

LIEN SCENE

Fall Edition
October 2008

A QUARTERLY PUBLICATION OF

BOEHM & ASSOCIATES

HEALTHCARE RECOVERY SPECIALISTS

WCAB ISSUES EN BANC DECISION

The Worker's Compensation Appeals Board has issued an En Banc decision Tapia v. Skill Master Staffing, ADJ No. 4564224 (LBO 0322121) which will immediately and significantly impact lien claimants' ability to collect and to litigate their treatment liens successfully.

The Tapia case holds in no uncertain terms that lien claimants bear the burden of proof regarding the reasonableness of charges contained in their medical treatment bills. This is so, even when the defendant fails to present any evidence that the bills are unreasonable in any way.

The Board emphasized in its En Banc decision that "It is *not* a defendant's burden to prove that ... a claimed fee is *not* reasonable. To the contrary, the [medical provider] has the affirmative burden of proving that its lien *is* reasonable, and it must carry this burden by the preponderance of the evidence." (Emphasis in the original.) The Board cited Labor Code Section 5705, which states that the "burden of proof rests upon the party or lien claimant holding the affirmative of the issue," as well as the "general principle that a lien claimant has the burden of proving *all* of the elements necessary to the establishment of its lien" (Emphasis in the original, citing Kunz v. Patterson Floor Coverings, Inc. (2002) 67 CCC 1588, 1592.)

The factors which the Board held relevant to the determination of reasonableness include, but are not limited to, the provider's usual fee and the usual fee of other providers in the geographical area in which the services were rendered, the amount the provider usually accepts for the services rendered, and the amount usually accepted by other medical providers in the same geographical area.

The Board's pronouncement in this En Banc decision makes clear that all lien claimants, even providers of treatment which is exempt from the Official Medical Fee Schedule, must be fully prepared to sustain the initial burden of establishing the reasonableness of bills to which defendant may never have objected.

The Board emphasized that it chose to issue its pronouncement through the issuance of an En Banc decision, in which all five of the Board's Commissioners participate, because of the importance of the legal issue, and in order to achieve uniformity of decision. En Banc decisions are binding on all panels of the Appeals Board and on all workers' compensation judges, pursuant to Title 8, California Code of Regulations, Section 10341.

In view of this decision, whenever a lien will be set for an MSC (Mandatory Settlement Conference), the following information will be needed:

Hospital clients should make available a current list of hospital billing personnel who may be available to testify, if necessary, regarding how hospital rates are set, the factors that go into setting charge rates, how hospital rates compare to similar hospitals in the same geographic area, and the basis for that comparison (e.g. OSHPD statistics, etc.). Witnesses should also be prepared to cover the rationale behind contractual discounts (for example, prompt payment, patient referrals, etc.) and the reasons why such discounts are not available to all payors.

Health Plan and Trust Fund Clients should make available a current list of personnel who may be available to testify regarding how payment rates and contracts have been established (e.g. arms length negotiation between the health plan and the providers, and that these are the rates the providers have agreed to accept from the health plan).

Submitted by Boehm Staff Attorney Anne Marie Rapolla

REMINDER TO OUR HOSPITAL CLIENTS

Boehm offers an efficient and effective Early Out Billing program for billing follow up and recovery of workers' compensation accounts that have been billed to the WC carrier but have not been paid.

Contact our Client Services Department for additional information.

Northern California (510) 865-0544

Vicki Bogdanos
Operations Manager
vb@boehm-associates.com
510-865-0544 Ext. 2506

Linda Repogle
Client Services Manager
lcr@boehm-associates.com
510-865-0544 Ext. 2503

Mitch Bohnenstiehl
Client Services Representative
mitchb@boehm-associates.com
510-865-0544 Ext. 2507
Cell: 510-427-4879

Marcia Scott
Trust Analyst/Client Services
Representative
mjscott@boehm-associates.com
510-865-0544 Ext. 2509

Christina Woyczik
Client Services Representative
christinaw@boehm-associates.com
510-865-0544 Ext. 2514

Southern California (818) 246-8380

Corina Casas
Office Manager
corinacasas@boehm-associates.com
818-246-8380 Ext. 7575

Marilyn Sacasas
Client Services Representative
marilynsacasas@boehm-associates.com
818-246-8380 Ext. 7576