

**STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION**



ELAINE GAFFKE,

Applicant

vs.

**LONG BEACH MEMORIAL MEDICAL
CENTER/PERMISSIBLY SELF-INSURED c/o
ASSOCIATED CLAIMS MANAGEMENT,
*Defendants.***

**Case No. LBO 021 4953 (MF)
LBO 021 3920**

**FINDINGS OF FACT
& ORDER**

APPEARANCES MADE AT THE 4-26-93 HEARING:

NO APPEARANCE BY OR ON BEHALF OF APPLICANT

**KEGAL, TOBIN & TRUCE, by Dennis Triplett,
Attorneys for Defendant**

**DALLAS G. DAHL, Claims Examiner, Associated
Claims Management**

**HANS STOEHR, Representative, for Lien Claimant Bloch
Medical Clinic and Psychodiagnostic Laboratories
* * * ***

These cases were settled by way of Compromise and Release, with an Order Approving same by Judge Rosenthal on 8-13-92. Thereafter, the matter came to trial on the issue of the liens of Bloch Medical and Psychodiagnostic Laboratories. The issue at this time is whether or not the liens of Bloch Medical clinic and Psychodiagnostic Laboratories are payable. Matter having been regularly submitted, the Honorable MARY ANNE THOMPSON, Workers' Compensation Judge, now makes her decision as follows:

FINDINGS OF FACT

- 1) - The medical reports of Dr. Bloch and Psychodiagnostic Laboratories are

0010

9 22 93

ELAINE GAFFKE
LBO 021 4953 (MF)
LBO 021 3920

Page -2-

hereby excluded and the liens disallowed, there being a violation of Labor Code Section 139.5.

2) - No penalty or interest is found.

ORDER

IT IS HEREBY ORDERED that the lien claims of Dr. Bloch and Psychodiagnostic are disallowed in full.

No penalty or interest is awarded.

Mary Anne Thompson
MARY ANNE THOMPSON
Workers' Compensation Judge

Dated: SEP 21 1993
at Long Beach, California
Service by mail on parties
as shown on Official Address
Record effected on above date.
By: *[Signature]*

WORKERS' COMPENSATION APPEALS BOARD
Case No. LBO 021 4953 (MF)
Case No. LBO 021 3920

ELAINE GAFFKE

vs.

LONG BEACH MEMORIAL
MEDICAL CENTER/PERMISSIBLY
SELF-INSURED c/o ASSOCIATED
CLAIMS MANAGEMENT,

WORKERS' COMPENSATION JUDGE:

MARY ANNE THOMPSON

OPINION ON DECISION

PRELIMINARY STATEMENT:

On 2-7-91 the employer received Applicant's claim form wherein Applicant claimed to have suffered a cumulative trauma during the period 8-89 through 7-90 causing "injury to nerves and other parts." On 6-17-91 Applicant's attorney notified Applicant and Defendant that Applicant was scheduled to see Dr. Bloch on 7-18-91. Dr. Bloch saw Applicant on 7-18-91 and issued a preliminary report which stated that Applicant was to be referred to an "affiliated laboratory " for psychological testing. On 8-29-91, Dr. Capuano of Psychodiagnostic Laboratories issued a report. On 8-21-91 Dr. Bloch issued a 33 page report. On 7-31-92 and 8-3-92, Dr. Bloch issued 2 supplemental medical legal reports.

Defendant raises Labor Code Section 139.3 which states

- (c) - An agreed or qualified medical evaluator who refers to or seeks consultation from an organization in which the agreed or qualified medical evaluator has a significant beneficial interest shall disclose this interest to the parties in writing at the time of the referral and in the final medical evaluation. For the purposes of this section, the term "significant beneficial interest" shall have the same meaning as set forth in Section 654.2 of the Business and Professions Code.
- (d) - A qualified medical evaluator who is found to have committed a violation of this section may be terminated, suspended, or placed on probation as a

ELAINE GAFFKE
LBO 021 4953 (MF)
LBO 021 3920

Page -2-

qualified medical evaluator by the Industrial Medical Council.

1. - HAS DR. BLOCH VIOLATED LABOR CODE SECTION 139.3?

Labor code Section 139.3 provides that the doctor must provide the parties notice of the "significant beneficial interest." In the instant matter, Lien Claimant Exhibit 1 shows that Applicant was provided with a specific notice but that the Defendant was not. The only such notification to Defendant was an obtuse reference in the 7-18-91 preliminary report that Applicant was being referred to an "affiliated laboratory". If Dr. Bloch's office can specifically advise Applicant pursuant to B & P Code Section 654.2, it can surely send a copy of this notice to the Defendant at the time of the referral and again in the final medical evaluation. This, Dr. Bloch has failed to do.

2. - WHAT IS THE PENALTY FOR A VIOLATION OF LABOR CODE SECTION 139.3?

Labor code Section 139.3 specifically provides that for a violation of the section that the doctor may be subject to suspension, revocation, or termination of his status as a QME by the Industrial Medical Council. Defendant asserts that a more immediate and direct penalty would be to have the WCAB exclude the reports of Dr. Bloch and Psychodiagnostic Laboratories and disallow the liens of the offending doctor. Defendant cites Zenith Ins. Co. vs. Gloria Ramirez 57 CCC 719 (1992) for the proposition that the WCAB has the power to enforce the statute, since to fail to enforce the statute would directly undermine its purpose. I agree with Defendant. The Legislature clearly intended

ELAINE GAFFKE
LBO 021 4953 (MF)
LBO 021 3920

Page -3-

to control medical-legal examinations and reduce costs. This is well documented in the Legislature History and in the documents attached to Defendant's trial brief.

Since the Legislature clearly intended to control referrals of this nature, it is appropriate to enforce the intent of the Legislature. Therefore, the medical reports of Dr. Bloch and Psychodiagnostic Laboratories are hereby excluded and the liens disallowed.

3) - PENALTY & INTEREST:

Labor Code Section 4622 provides that "All medical-legal expenses for which the employer is liable shall, upon receipt by the employer of all reports and documents required by the administrative director incident to the services, be paid...by the employer." The Statute requires, however, that the employer be liable. Where, as here, the issue of Labor Code Section 139.3 developed, there exists a bonafide issue of liability. Therefore, no penalty or interest applies.

With respect to Labor Code Section 4625, the initial medical-legal charge is rebuttably presumed reasonable, and shall be paid promptly. Section 4625 refers only to the initial medical-legal charge, which in this case would be \$1,279.00. Dr. Bloch charged well in excess and almost double this charge including psychological testing on 8-6-91 and 8-21-91 by 2 different psychologists. In light of these facts and the development of Labor Code Section 139.3 Defendant is not held liable for penalty.

Dated: SEP 21 1993
at Long Beach, California
Service by mail on parties
as shown on Official Address
Record effected on above date.


MARY ANNE THOMPSON
Workers' Compensation Judge