

Significant Decision

“Lien claimants have to prove proper licensure or accreditation in order to prove entitlement to reimbursement. If this burden is not satisfied, awards to lien claimants are not supported by substantial evidence.”

Zenith Insurance Company v. Workers’ Comp. Appeals Bd.

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Fourth Appellate District, Division One,

Civil No. D046783

2006 Cal. App. LEXIS 479; 2006 Daily Journal DAR 4137

Significance: Citable authority from the Court of Appeal establishing lien claimants’ burden of proving proper licensure or accreditation.

Facts Gilberto Capi injured his low back at work. At the time of the injury, Zenith Insurance Company (“Zenith”) was on the risk. For the injury, Capi received treatment from lien claimants Beach Cities Surgery Center (“Beach Cities”) and Pain Intervention Therapy of San Diego (“PIT”). Zenith settled Capi’s claim by compromise and release, but disputed the lien claims. At a conference hearing, Zenith requested additional discovery time, and presented the WCJ with a copy of its civil complaint, which alleged the bills of Beach Cities and PIT were illegal because the lien claimants were unlicensed and unaccredited in violation of the Business and Professions Code and the Health and Safety Code. The WCJ denied Zenith’s request, proceeded to trial, and found in favor of the lien claimants. The WCJ allowed \$22,100 for Beach Cities’ lien, and \$24,000 for PIT’s lien. Zenith petitioned for reconsideration, and asserted the awards were not supported by the evidence because the lien claimants failed to meet their burden of proving they were licensed or accredited, and therefore they were not entitled to collect facility fees. The Board denied reconsideration, and Zenith filed for writ of review. The Court of Appeal granted review, and annulled the Board’s order denying reconsideration.

Discussion Under Bus. & Prof. Code § 2215, the Legislature expressed a concern for the public health, welfare and safety arising from surgeries performed in outpatient settings, and expressed an intent to provide assurances that the surgeries are safe and effective. The authority to create regulations to implement this intent is provided in Bus. & Prof. Code § 2217. Interpreting the Legislature’s assurances for safe and effective surgeries, the court noted:

“it is illegal to operate an outpatient setting in California, including ambulatory surgical centers and surgical clinics, if the outpatient

setting is not properly licensed or accredited. (Health & Saf. Code, §§ 1248, subd. (c), 1248.1, subd. (a), (d), (f) & (g), 1248.8.)”

The court then discussed the lien claimant’s burden of proof, which includes the burden of proving the lien claimant’s services were properly provided. In turn, the court interpreted the proper provision of services to mean compliance “with applicable licensure or accreditation requirements.”

Holding: The court concluded that in order for the lien claimants to prove entitlement to reimbursement, they had to prove proper licensure or accreditation. And because they failed to satisfy this burden, the awards to Beach Cities and PIT were not supported by substantial evidence. Hence, the court annulled the Board’s order denying reconsideration, and remanded the matter for further proceedings in accordance with the court’s opinion.

Note: The court’s opinion becomes final 30 days after the filing date. Once it becomes final, the lien claimants have 10 days to file for review by the Supreme Court.