

STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION

*MPM*

Case No. 88 BGN 0125072

AURORA P. LUNA

Applicant

v.

RALPHS GROCERY CO.,

Permissibly Self-insured

Defendants

**FINDINGS AND AWARD**

The above-entitled matter having been heard and regularly submitted on the LIEN claim of Nogales Family Counseling, The Court, Finds, Awards, and Orders as follows:

**FINDINGS OF FACT**

1. That lien claimant Nogales Family Counseling should take nothing from its lien.
2. Defendant Ralphs Grocery Co. is entitled to reimbursement from Nogales Family Counseling for an overpayment of costs of Nogales Family Counseling services.

**AWARD**

AWARD IS MADE :

1. That Nogales Family Counseling take nothing from its lien.
2. Ralphs Grocery Co. is awarded \$1,400.00 from Nogales Family Counseling as reimbursement for the overpayment set forth in (2) above.

Dated: 7-8-91  
Filed and Served by mail  
On all parties on the  
Official Address Record.  
By: *W. W. [Signature]*

*Edmund P. Ball*  
EDMUND P. BALL  
WORKERS' COMPENSATION JUDGE

AURORA P. LUNA

v

RALPHS GROCERY COMPANY,  
Permissibly Self-insured.

DATE OF INJURY

DECEMBER 9, 1987

WORKERS' COMPENSATION JUDGE

EDMUND P. BALL

OPINION ON DECISION

This is a trial of a lien claim brought by Nogales Family Counseling for services rendered for a psychic injury suffered by applicant in this case.

Applicant testified that she suffered this injury as a result of an admitted industrial injury to her back which in turn caused the injury to her mind, when problems arose of income loss and inability to do housework and otherwise take care of her family. I note that she did not testify to her psychic injury being related to any experience at work. She further testified that she was referred to lien claimants clinic (hereinafter referred to as "claimant") by Dr. Swerdloff. Alex Nogales, the Chief Administrator and former Business Manager of claimant, testified to the contrary, saying she had been referred by her attorney, Mr. Slater. I believe the latter version is correct since she was originally seen on 11-18-88 by claimant and Dr. Swerdloff's report of 1-19-89 makes no reference to any referral to claimant or even any indication their care would be appropriate.

Claimant's charges total \$10,605.00 with \$6,515.00 being for medical-legal evaluation and the balance for treatment. \$1,400.00 has been paid by defendants on account.

I note preliminarily that there is no question from the evidence that claimant was operating as a marriage, family and child counseling center when their services to applicant were finished. Their Articles of Incorporation of 8-27-86 confirm this in paragraph II. The Articles were changed by amendment to refer to "the profession of psychology" on 8-25-89, but a report to applicant's attorney by claimant dated 8-18-89 indicates treatment of applicant had recently been terminated and she was last seen on 7-28-89. Their billing in their liens confirm this.

Based on these facts, I have to go no further in finding that applicant's lien should be disallowed in its entirety and that defendant is entitled to a refund of the amount it paid to claimant.

As to the medical-legal portion of the bill, defendant is correct that the change in form of the business enterprise to a corporation did not take this enterprise outside the prohibition set forth in Labor Code Section 3209.8. Instead it puts them clearly within the limits imposed therein as Article II of their 8-27-86 Articles referred to above states that "the purpose of their corporation is to engage in the profession of marriage, family, and child counseling....." As such, it is clearly not authorized to determine disability and its lien for medical-legal costs must be disallowed under *Ledwin vs WCAB*, 54 CCC 452. The fact that one of the employees of claimant who treated and evaluated applicant was a licensed psychologist does nothing to change this outcome. He was concededly an hourly employee of claimant. No law was offered to show how the fact of his employment changed the character of claimant's enterprise so as to make Labor Code Section 3209.8 inapplicable.

AURORA LUNA  
88 BGN 0125072  
Page 2 Opinion

The treatment portion of the lien must also be disallowed under Labor Code Section 3209.8 as it requires that treatment be given on referral from "a licensed physician and surgeon with the approval of the employer for treatment of a condition arising out of the injury." Here the referral was by applicant's attorney, not a doctor, and no consent of the employer was ever shown.

Accordingly claimant's lien will be disallowed completely and claimant will be ordered to reimburse defendant for the \$1,400.00 paid to it.



EDMUND P. BALL  
WORKERS' COMPENSATION JUDGE

7-8-91  
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AURORA P. LUNA

v

RALPHS GROCERY COMPANY,  
Permissibly Self-insured

DATE OF INJURY

DECEMBER 9, 1987

WORKERS' COMPENSATION JUDGE

EDMUND P. BALL

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

STATEMENT OF CONTENTIONS

Lien claimant, Nogales Family Counseling Inc., filed a timely Petition for Reconsideration on July 31, 1991 challenging the Findings and Award, dated July 8, 1991 that it take nothing from its lien and repay \$1,400.00 to defendant Ralphs Grocery Co., on the grounds that the judge acted without or in excess of his powers and that evidence does not justify the Findings of Fact which in turn do not support the Award.

II

DISCUSSION OF THE RECORD

Petitioner states five specific grounds claiming error. Before dealing with them I do note that petitioner had elected to operate its clinic as a professional corporation, specifically as a marriage, family, and child counseling corporation. As such, it had the power of a natural person subject to any limitations in its articles.....and any other applicable laws (Corp. C. Section 207 and 9 "Witkin Summary of Calif.Law" 9th Ed 545, 616). As such, it was subject to B.&P.C. Section 4988.1 and 4980.50 which basically provides that a corporation shall require the same licensing and be subject to the same qualifications and regulations as an individual licensed in this profession. Since Petitioner was a marriage, family, and child counseling corporation during the time it furnished services to Applicant, I found it was subject to Labor Code Section 3209.8, just as an individual would have been.

Petitioner now claims that I was in error:

- 1) in considering the reasonableness and necessity of medical-legal costs when no timely objection was filed. My opinion clearly reflects that I did not consider this issue. I simply found it had no right to a lien since it was not authorized to furnish this service under Section 3209.8 in that it was not authorized to determine disability as to the medical-legal portion of its claim and it did not furnish treatment on referral from a licensed physician and surgeon with the approval of the employer as to the treatment portion of the claims. To say that Otis v City of L. A. stands for the proposition that an invalid lien can be made valid because timely objection was not made is to stretch this case beyond the parameters of what was ever reasonably intended. Certainly, no authority or analysis was offered beyond that case in this regard.
- 2) in holding that a licensed clinical psychologist employed by the corporation was prohibited from determining disability under Section 3209.8.

Once again, I made no such determination. I found that the corporation which employed the psychologist and on whose behalf he acted was not authorized to enforce a lien under Section 3209.8 for the reasons set forth in (1) above.



Petitioner alleges that Labor Code Section 3209.3 "expressly provides for treatment and testing by licensed psychologist." The section contains no such express provisions. Assuming that a psychologist can make such an evaluation and get paid by this corporation, there is still no showing that his employment will authorize this corporation to practice psychology any more than employment of a doctor by a law corporation would allow the corporation to practice medicine.

The referral to Rule 10606 is inapplicable for the same reasons.

3) in ruling that the corporation is precluded from employing any licensed professionals other than marriage, family, and child counselors. Once again, I made no such ruling. The corporation is free to employ lawyers, doctors, psychologists or any other professionals it needs. It simply cannot use such a professional to provide a service which it was not authorized to provide by law. Corp. Code Sections 13404 and 13405 basically so hold. Indeed the last sentence of Section 13405 (cited by petitioner incorrectly on page 7) says "the corporation may employ persons not so licensed, but said persons shall not (emphasis added) render any professional services rendered or to be rendered by the corporation." The "licensed person" clearly refers to a natural person duly licensed.... to render the same professional services as are or will be rendered by the professional corporation.... [Corp. Code Section 13401 (c)]. Since the psychologist was not so licensed for this corporation, he could not perform professional services for it.

4) that I did not determine injury AOE-COE regarding applicant's psychological injury and determination is essential before determining the rights of the parties. This issue is not even discussed in their argument. I regard it as a bare allegation without any showing or possible showing of merit, since I had already found their lien was invalid.

5) that further clarification of the Boards Opinion and Decision after Reconsideration in Pizano v Golden is necessary. Although this is not an allegation of error, their request may have merit. Petitioner indicates the case I cited, Ledwin v WCAB, 54 CCC 452, is actually the Pizano case. This is a distinction without a difference. So is the fact that Ms Ledwin, a presumably licensed marriage, family, and child counselor, was formerly doing business as a sole proprietor but during the period when services were furnished that are the basis of this lien claim was doing business as a corporation authorized in its articles to operate the same profession. I note that the corporation has amended its articles on 8-25-89 to provide that it can now engage in the profession of psychology. It may now be able to escape the provisions of Labor Code Section 3209.8 but it did not do so simply by adopting a corporate form for the reasons set forth above.

Finally, I have reviewed the attached provision of the Moscone-Knox Act. I found nothing that included marriage, family, and child counseling as a healing art or anything else that had application to their problem with this lien.

### III

#### RECOMMENDATION

I recommend that this Petition for Reconsideration be denied for the reasons set forth above.



EDMUND P. BALL  
WORKERS' COMPENSATION JUDGE

Date: 8-12-91  
Filed and Served by mail  
On parties as shown on  
Official Address Record.  
By: *V. Goldstein*

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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

Case No. BGN 125072

AURORA P. LUNA,

*Applicant,*

vs.

RALPHS GROCERY COMPANY,  
Permissibly Self-Insured,

*Defendants.*

OPINION AND ORDER  
DENYING RECONSIDERATION

Lien claimant, Nogales Family Counseling, Inc. (Nogales), seeks reconsideration of the July 8, 1991 Findings and Award wherein it was found that it should take nothing on its lien,<sup>1</sup> and that defendant, Ralphs Grocery, is entitled to reimbursement from Nogales for an overpayment of costs in the amount of \$1,400.00. Lien claimant contends that the workers' compensation judge (WCJ) erred in (1) considering the issue of reasonableness and necessity of the medical/legal costs insofar as no timely objection was filed, pursuant to Otis v. City of Los Angeles (1980) 1132 Cal. Comp. Cases 45; (2) ruling that a licensed psychologist employed by a marriage, family, child counseling corporation is prohibited from determining disability pursuant to Labor Code section 3209.8; (3) ruling that a marriage, family, child counseling corporation is precluded from employing any licensed professionals other than

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<sup>1</sup> On May 6, 1991, Alex Nogales, Chief Administrator for Nogales testified that the total lien was for \$10,605.00, of which \$6,515.00 was for medical/legal costs. These medical/legal costs included \$1,400.00 for an initial evaluation which was paid on August 25, 1989.

1 marriage, family, child counselors in direct apposition to  
2 California Corporations Code section 13405; and (4) failing to  
3 determine whether or not there was an industrial injury prior to  
4 determining lien claimant's rights. Lien claimant further argued  
5 that the WCJ's reliance on Ledwin v. Workers' Comp. Appeals Bd.  
6 (1989) 54 Cal. Comp. Cases 452, is misplaced.

7 Based on our review of the record and for the reasons stated  
8 by the WCJ in his Report and Recommendation (Report) of August 12,  
9 1991, which we adopt and incorporate, and for the reasons stated  
10 herein, we will deny the petition.

11 With respect to the contentions raised, we find that the lien  
12 was invalid as one for treatment reasonably required to cure or  
13 relieve from the effects of an injury and as one for litigation  
14 expense. We note that Mr. Alex Nogales testified as Chief  
15 Administrator for Nogales that applicant's attorney simply made  
16 the referral and they furnished applicant with treatment and  
17 medical/legal reports as they saw fit.

18 Labor Code section 3209.8 provides:

19 "Treatment reasonably required to cure or  
20 relieve from the effects of an injury shall  
21 include the services of marriage, family, and  
22 child counselors and clinical social workers  
23 licensed by California state law and within  
24 the scope of their practice as defined by  
25 California state law if the injured person is  
26 referred to the marriage, family, and child  
27 counselor or the clinical social worker by a  
licensed physician and surgeon, with the  
approval of the employer, for treatment of a  
condition arising out of the injury. Nothing  
in this section shall be constituted to autho-  
rize marriage, family, and child counselors or  
clinical social workers to determine disabili-  
ty for the purposes of Article 3 (commencing

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with Section 4650) of Chapter 2 of Part 2."  
(Emphasis added.)

Thus, applicant was not referred to lien claimant by a licensed physician or surgeon, with the approval of the employer. Here, the mere fact that lien claimant is a corporation, rather than a counselor, does not exempt it from the statutory requirement that referral be made by a licensed physician with the approval of the employer, even when the corporation employs psychologists and counselors and provides treatment through its employees. Again, applicant was referred to the corporation by her attorney. (See Minutes of Hearing for May 6, 1991.)

We additionally note that Labor Code section 3209.3 provides, in pertinent part:

"(a) 'Physician' includes physicians and surgeons holding an M.D. or D.O. degree, psychologists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

"(b) 'Psychologist' means a licensed psychologist with a doctorate degree in psychology and who either has at least two years of clinical experience in a recognized health setting, or has met the standards of the National Register of the Health Service Providers in Psychology.

"(c) When treatment or evaluation for an injury is provided by a psychologist, provision shall be made for appropriate medical collaboration when requested by the employer or the insurer." (Emphasis added.)

Therefore, we find no appropriate medical collaboration in the instant matter for either the treatment or for the medical/legal provisions.

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For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration filed July 31, 1991, be, and the same hereby is, DENIED.

WORKERS' COMPENSATION APPEALS BOARD

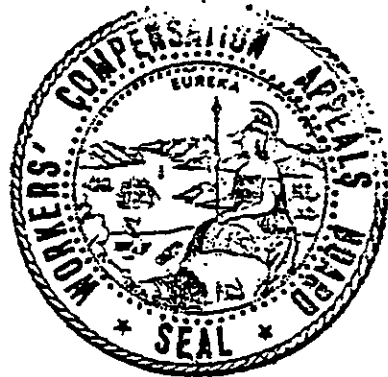
*[Signature]* DEPUTY

I CONCUR,

*[Signature]*

NOT PARTICIPATING

William B. Donohoe DEPUTY



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEP 25 1991 *[Signature]*

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD EXCEPT LIEN CLAIMANTS

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