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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION APPEALS BOARD
KENNITH L. PETERSON

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CESAR GARCIA,

Applicant,

vs.

LASCO BATHWARE, INC.; AIG
INSURANCE, Administered by,
GALLAGHER BASSETT SERVICES,
INC.,

Defendant,

Case No. ANA 389321

FINDINGS OF FACT
AND
ORDER
RE: LIEN

COUNSEL- LIEN ADMINISTRATIVE SERVICES
By: WILLIAM ZEPEDA
Representative for Lien Claimant,
ORANGE COUNTY REGIONAL SURGICAL CENTER/
RICHARD O'DELL, M.D.

SABRINA NIELSEN-ERICKSEN
Representative for Lien Claimant,
THE CENTER FOR BETTER HEALTH/SOUTHLAND
SPINE & REHABILITATION MEDICAL CENTER

LAW OFFICES OF KENNITH L. PETERSON
By: KENNITH L. PETERSON
Attorney for Defendant

ORANGE COUNTY REGIONAL SURGICAL CENTER/RICHARD
O'DELL, M.D. and THE CENTER FOR BETTER HEALTH/SOUTHLAND
SPINE & REHABILITATION MEDICAL CENTER having filed liens, and the

3 matter having been tried and duly submitted, the Honorable
4 **NORMAN F. DELATERRE**, Workers' Compensation Administrative Law Judge,
5 finds and orders as follows:

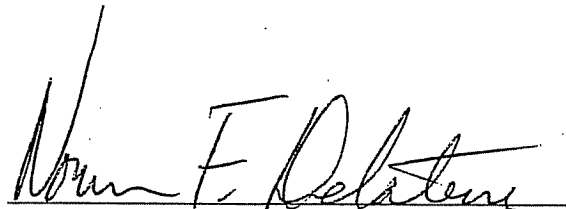
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7 **FINDINGS OF FACT**

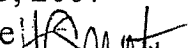
8 The applicant, Cesar Garcia, born April 16, 1964, was employed on December 8,
9 2004 as a fiberglass bathtub roller at Anaheim, California by Lasco Bathware, Inc.,
10 sustained an injury arising out of and in the course of his employment to his back. At
11 the time of the injury, the employer was insured for workers' compensation by AIG
12 Insurance, administered by Gallagher Bassett Services, Inc.

13 **ORDER**

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15 ***IT IS ORDERED that*** the liens of The Center for Better Health/Southland Spine
16 & Rehabilitation Medical Center and Dr. Richard O'Dell/Orange County Regional
17 Surgical Center are disallowed.

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21 Date: December 3, 2007

22 
23 **NORMAN F. DELATERRE**
24 Workers' Compensation Judge

25 Served on all parties listed
26 On the Official Address Record
27 On: December 3, 2007
28 By: H. Samonte 

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION APPEALS BOARD**

Case No. ANA 389321

**Cesar Garcia,
Applicant**

**vs. Lasco Bathware, Inc.; AIG
Insurance, administered by
Gallagher Bassett Services,
Inc.,**

Defendant

**Norman F. Delaterre,
Workers' Compensation Administrative Law Judge**

OPINION ON DECISION

Introduction

The applicant, Cesar Garcia, born April 16, 1964, was employed on December 8, 2004 as a fiberglass bathtub roller at Anaheim, California by Lasco Bathware, Inc. On that date he sustained injury arising out of and in the course of his employment to his back. At the time of the injury, the employer was insured for workers' compensation by AIG Insurance, administered by Gallagher Bassett Services, Inc.

The applicant resolved his disability and medical issues with the defendant by way of a Stipulation with Request for Award, dated April 5, 2007. This Court issued the Award pursuant to the Stipulations on that date. The Stipulations and Award included a 7% finding of permanent disability and indemnity thereto. There was no award for future medical treatment. The applicant lost no compensable time from work as a result of the injury.

There were some unresolved lien claims at the time of the Award. The liens included The Center for Better Health/Southland Spine & Rehabilitation Medical Center and Dr. Richard O'Dell/Orange County Regional Surgical Center. The defendant and lien claimants were unable to resolve their disputes; thus the matter was set for a lien trial before the undersigned Workers' Compensation Administrative Law Judge (WCJ). The parties presented no witnesses but submitted exhibits, including billings, medical reports, correspondence and billing reviews. The defendant submitted a trial brief as well. After considering the exhibits presented, the Court's findings and opinion are as follows.

Facts

1. The applicant sustained an admitted injury to his back arising out of and in the course of his employment, as set forth above.
2. The employer referred the applicant to Sunrise Healthcare Center for treatment on or about December 10, 2004.
3. The applicant received treatment at Sunrise Healthcare Center from Dr. Wade Faerber, an orthopedist.
4. In his report of February 1, 2005, Dr. Faerber declared the applicant permanent and stationary and released the applicant from medical care. Dr. Faerber found that the applicant had no work restrictions or impairment and required no future medical treatment.
5. There is no evidence that the applicant or his counsel advised the defendant that they objected to the findings of Dr. Faerber and proposed an agreed medical examiner to resolve the dispute pursuant to *Labor Code Sections 4061 and 4062*.
6. By way of a letter dated March 26, 2005, the applicant's attorney scheduled the applicant for a medical examination with Dr. Max Matos. The examination was scheduled for April 12, 2005. The letter also states "*The parties have satisfied the requirements of attempting to agree upon an Agreed Medical Evaluator and were unable to reach an agreement and the required time limit has expired under L.C. 4061(c), 4061(m), 4062(a) and 4062(e).*" Again, there is no evidence to support this last statement.

7. Following the examination by Dr. Matos, the applicant's attorney advised the defendant by letter dated April 21, 2005 that the applicant was selecting Dr. Matos as his "primary treating physician."

8. Thereafter, the applicant self-procured medical treatment from Dr. Matos as well as other healthcare providers to whom he referred the applicant. The amount of the claimed liens currently before the Court is \$21,311.44.

Liability for Liens

The liens of The Center for Better Health/Southland Spine & Rehabilitation Medical Center and Dr. Richard O'Dell/Orange County Regional Surgical Center are disallowed.

The applicant completely failed to comply with *Labor Code Sec. 4061 and 4062* as well as *8 C.C.R. 9785(b)(3)*. As stated above, there is no evidence that the applicant objected to the findings of Dr. Faerber, nor proposed an agreed medical examiner, prior to being examined by Dr. Matos. This violates the requirements of *Labor Code Sec. 4061 and 4062*. It is clear that said code sections require a party disputing the findings of the primary treating physician to resolve the disputes as set forth in said code sections. In addition, *Administrative Director Rule 9875* provides additional guidance in resolving disputed medical findings of the primary treating physician.

8 C.C.R. 9785(a)(5) defines "Released from care" as a determination by the primary treating physician that the employee's condition has reached a permanent and stationary status with no need for continuing or future medical treatment. Dr. Faerber released the applicant from care, with no need for further or future medical treatment, on February 1, 2005.

8 C.C.R. 9785(b)(3) states that an employee who disputes the findings of the primary treating physician **shall** resolve the dispute "*under the applicable procedures set forth at Labor Code sections 4061 and 4062. No other primary treating physician shall be designated by the employee unless and until the dispute is resolved.*" The applicant did not comply with the foregoing Administrative Director rule. Thus, he is precluded from selecting a new primary treating physician until he complies with the foregoing Labor

Code sections and Administrative Director rules. Any medical costs incurred in violation of these code sections are not the responsibility of the defendant.

In *Tenant/Centinela Hospital Medical Center v. Workers' Compensation Appeals Board (Rushing)* 80 Cal. App. 4th 1041, 65 CCC 477 the Court of Appeals held that once an injured worker was discharged from care by the primary treating physician, the provisions of *Labor Code Sections 4061 and 4062* must be followed prior to the employee selecting a second primary treating physician. The Court annulled an award that was based upon the reporting of a physician who was not properly selected pursuant to these code sections. The medical reports were inadmissible.

The medical treatment represented by the liens herein must be disallowed in accordance with the above cited authority. The applicant's attorney failed to properly object to Dr. Faerber's findings. Thus, the medical reports generated thereafter by Dr. Matos and others are not admissible in any proceeding before this Court. In addition, Dr. Matos' reports are inadmissible as medical-legal evaluations as the applicant's attorney failed to comply with the requirements of *Labor Code Sec. 4061 and 4062*. Since the medical reports are inadmissible for any purpose, any costs associated with them must be disallowed.

Date: December 3, 2007



Norman F. Delaterre, Workers'
Compensation Administrative
Law Judge

NFD/hs