) for physicians preparing medical-legal reports.[4] SCIF complained that, in this case, "The reports for physical therapy and chiropractic treatment do not indicate that an interpreter was used, let alone disclose the name or qualifications of the interpreter. If there is no indication on the report that an interpreter was used, how can State Fund verify that interpreting services were actually provided." (Defendant's Trial Brief on Lien of E&M Interpreting, 4:6-10.)

On October 1, 2010, the WCJ found that the services rendered by E&M on June 20, 2006, and February 9, 2007 (primary treating physician Igor Boyarsky, D.O.'s initial and final evaluations) were reasonably required to cure or relieve the effects of applicant's industrial injury, and that SCIF is liable for payment for those services. He found that the other services billed by E&M were not reasonable or necessary, and that the issue of SCIF's liability for payment for the other dates of service was, therefore, moot.

The WCJ distinguished the cases cited by E&M that allowed reimbursement for medical transportation expenses, stating that medical transportation is reimbursed when there is substantial medical evidence that it is necessary to obtaining medical treatment. By contrast, he reasoned, there was no evidence in this case "that Spanish interpreting services were *necessary* in order for Mr. Guitron to obtain physical therapy and chiropractic treatment. The mere fact that the applicant does not speak English is not enough." (Opinion on Decision, p. 3.)

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[4] Section 4628(b) provides, "The report shall disclose the date when and location where the evaluation was performed; that the physician or physicians signing the report actually performed the evaluation; whether the evaluation performed and the time spent performing the evaluation was in compliance with the guidelines established by the administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2 or Section 5307.6 and shall disclose the name and qualifications of each person who performed any services in connection with the report, including diagnostic studies, other than its clerical preparation. If the report discloses that the evaluation performed or the time spent performing the evaluation was not in compliance with the guidelines established by the administrative director, the report shall explain, in detail, any variance and the reason or reasons therefor."

E&M filed a timely petition for reconsideration.[5] We have not received an Answer from SCIF.

In his Report and Recommendation on Petition for Reconsideration (Report), the WCJ reviewed the various statutes and regulations governing interpreter fees and expressed his agreement, "in theory," with E&M's position that interpreter services can be a necessary component of medical treatment under section 4600. He said, "If an interpreter is necessary to enable an injured worker to communicate with his or her medical provider, understand treatment recommendations and make decisions regarding them, and to participate in treatment, then an interpreter should be provided as part of the cost of the injured worker's medical care." (Report, p. 3.) He added, however,

> "In the present case, there is no evidence that Spanish interpreting services were necessary in order for Mr. Guitron to obtain physical therapy and chiropractic treatment. Lien claimant's Exhibit 2 reveals that the interpreting services were performed at offices in East Los Angeles. In that part of the city, Spanish is the primary language, and it is reasonable to believe that medical offices (physicians, chiropractors and physical therapists) serving that community are staffed primarily (if not entirely) by people who speak Spanish. Because the lien claimant has the burden of proof, it is lien claimant's burden to prove that the offices at which interpreting services were performed did *not* have a Spanish-speaking staff member available to interpret, as well as whether interpretation was required. Even if those offices did not have the ability to speak directly to the patient in his language, it would not necessarily render Spanish interpreting services reasonable and necessary, since East Los Angeles (and all of Southeast Los Angeles County, where applicant lived and worked) has numerous physical therapy and chiropractic offices which are Spanish-speaking." (*Id*. at pp. 3-4.)

The WCJ explained that the question of whether interpreting services for *all* medical visits are reimbursable, when the injured worker does not speak English, is an unsettled issue on which there is no binding case authority, and is an issue of great importance in Southern California. He

[5] Lien claimant, represented by a hearing representative, seems not to understand that, to be considered, exhibits must be formally admitted into evidence. Both its post-trial brief and petition for reconsideration improperly included exhibits that were not admitted into evidence.

noted that, according to the Presiding Judge, the Los Angeles District Office alone receives approximately 700 interpreter liens per month, the majority of which are for services related to medical treatment. While the WCJ's comments refer to matters not in evidence and not judicially noticed, we nonetheless acknowledge that the issues in dispute in this case are of broad concern to the workers' compensation community, and that the issue has not, until now, been addressed in a precedential decision.

DISCUSSION

Explicit Legal Authority for Interpreter Fees

The Labor Code and the AD Rules require a defendant to provide interpretation services in several specified circumstances. We review them here, in the absence of any specific provision concerning interpretation services at medical treatment appointments.

Section 5710(b)(5) provides that, when a defendant requests the deposition of an injured worker or person claiming dependent benefits, the deponent is entitled to,

> "A reasonable allowance for interpreter's fees for the deponent, if interpretation services are needed and provided by a language interpreter certified or deemed certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code. The fee shall be in accordance with the fee schedule set by the administrative director and paid by the employer or his or her insurer. Payment for interpreter's services shall be allowed for deposition of a non-English-speaking injured worker, and for any other deposition-related events as permitted by the administrative director."

Section 4600(f) provides for a reasonable fee for "qualified interpreters" at a required medical "examination":

> "When at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For

> purposes of this section, 'qualified interpreter' means a language interpreter certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code."

Section 4620(a) includes interpreter's fees within the definition of medical-legal expenses, if "the medical report is capable of proving or disproving a disputed medical fact." (Lab. Code, § 4620(c).) Section 4621(a) includes the cost of interpreter services among medical-legal expenses "reasonably, actually, and necessarily incurred," which shall be reimbursed.

Section 5811(b) addresses interpreter fees as a cost of workers' compensation litigation and provides in full:

> "(b) It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter. A qualified interpreter is a language interpreter who is certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.
>
> "Interpreter fees which are reasonably, actually, and necessarily incurred shall be allowed as cost under this section, provided they are in accordance with the fee schedule set by the administrative director.
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> "A qualified interpreter may render services during the following:
>
> "(1) A deposition.
>
> "(2) An appeals board hearing.
>
> "(3) During those settings which the administrative director determines are reasonably necessary to ascertain the validity or extent of injury to an employee who cannot communicate in English."

AD Rule 9795.3 (Cal. Code Regs., tit. 8, § 9795.3) enumerates the settings in which qualified interpreters are specifically authorized, and establishes the fees for interpreter services in the various settings.

Rule 9795.3 provides,

> "(a) Fees for services performed by a qualified interpreter, where the employee does not proficiently speak or understand the English language, shall be paid by the claims administrator for any of the following events:
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> "(1) An examination by a physician to which an injured employee submits at the requests of the claims administrator, the administrative director, or the appeals board;
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> "(2) A comprehensive medical-legal evaluation as defined in subdivision (c) of Section 9793, a follow-up medical-legal evaluation as defined in subdivision (f) of Section 9793, or a supplemental medical-legal evaluation as defined in subdivision (k) of Section 9793; provided, however, that payment for interpreter's fees by the claims administrator shall not be required under this paragraph unless the medical report to which the services apply is compensable in accordance with Article 5.6. Nothing in this paragraph, however, shall be construed to relieve the party who retains an interpreter from liability to pay the interpreter's fees in the event the claims administrator is not liable."

The rule also includes payment for interpreting services at depositions, hearings, conferences, arbitration, and

> "(7) Other similar settings determined by the Workers' Compensation Appeals Board to be reasonable and necessary to determine the validity and extent of injury to an employee."

As to payment, Rule 9795.3 provides,

> "(b) The following fees for interpreter services provided by a certified interpreter shall be presumed to be reasonable:
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> "(1) For an appeal board hearing, arbitration, deposition, or formal rehabilitation conference: interpreter fees shall be billed and paid at the greater of the following (i) at the rate for one-half day or one full day as set forth in the Superior Court fee schedule for interpreters in the county where the service was provided, or (ii) at the market rate. The interpreter shall establish the market rate for the interpreter's services by submitting documentation to the claims administrator, including a list of recent similar services performed and the amounts paid for those services. Services over 8 hours shall be paid at the rate of one-eighth the full day rate for each hour of service over 8 hours.

"(2) For all other events listed under subdivision (a), interpreter fees shall be billed and paid at the rate of $11.25 per quarter hour or portion thereof, with a minimum payment of two hours, or the market rate, whichever is greater. The interpreter shall establish the market rate for the interpreter's services by submitting documentation to the claims administrator, including a list of recent similar services performed and the amounts paid for those services.

"(3) The fee in paragraph (1) or (2) shall include, when requested and adequately documented by the interpreter, payment for mileage and travel time where reasonable and necessary to provide the service, and where the distance between the interpreter's place of business and the place where the service was rendered is over 25 miles. Travel time is not deemed reasonable and necessary where a qualified interpreter listed in the master listing for the county where the service is to be provided can be present to provide the service without the necessity of excessive travel.

"(i) Mileage shall be paid at the minimum rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code for non-represented (excluded) employees at Title 2, CCR § 599.631(a).

"(ii) Travel time shall be paid at the rate of $5.00 per quarter hour or portion thereof.

"(c) Unless notified of a cancellation at least 24 hours prior to the time the service is to be provided, the interpreter shall be paid no less than the minimum fee.

"(d) Nothing in this section shall preclude payment to an interpreter or agency for interpreting services based on an agreement made in advance of services between the interpreter or agency and the claims administrator, regardless of whether or not such payment is less than, or exceeds, the fees set forth in this section.

"(e) The fees set forth in subdivision (b) shall be presumed reasonable for services provided by provisionally certified interpreters only if efforts to obtain a certified interpreter are documented and submitted to the claims administrator with the bill for services. Efforts to obtain a certified interpreter shall also be disclosed in any document based in whole or in part on information obtained through a provisionally certified interpreter."

AD Rule 9795.1 (Cal. Code Regs., tit. 8, § 9795.1) contains the definitions of the terms used in the regulations governing interpreter services. Rule 9795.1 provides, in pertinent part,

> "(a) 'Certified' means an interpreter who is certified in accordance with subdivision (e) of Section 11513 [sic] of the Government Code or Section 68562 of the Government Code.
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> …
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> "(e) 'Provisionally certified' means an interpreter who is deemed to be qualified to perform services under this article, when a certified interpreter cannot be present, by (A) the residing officer at an appeals board hearing, arbitration, or formal rehabilitation conference, at the request of a party or parties, or (B) agreement of the parties for any services provided under this article other than at an appeals board hearing, arbitration, or formal rehabilitation conference.
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> "(f) 'Qualified interpreter' means an interpreter who is certified or provisionally certified.
>
> "(g) 'Travel time' means the time an interpreter actually travels to and from the place where service is to be rendered and his or her place of business.
>
> "(h) 'Market rate' means that amount an interpreter has actually been paid for recent interpreter services provided in connection with the preparation and resolution of an employee's claim."

AD Rule 9795.2 requires that notice be given of the right to an interpreter: "The notice of hearing, deposition, or other setting shall include a statement explaining the right to have an interpreter present if they do not proficiently speak or understand the English language. Where a party is designated to serve a notice, it shall be the responsibility of that party to include this statement in the notice." (Cal. Code Regs., tit. 8, § 9795.2.)

AD Rule 9795.4 (Cal. Code Regs., tit. 8, § 9795.4) governs the time for payment of, and objections to, interpreter expenses:

> "(a) All expenses for interpreter services shall be paid within 60 days after receipt by the claims administrator of the bill for services unless the claims administrator, within this period, contests its liability for such payment, or the reasonableness or the necessity of incurring such expenses. A claims administrator who

contests all or any part of a bill for interpreter services shall pay the uncontested amount and notify the interpreter of the objection within 60 days after receipt of the bill. Any notice of objection shall include all of the following:

"(1) An explanation of the basis of the objection.

"(2) If additional information is needed as a prerequisite to payment of a contested bill or portions thereof, a clear description of the information required.

"(3) The name, address and telephone number of the person or office to contact for additional information concerning the objection.

"(4) A statement that the interpreter may adjudicate the issue of the contested charge before the Workers' Compensation Appeals Board.

"(b) Any bill for interpreter's services which constitutes a medical-legal expense as defined in subdivision (g) of Section 9793 and which is neither paid nor contested within the time limits set forth herein shall be subject to the penalties and interest set forth in Section 4622 of the Labor Code.

"(c) This article shall be effective for services provided on and after the effective date of this article which pertain to injuries occurring on or after January 1, 1994. Amendments to this article which became effective in 1996 shall apply to interpreting services provided on or after April 1, 1997."

In addition, WCAB Rule 10564 (Cal. Code Regs., tit. 8, § 10564) provides,

"Subject to the Rules of the Administrative Director, the Workers' Compensation Appeals Board may in any case appoint an interpreter and fix the interpreter's compensation. It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter.

"For injuries before January 1, 1994, interpreter's fees that are reasonably, actually and necessarily incurred and that are not allowed under Labor Code Section 4600 shall be allowed as costs under Labor Code Section 5811. Recovery shall be allowed in the amount charged by the interpreter unless:

"(1) proof of unreasonableness is entered by the party contesting the reasonableness of the charge, or

"(2) the charge is manifestly unreasonable.

"For injuries on or after January 1, 1994, interpreter's fees that are reasonably, actually and necessarily incurred shall be allowed as provided by Labor Code Sections 4600, 5710 and 5811 as amended July 16, 1993. Interpreter's fees as defined in Labor Code section 4620, that are reasonably, actually and necessarily incurred as provided in Labor Code section 4621, shall be allowed in accordance with the fee schedule set by the Administrative Director."

Labor Code sections 5811(b), 4600(f), and 5710(b)(5) refer to the Government Code provisions regarding certification of interpreters: "Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code." Article 8 sets forth the procedures for qualifying interpreters in state agency proceedings to provide "'language assistance' for a party or witness who cannot speak or understand English or who can do so only with difficulty." (Gov. Code, § 11435.05.) Article 8 expressly applies to WCAB adjudicative proceedings (Gov. Code, § 11435.15(a));[6] however, "[n]othing in this section prohibits an agency from providing an interpreter during a proceeding to which this chapter does not apply, including an informal factfinding or informal investigatory hearing." (Gov. Code, § 11435.15(c).)

Government Code section 11435.30 directs the State Personnel Board to establish a list of "certified administrative hearing interpreters," and Government Code section 11435.35 directs the State Personnel Board to establish a list of "certified medical examination interpreters." Government Code section 11435.35 further provides that court interpreters certified through the program established by the Judicial Council, pursuant to Government Code section 68562, and administrative hearing interpreters certified by the State Personnel Board pursuant to Government

[6] Subdivision (d) of Government Code section 11435.15 provides, "this article applies to an agency listed in subdivision (a) notwithstanding a general provision that this chapter does not apply to some or all of an agency's adjudicative proceedings." The WCAB is one of those agencies referenced in subdivision (d) because Article 8's provisions on interpreters apply to the WCAB, but its adjudicative proceedings are expressly governed by the Labor Code and by its own rules of practice and procedure. (See Lab. Code, §§ 5309, 5708; Gov. Code, § 11415.10(a).)

Code section 11435.30, shall be deemed certified for purposes of Government Code section 11435.35, which pertains only to certified medical examination interpreters.

Government Code section 11435.55(b) provides,

> "(b) An interpreter used in a medical examination shall be certified pursuant to Section 11435.35. However, if an interpreter certified pursuant to Section 11435.35 cannot be present at the medical examination, the physician provisionally may use another interpreter if that fact is noted in the record of the medical evaluation."

Government Code sections 68560, et seq. govern certification of court interpreters. Government Code section 68566 establishes who is entitled to use the designation "certified court interpreter."

Pursuant to the Employer's Obligation Under Labor Code Section 4600 to Provide Medical Treatment Reasonably Required to Cure or Relieve the Injured Worker from the Effects of His or Her Injury, the Employer is Required to Provide Reasonably Required Interpreter Services During Medical Treatment Appointments for an Injured Worker Who Is Unable to Speak, Understand, or Communicate in English.

As the review above demonstrates, there is a wealth of authority on interpreter services, but none directly applicable to medical treatment. Although no statutory or regulatory provision specifically provides for interpretation services during medical treatment appointments, we hold that, pursuant to the employer's obligation under section 4600 to provide medical treatment reasonably required to cure or relieve the injured worker from the effects of his or her injury, the employer is required to provide reasonably required interpreter services during medical treatment appointments for an injured worker who is unable to speak, understand, or communicate in English.

Article XIV, section 4 of the California Constitution directs the Legislature to create a complete workers' compensation system, which includes "full provision of such medical, surgical hospital and other remedial treatment as is requisite to cure and relieve from the effects of" an injury sustained in the course of employment. Pursuant to this mandate, the Legislature enacted section 4600(a), which provides that the employer shall provide an injured employee "[m]edical,

surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury…."

The California Supreme Court has long recognized the important purpose served by provision of medical treatment necessitated by an industrial injury.

> "The primary purpose of industrial compensation is to insure to the injured employee and those dependent upon him adequate means of subsistence while he is unable to work and also to bring about his recovery as soon as possible in order that he may be returned to the ranks of productive labor. By this means society as a whole is relieved of the burden of caring for the injured workman and his family, and the burden is placed upon the industry. That the injured workman and his dependents may be cared for, compensation in the form of disability benefits is provided for by the act approximating the wages earned by the employee and varying with the degree of disability and dependency. And to secure the speedy return of the workman to productive employment it is provided that medical and surgical services shall be furnished by the employer. This liability for medical and surgical services is not, therefore, a burden placed upon the employer as a penalty for any failure of duty on his part, but is merely a part of the whole compensation due the employee as the result of his injury. It therefore follows that the medical and surgical services contemplated and called for by the statute in question should be such as will tend to secure the return of the workman to productive employment. In other words, and perhaps more precisely stated, the treatment required by the statute is such as will reasonably and seasonably tend to relieve and cure the injured employee from the effects of the injury…." (*United Iron Works v. Industrial Acc. Com. (Henneberry)* (1922) 190 Cal. 33 [9 I.A.C. 223, 226].)

"Employer liability for medical and surgical services is provided in major part in order to facilitate the worker's speedy recovery and to maximize his productive employment." (*J. T. Thorp, Inc. and Insurance Co. of North America v. Workers' Comp. Appeals Bd. (Butler)* (1984) 153 Cal.App.3d 33 [49 Cal.Comp.Cases 224, 228].) The Supreme Court said, in *Zeeb v. Workmen's Comp. Appeals Bd.* (1967) 67 Cal.2d 496, 501-503 [32 Cal.Comp.Cases 441, 443],

"Obviously, it will ordinarily be in the interests of both the employer and the employee to secure adequate medical treatment so that the employee may recover from his injury and return to work as soon as possible."

While section 4600 does not specifically list interpreter services as an element of medical treatment, section 4600 has been construed to include the costs of transportation to obtain treatment and medication, even though such transportation costs also are not specifically listed in section 4600. As stated in *Avalon Bay Foods v. Workers' Comp. Appeals Bd.* (*Moore*) (1998) 18 Cal.4th 1165, 1173-1175 [63 Cal.Comp.Cases 902, 907-909] (*Moore*),

> "Although Labor Code section 4600 does not expressly refer to medical treatment transportation expenses as an aspect of medical treatment benefits, they have consistently been so regarded under the workers' compensation laws. … [¶¶] … [T]he right to medical treatment transportation expenses under Labor Code section 4600 has been implied as dependent on and ancillary to medical treatment benefits, not as a different benefit. Medical treatment transportation benefits have not been treated as having a separate existence from all other medical treatment benefits, but, instead, have been included as derivative of medical treatment benefits. As such, they have been viewed as a necessary means to the end of ensuring prompt medical treatment so that an injured worker may return to the workplace."

In *Hutchinson v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 372 [54 Cal.Comp.Cases 124, 126], the Court held that an injured worker was entitled to transportation expenses to obtain prescribed medication, stating,

> "Section 3202 requires us to construe section 4600 liberally to extend its benefits for the protection of persons injured in the course of their employment…[¶] We must bear in mind that the underlying policy of the workers' compensation statutes and their constitutional foundation (Cal. Const., art XIV, § 4), as well as the recurrent theme of countless appellate decisions on the matter, has been one of pervasive and abiding solicitude for the worker."

Citing *Remedy Home Health Care, Inc. v. Workers' Comp. Appeals Bd. (Sharp)* (1996) 61 Cal.Comp.Cases 891 (writ denied), the Appeals Board stated, in *Jones v. Ukiah Timber Products* (1997) 62 Cal.Comp.Cases 1257, 1259-1260 (Appeals Board en banc) (*Jones*), "Were

transportation costs not included in medical treatment benefits, the injured worker might be deprived of necessary benefits, defeating the fundamental purpose of extending benefits for the protection of persons injured in the course of their employment."

Like transportation, effective communication between an injured employee and a medical provider is an essential adjunct to treatment. This common sense principle has been recognized in a number of Appeals Board panel decisions. (E.g., *Garcia v. State Comp. Ins. Fund* (2001) 29 Cal. Workers' Comp. Rptr. 310; *Paguada v. Amberwood Products* (2008) 2008 Cal. Wrk. Comp. P.D. LEXIS 92; *Saldana v. 3M Espe* (2008) 2008 Cal. Wrk. Comp. P.D. LEXIS 417 (*Saldana*); *Gil v. Shea-Kenny Joint Venture* (2007) 2007 Cal. Wrk. Comp. P.D. LEXIS 219; *Perez v. A's Match Dyeing* (2007) 2007 Cal. Wrk. Comp. P.D. LEXIS 112.)[7] To paraphrase our admonition in *Jones, supra,* 62 Cal.Comp.Cases at pp. 1259-1260, quoted above with regard to transportation expenses, were the cost of an interpreter not included in medical treatment benefits, the injured worker might be deprived of necessary benefits, defeating the fundamental purpose of extending benefits for the protection of persons injured in the course of their employment.

SCIF appears to draw a distinction between types of treatment, implying that compensation for interpreter services at some treatment appointments might be justified, but not at others, such as chiropractic manipulations, physical therapy, and, particularly, work conditioning. We find no *legal* basis for drawing such a distinction. If the services provided constituted "medical treatment," if the treatment was reasonably required to cure or relieve from the effects of an industrial injury, and if qualified interpreter services were required and provided during the treatment, then the interpreter services may be compensable under section 4600, regardless of the nature of the medical treatment involved.

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[7] While it is true that Appeals Board panel decisions are not binding precedent and have no stare decisis effect (*Gee, supra,* 96 Cal.App.4th at p. 1425, fn. 6 [67 Cal.Comp.Cases 236]), we consider them to the extent we find their reasoning persuasive. Unlike unpublished appellate court opinions, which, pursuant to California Rules of Court, rule 8.1115(a), may not be cited or relied on, except as specified by rule 8.1115(b), Appeals Board panel decisions are citable, even though they have no precedential value. (See *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].)

Our construction of section 4600, to allow for interpreter expenses in conjunction with medical treatment, is consistent with the other provisions of law allowing for interpreter costs for medical-legal examinations (Lab. Code, §§ 4600(f), 4620(a) & (c), 4621(a)), depositions (Lab. Code, §§ 5710(b)(5), 5811(b)(1)), hearings (Lab. Code, § 5811(b)(2)), and other settings (Lab. Code, § 5811(b)(3)). The fact that section 4600 was amended in 1993 to provide for interpreter costs in conjunction with medical-legal examinations (see Stats. 1993, ch. 121, § 38) does not reflect a legislative intent to disallow interpreter costs for medical treatment. (Cf. *Moore, supra,* 18 Cal.4th at pp. 1174-1175 & fn. 4 [noting that a 1959 amendment to section 4600 allowing transportation costs for medical-legal examinations did not reflect a legislative intent not to allow transportation costs for medical treatment]; *Caldwell v. Workmen's Comp. Appeals Bd.* (1969) 268 Cal.App.2d 912, 915 [34 Cal.Comp.Cases 37] [same conclusion re 1959 amendment and stating, "Applying the logic of the appeals board to the lack of a provision in the first paragraph [of section 4600] allowing the workmen transportation expenses to obtain treatment (the only express provision in the whole section allowing transportation costs is in the third paragraph and then only for submitting to employer or board-directed *examination*, not *treatment*), would attribute to the Legislature the illogical design of authorizing transportation expenses for *examination*, but not for treatment." (Court's italics)].) Moreover, that payment of interpreter costs is expressly authorized in certain contexts does not mean that payment is prohibited in all other contexts. (See *Osuna v. Sun View* (2005) 2005 Cal. Wrk. Comp. P.D. LEXIS 21 (Appeals Board panel decision) [lien claimant interpreter found entitled to fees for explaining terms of complex C&R, at the applicant's attorney's office].)

The WCJ's decision in the present case does not reflect any disagreement with the principles discussed above. Rather, he denied most of E&M's lien because he found, as a factual matter, that, except for Dr. Boyarsky's initial and final evaluations, the billed interpreter services were not reasonable or necessary. In other words, the WCJ determined that E&M had not met its burden of proving its right to payment of its lien.

To Recover Its Charges for Interpreter Services, the Interpreter Lien Claimant Has the Burden of Proving, Among Other Things, That the Services It Provided Were Reasonably Required, That the Services Were Actually Provided, That the Interpreter was Qualified to Provide the Services, and That the Fees Charged Were Reasonable.

"The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) Section 3202.5 provides that, "All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence…."

Although we agree with E&M that, as a general principle, interpreter fees may be allowed in conjunction with, and as a component of, medical treatment, this does not mean that interpreter liens are automatically payable. As explained above, interpreter services are authorized under section 4600's general requirement that employers provide medical treatment reasonably required to cure or relieve the injured worker from the effects of the industrial injury. Therefore, like other medical lien claimants, interpreter lien claimants have the burden of proving their right to payment. (Lab. Code, §§ 3202.5, 5705; *Zenith Ins. Co. v. Workers' Comp. Appeals Bd.* (*Capi*) (2006) 138 Cal.App.4th 373, 376-377 [71 Cal.Comp.Cases 374] (*Capi*); *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588 (Appeals Board en banc) (*Kunz*); *Tapia v. Skill Master Staffing* (2008) 73 Cal.Comp.Cases 1338 (Appeals Board en banc) (*Tapia*).) For guidance to the workers' compensation community, we will now consider the various elements of the interpreter lien claimant's burden of proof, and what evidence may satisfy that burden.

One element of an interpreter lien claimant's burden is to show that the injured worker required an interpreter. If an injured worker used an interpreter, but did not need one, the defendant would not be obligated to pay for the interpreter services. The statutes governing interpretation services in settings other than medical treatment provide guidance as to when an interpreter is needed. Section 5710(b)(5) authorizes payment for interpreter's services for the deposition of a "non-English-speaking injured worker." Section 5811 allows interpreter services "which are reasonably, actually, and necessarily incurred" for "an employee who cannot communicate in English" during a deposition, an appeals board hearing, and those settings the AD determines are reasonably necessary to ascertain the validity or extent of injury. Under section

4600(f), an employee who "does not proficiently speak or understand the English language" is entitled to interpreter services during a medical examination set at the request of the employer, insurance company, AD, Appeals Board, or WCJ. AD Rule 9795.2 requires notice of the right to an interpreter for those who "do not proficiently speak or understand the English language." AD Rule 9795.3(a) allows fees for interpreter services in various settings "where the employee does not proficiently speak or understand the English language." The Government Code provisions on "language assistance" are for parties or witnesses in state agency proceedings "who cannot speak or understand English or who can do so only with difficulty." (Gov. Code, § 11435.05.) These provisions are essentially consistent. In the various settings for which the right to an interpreter is expressly authorized by statute or regulation, the injured worker must need assistance because he or she does not adequately speak or understand or communicate in English.

An injured worker's need for an interpreter could be demonstrated in many ways. If, for example, an interpreter was used during the deposition of the worker (see Lab. Code, §§ 5710(b)(5), 5811(b)(1)) or at an agreed or qualified medical evaluation (see Lab. Code, §§ 4600(f), 4620(a) & (c), 4621(a); Cal. Code Regs., tit. 8, § 9795.3(a)), although not conclusive, it might be reasonable to infer that the worker needed interpreting services during medical treatment.[8] A physician's statement that an interpreter was required, an interpreter's testimony or sworn statement that he or she confirmed with the physician that interpreting services were needed, or the worker's testimony through an interpreter that he or she needed an interpreter to communicate with a medical provider could all constitute evidence of the need for an interpreter. If the defendant authorized interpreter services for some medical treatment appointments, it should not be necessary for the interpreter lien claimant to prove that interpreter services were required for each individual appointment, unless defendant raises a legitimate objection to a particular date of service. Ultimately, if there is a dispute, it will be up to the trier-of-fact to determine whether the interpreter

[8] Here, for example, the February 27, 2008 agreed medical evaluation report of Dr. Andrew Sew Hoy reflects that a Spanish-language interpreter was used at the February 7, 2008 evaluation.

lien claimant has demonstrated that the interpreter services were reasonably required. The parties may present any evidence that is probative on the issue.

We observe that, in the WCJ's consideration of this element of E&M's burden of proof, he indicated that it was E&M's responsibility to prove that no one on the medical provider's staff was available to interpret. Certainly evidence to that effect could be probative as to the need for an interpreter for a non-English speaking worker. If the physician speaks the injured worker's language, or if the physician chooses to use a member of his or her staff to interpret, then it is unlikely that other interpreter services would be reasonably required. However, we would not require a physician to use an employee with other work responsibilities as an interpreter, merely because that employee was able to speak the patient/injured worker's language. The standard adopted by the WCJ appears to imply such a requirement.

The WCJ also implied that E&M must prove that there were no *other* medical providers in the area who could provide the treatment, using the injured worker's language. This would limit an injured worker's choice of providers to those who speak his or her language. We do not accept the notion that non-English speaking workers have restrictions on their choice of medical providers that are not applicable to English speakers. By affirming the non-English speaking worker's right to choose a medical provider, regardless of the provider's proficiency in the worker's language, we do not, however, abandon or minimize the requirement that the interpreter lien claimant must prove that its interpreting services were reasonably required.

In sum, we emphasize that we neither prescribe nor proscribe any particular admissible evidence that may prove that the lien claimant interpreter's services were reasonably required in a given case.

The interpreter lien claimant must also establish that an interpreter was actually present at the medical appointments in question, i.e., that the interpreter actually rendered the services being

billed.[9] As part of this burden, if the issue is disputed, the interpreter lien claimant must also establish that the medical treatment occurred on the interpreter's billed dates of service. There are a variety of ways in which this burden of proving the services were rendered might be carried. For example, an interpreter might be able to rely on a medical report regarding the visit, reciting that the interpreter was present. Although there is no current requirement for a treating physician to indicate the presence of an interpreter (see Cal. Code Regs., tit. 8, §§ 9785.2, 9785.3, 9785.4, 10606), it is certainly appropriate and helpful for a physician to do so. SCIF's suggestion that interpreter lien claimants prepare disclosures similar to those required for physicians by section 4628(b) provides another option for a lien claimant to demonstrate satisfaction of this element.

The burden of proving that the services were required, and that they were provided, may also be satisfied by the interpreter using a form, signed by the medical provider in conjunction with the visit, containing a statement to the effect that a named interpreter was present, the medical practitioner is not proficient in the injured employee's language, the practitioner's office does not provide interpreters, and the office's policy is that patients who are not proficient in English should be accompanied by an interpreter. (See *Saldana, supra*, 2008 Cal. Wrk. Comp. P.D. LEXIS 417.)

The methods discussed above are neither mandatory nor exclusive. There may well be other ways to satisfy lien claimant's burden. To avoid these issues, however, the preferred practice is to obtain pre-authorization. (*Saldana*, *supra*, 2008 Cal. Wrk. Comp. P.D. LEXIS 417.) When a treating physician requests authorization for treatment by another practitioner, such as a physical therapist, chiropractor, or acupuncturist, the treating physician could include in the request a statement that the injured worker requires the services of an interpreter. The defendant could then efficiently and unambiguously authorize use of an interpreter in conjunction with the requested treatment. However, a treating physician's failure to expressly request an interpreter, by itself, is not a basis to conclude that an interpreter is not reasonably required.

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[9] Of course, a lien claimant claiming entitlement to payment for services not actually rendered would be subject to sanctions under section 5813 and WCAB Rule 10561 (Cal. Code Regs., tit. 8, § 10561), as well as criminal prosecution for insurance fraud, pursuant to Insurance Code sections 1871, et seq.

An interpreter lien claimant must also prove that the interpreter was qualified to provide the billed services. (Lab. Code, § 5705; *Capi, supra,* 138 Cal.App.4th 373 [71 Cal.Comp.Cases 374]; *Stokes v. Patton State Hospital* (2007) 72 Cal.Comp.Cases 996 (Significant Panel Decision).) Pursuant to AD Rule 9795.3(a), a "qualified interpreter" may provide services for a medical examination requested by the claims administrator, AD, or appeals board, or at a comprehensive medical-legal evaluation. A "qualified interpreter" means a "certified" or "provisionally certified" interpreter pursuant to AD Rule 9795.1(f) (Cal. Code Regs., tit. 8, § 9795.1(f)), or, for purposes of section 4600, a "qualified interpreter" means an interpreter certified or deemed certified pursuant to the Government Code.

When the setting is not "an appeals board hearing, arbitration, or formal rehabilitation conference," and when a certified interpreter cannot be present, a "provisionally certified" interpreter is one deemed qualified to perform interpreting services *by agreement of the parties*. (Cal. Code Regs., tit. 8, § 9795.1(e).) Thus, for a medical examination, a provisionally certified interpreter is one deemed qualified by agreement of the parties, when a certified interpreter is unavailable. While a treatment appointment is not strictly governed by these provisions, we see no logical reason why the qualifications for an interpreter at a treatment appointment should be any different or less rigorous than the qualifications for an interpreter at a medical examination. If certified interpreters are difficult to obtain, as stated by E&M, agreement by the parties is unquestionably the best option for obtaining a "provisionally certified" and, therefore, "qualified" interpreter.

Government Code section 11435.55 suggests another option. It provides that, when a certified interpreter cannot be present at a medical examination, "the physician provisionally may use another interpreter if that fact is noted in the record of the medical evaluation." While agreement between the parties is preferred, a non-certified interpreter lien claimant seeking payment for services performed during medical treatment could show that it was selected "provisionally," under Government Code section 11435.55, if use of the non-certified interpreter is recorded by the physician.

Thus, in the absence of any directly applicable authority on qualifications for interpreters during medical treatment, an interpreter may be qualified to interpret at medical treatment appointments because he or she is certified for interpreting at medical examinations or deemed certified for medical examinations by virtue of being certified for court or administrative hearing interpreting, or, if a certified interpreter is unavailable, the interpreter is provisionally certified by agreement of the parties or selected for provisional use by the treating physician.

In some cases, such as when an injured worker has settled the case by C&R, and the defendant has not admitted liability, it could fall to the interpreter lien claimant, like any other medical lien claimant, to prove that the injury arose out of and occurred in the course of employment, and that the medical treatment itself was reasonable and necessary. "Where a lien claimant (rather than the injured employee) is litigating the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured employee and the lien claimant must prove by preponderance of the evidence all of the elements necessary to the establishment of its lien." (*Kunz, supra*, 67 Cal.Comp.Cases at p. 1592.)

If a lien claimant succeeds in proving that its interpreter was qualified, that it provided the billed services, and that the services were reasonably required, the lien claimant must still prove the reasonableness of its charges.[10] In *Kunz*, with regard to outpatient surgery facility fees, we stated that a number of factors should be considered in determining if a fee is reasonable, including but not limited to: 1) the usual fee accepted (not charged) by the provider, 2) the usual fee accepted by other medical providers in the same geographical area, 3) other aspects of the economics of the medical provider's practice that are relevant, and 4) any unusual circumstances in the case. (*Kunz*, s*upra*, 67 Cal.Comp.Cases at p. 1598.) In *Tapia*, we further considered the question of reasonableness, with regard to outpatient surgery center fees, and held,

> "consistent with *Kunz*: (1) an outpatient surgery center lien claimant (**or any medical lien claimant**) has the burden of proving that its charges are reasonable; (2) the outpatient surgery center lien claimant's billing, by itself, does not establish that the claimed

[10] The issue of the value of lien's claimant's services was bifurcated and deferred in this case.

> fee is 'reasonable'; therefore, even in the absence of rebuttal evidence, the lien need not be allowed in full if it is unreasonable on its face; and (3) any evidence relevant to reasonableness may be offered to support or rebut the lien; therefore, evidence is not limited to the fees accepted by other outpatient surgery centers in the same geographic area for the services provided." (*Tapia, supra*, 73 Cal.Comp.Cases at p. 1340.) (Emphasis added.)

AD Rule 9795.3(b)(2) (Cal. Code Regs., tit. 8, § 9795.3(b)(2)) provides the following fee schedule for interpretation at all events listed in subdivision (a), other than a hearing, arbitration, deposition, or rehabilitation conference:

> "interpreter fees shall be billed and paid at the rate of $11.25 per quarter hour or portion thereof, with a minimum payment of two hours, or the market rate, whichever is greater. The interpreter shall establish the market rate for the interpreter's services by submitting documentation to the claims administrator, including a list of recent similar services performed and the amounts paid for those services."

"Market rate" is defined as "that amount an interpreter has actually been paid for recent interpreter services provided in connection with the preparation and resolution of an employee's claim." (Cal. Code Regs., tit. 8, § 9795.1(h).)

The fee schedule does not apply directly to interpreter services for medical treatment, since treatment is not one of the enumerated settings. Still, we may look to the fee schedule for guidance as to what a reasonable fee may be. (Cf. *Roberson v. Atlantic Mut. Ins. Co.* (2006) 34 Cal. Workers' Comp. Rptr. 190 (Appeals Board panel decision) [the fee schedule for ambulatory surgery centers may reasonably serve as a guide for the reasonableness of charges incurred before the effective date of the schedule].) While $11.25 per quarter hour, or market rate, as proven by lien claimant, appears to be a reasonable standard, we are not prepared to conclude that the two-hour minimum applies to all medical treatment appointments, some of which might take only 10 to 15 minutes. (See *Di Giuseppe v. Workers' Comp. Appeals Bd. (Menjivar)* (2002) 67 Cal.Comp.Cases 1003 (writ denied) [$45.00 per visit was considered adequate payment for interpreting services at medical treatment appointments that were not shown to last longer than one hour].) On the other hand, we understand that, without some minimum rate of reimbursement,

there might not be a sufficient incentive for interpreters to provide services during medical treatment, and injured workers would, therefore, be deprived of this necessary adjunct to medical treatment.

As with selection of a qualified interpreter, the preferred practice with regard to fees is for the parties to agree in advance. This practice is specifically endorsed by AD Rule 9795.3(d), which states, "Nothing in this section shall preclude payment to an interpreter or agency for interpreting services based on an agreement made in advance of services between the interpreter or agency and the claims administrator, regardless of whether or not such payment is less than, or exceeds, the fees set forth in this section." (Cal. Code Regs., tit. 8, § 9795.3(d).)

If the parties have not agreed in advance, and cannot agree after the fact, it will be the interpreter lien claimant's responsibility to offer any probative evidence as to the reasonableness of its charges; and it will be the trier of fact's responsibility to determine whether the lien claimant has succeeded in proving its fee was reasonable. If the lien claimant has not proved its fee was reasonable, but has otherwise proved its right to recover, the trier of fact must determine and award a reasonable fee.

Disposition

In this case, the WCJ expressly stated that his reasoning was limited to Spanish-language interpreting. He appears to have concluded, without any evidence in the record, that the use of the Spanish language is so pervasive in East Los Angeles that Spanish interpretation services during a medical treatment appointment in that location would never be "reasonably required" under section 4600. Under the WCJ's reasoning, all claims for Spanish interpreting fees in East Los Angeles that do not fall within a specific provision authorizing recovery should be denied. We disagree. It cannot be said categorically that provision of Spanish interpretation services at a medical treatment appointment in East Los Angeles is never reasonably required, and therefore never compensable. The compensability of interpretation services must be decided based on the evidence in each case, regardless of the language or location involved. California's population is highly diverse. Undoubtedly, there are other areas of the state where neither English nor Spanish is the

predominant language. Under the WCJ's reasoning, separate standards would prevail for each of these ethnic enclaves.

None of the statutory or regulatory provisions relating to interpreter fees limits or any way distinguishes compensation for Spanish interpretation services, from interpretation services for other languages, and there is no need or justification to create such a distinction with regard to interpreter services for medical treatment.

SCIF argued that E&M did not prove that its services were necessary, that its interpreters were qualified, that interpreter services were provided on all the dates billed, or even that medical treatment took place on all of those dates. Because these elements were part of E&M's burden of proof, it was E&M's responsibility to offer evidence on those issues.

SCIF further objected to payment of most of the billed services on the following grounds: the medical treatment was unauthorized, the medical provider was not part of defendant's medical provider network, and the treatment exceeded the 24-visit limitation on chiropractic care and physical therapy established in section 4604.5(d)(1). Once these objections were raised by defendant, it fell to lien claimant to rebut them. If the injured worker was not entitled to the underlying medical treatment, the interpreter's lien must be disallowed for the services in question. Of course, if a defendant has no reasonable basis for disputing an interpreter's lien, or if a defendant frivolously asserts defenses, while possessing proof that its allegations are false, the defendant will expose itself to potential penalties under section 5814 and sanctions under section 5813.

The WCJ did not reach any of these issues because he found preliminarily that E&M had failed to prove that most of its services were reasonable and necessary. Because, in some respects, the WCJ misapplied E&M's burden of proving that its services were reasonably required during medical treatment, and because he improperly distinguished Spanish from other languages, we will amend his decision to defer decision on those parts of the lien disallowed by the WCJ, and return the matter to the trial level for further proceedings and decision, consistent with this opinion. Because this opinion represents the first detailed and binding explanation of the interpreter lien

claimant's burden of proof with regard to medical treatment, we think it appropriate in this case to reopen the record and allow the parties to conduct further discovery, if necessary, and to introduce additional evidence on the issues addressed in this opinion. If, upon return of this matter, the WCJ reaches a different conclusion as to whether E&M's services were reasonably required, it will then be necessary for him to consider defendant's other defenses.

Only the disallowed parts of the lien require further consideration by the WCJ in light of this opinion. There has been no challenge to the WCJ's allowance of the lien for the June 20, 2006 and February 9, 2007 dates of service, or to his admission into evidence of lien claimant's Exhibits 12 and 13. Therefore, we will affirm the FA&O, except that we will amend it to defer decision on the remainder of the lien, i.e., those dates of service found by the WCJ to be not reasonable and necessary.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 1, 2010 Findings, Award and Order Re: Lien of E&M Interpreting is **AFFIRMED, EXCEPT** that Findings of Fact Nos.1 and 2 are **AMENDED** as follows:

FINDINGS OF FACT

1. The services rendered by lien claimant E&M Interpreting on June 20, 2006, and February 9, 2007, were reasonably required to cure or relieve the effects of applicant's industrial injury. Decision on the remainder of the services billed by lien claimant is deferred.

2. Defendant is liable for payment to E&M Interpreting for services rendered on June 20, 2006, and February 9, 2007.

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IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ *Joseph M. Miller*
JOSEPH M. MILLER, Chairman

/s/ *James C. Cuneo*
JAMES C. CUNEO, Commissioner

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

/s/ *Ronnie G. Caplane*
RONNIE G. CAPLANE, Commissioner

/s/ *Alfonso J. Moresi*
ALFONSO J. MORESI, Commissioner

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

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

3/17/2011

SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES AS SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD:

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