

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3 **Case No. SBR 0311485**

4 **KIMBERLY STOKES,**

5 *Applicant,*

6 **vs.**

7 **PATTON STATE HOSPITAL /**
8 **DEPARTMENT OF MENTAL HEALTH /**
9 **STATE OF CALIFORNIA, legally uninsured,**
10 **administered by STATE COMPENSATION**
11 **INSURANCE FUND,**

12 *Defendant,*

13 **AMBULATORY SURGERY CENTER OF**
14 **POMONA,**

Lien Claimant.

**OPINION AND DECISION
AFTER RECONSIDERATION**

15 **INTRODUCTION**

16 We previously granted the petition for reconsideration of lien claimant, Ambulatory
17 Surgical Center of Pomona (ASCP), of the June 28, 2006 Findings and Order, wherein the
18 workers' compensation administrative law judge (WCJ) disallowed ASCP's lien claim based upon
19 the sole finding that it "did not have a fictitious-name permit issued by the Division of Licensing
20 of the Medical Board of California prior to rendering professional services." Applicant's claim of
21 industrial injury to her neck, back and bilateral shoulders on August 5, 2002, while working for
22 defendant as a Psychiatric Technician, was earlier addressed by an award of 32% permanent
23 disability and future medical treatment issued pursuant to the parties' stipulation on October 31,
24 2005.

25 ASCP contends that because it is only claiming "facility fees" and not "professional fees"
26 it did not need a fictitious-name permit from the Medical Board, and that it possessed all necessary
27 licenses and accreditations required of a "Surgery Center" to support its billing.

1 We will rescind the decision of the WCJ and return the matter to the trial level for further
2 proceedings to address whether ASCP is claiming to have provided medical treatment to applicant
3 as a “clinic” that is required to have a fictitious-name permit and license from the Medical Board,
4 or is claiming to have provided services as an “outpatient setting” that is not required to have a
5 license or fictitious-name permit from the Medical Board if it is properly accredited by an agency
6 recognized by the Medical Board.

7 **PROCEDURAL BACKGROUND**

8 Applicant’s case was addressed by entry of a stipulated award entered in 2005, as described
9 above.¹ As part of the stipulations, defendant submitted an Affidavit of Resolution of Liens stating
10 that it had made a good faith effort to resolve the lien of ASCP by making payment to it “per fee
11 schedule / ASC Medicare guidelines.” ASCP disagreed that it had received reasonable
12 compensation and a pre-trial conference was conducted on April 18, 2006. According to the pre-
13 trial conference statement, ASCP asserted that it is owed \$44,548.06 as the balance of the
14 reasonable fee it is due. Defendant asserted that ASCP was “not properly licensed” pursuant to
15 Business and Professions Code sections 2285 and 2415 by not having a fictitious-name permit
16 from the Medical Board at the time services were provided, and for that reason is “not entitled to
17 payment,” citing *Zenith Ins. Co. v. Workers’ Comp. Appeals Bd. (Capi)* (2006) 138 Cal.App.4th
18 373 [71 Cal.Comp.Cases 374] (*Capi*). The lien claim was set for trial.

19 According to the minutes of hearing from the trial on August 2, 2006, the parties stipulated
20 that the sole issue to be addressed was “whether or not the Ambulatory Surgery Center of Pomona
21 is properly licensed pursuant to Business and Professions Code sections 2285 and 2415 and, if not,
22 whether the Ambulatory Surgery Center is entitled to payment.” All other issues, including the
23 reasonableness of the amount claimed by ASCP, were “bifurcated and deferred.” The parties
24 presented briefs and no testimony was received at trial. The attachments to ASCP’s brief were
25
26

27

¹ A petition to reopen was filed by applicant on January 5, 2006, but it is not relevant to the issues we address herein.

1 “marked” by the WCJ as an exhibit.² Those attachments include copies of an “L.A. County
2 Fictitious Name Statement,” an “AAAHC [Accreditation Association for Ambulatory Health Care]
3 accreditation letter dated 6-13-02,” an “AAAHC Certification of Accreditations dated May 2002
4 and May 31, 2005,” and a “City of Pomona business license of 4-9-03.” (Bracketed material
5 added.)

6 In her Report and Recommendation on Petition for Reconsideration (Report), the WCJ
7 explained why she disallowed the lien claim in its entirety:

8 “Business and Professions Code 17900(a)(3) defines a “fictitious
9 business name” to include, in the case of a corporation, any name
10 other than the corporate name in its articles of incorporation. The
11 LC’s [lien claimant’s] Fictitious Business Name Statement clearly
12 reflects that a corporation, Pomona Surgery Center, Inc., was
13 doing business as Ambulatory Surgery Center of Pomona. Thus,
14 the corporation, Pomona Surgery Center, Inc., was not utilizing its
15 corporate name but a fictitious business name.

16 “When the services were rendered in 2003, the controlling law was
17 as follows:

18 Business and Professions Code Section 2285 stated essentially that
19 it is unprofessional conduct to use a fictitious name in any
20 advertising or public communication without obtaining a fictitious
21 name permit, pursuant to section 2415.

22 “Further, 16 CCR 1350.2 [Cal. Code Regs., tit. 16, § 1350.2]
23 provided that no licensed person shall render professional services
24 using a fictitious name unless and until a fictitious name permit
25 has been issued by the division.

26 “Business and Professions Code Section 2415 required that any
27 physician and surgeon, who as a professional corporation, desires
to practice under any name that would otherwise be a violation of
section 2285 may practice under that name if the corporation
obtains and maintains in current status a fictitious name permit
issued by the Department of Licensing.

² The record shows no objection by defendant to the receipt of the ASCP documents into evidence and they are discussed in the WCJ’s Opinion on Decision (Opinion), but the record is unclear if they were, in fact, received into evidence. Following return of this matter to the trial level, documents received into evidence should be clearly identified. (*Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473 (Appeals Board en banc).)

1 “In the matter herein, Dr. Calaycay apparently practiced as a
2 professional corporation, Pomona Surgery Center, Inc., that
3 operated under the name of Ambulatory Surgery Center of
4 Pomona. Since the Ambulatory Surgery Center of Pomona was
5 not the corporate name, it is a fictitious business name and LC
6 [lien claimant] was, therefore, required not just to have a fictitious
business name statement with the county in which it was located
but also to have a fictitious business name issued by the Division
of Licensing of the Medical Board of California [Medical Board].”
(Bracketed material added.)

7 We conclude that it is necessary to further address whether ASCP is claiming to have
8 provided medical treatment to applicant as a “clinic” that is required to have a fictitious-name
9 permit and license from the Medical Board, or is claiming to have provided services only as an
10 “outpatient setting” that is not required to have a license or fictitious-name permit from the
11 Medical Board if it is properly accredited by an agency recognized by the Medical Board.

12 **LICENSURE AND ACCREDITATION REQUIREMENTS**

13 The Legislature has determined that quality assurance is needed to ensure that outpatient
14 surgical centers are safe and effective. (Bus. & Prof. Code, §§ 2215-2217.) To accomplish this,
15 the California Health and Safety Code contains regulatory and licensing provisions that make it
16 illegal to operate an “outpatient setting” or “clinic” in California unless it is licensed or accredited
17 as provided in Health and Safety Code sections 1248, 1248.1 and 1248.8. However, there is a
18 potential distinction between a “clinic” and an “outpatient setting” for purposes of licensure and
19 accreditation.

20 Health and Safety Code section 1200 defines a “clinic” as:

21 “an organized outpatient health facility *which provides direct*
22 *medical, surgical, dental, optometric, or podiatric advice, services,*
23 *or treatment* to patients who remain less than 24 hours, and which
24 may also provide diagnostic or therapeutic services to patients in
the home as an incident to care provided at the clinic facility.”
(Emphasis added.)

25 Health and Safety Code section 1248(c) defines an “outpatient setting” as:

26 “*any facility, clinic, unlicensed clinic, center, office, or other*
27 *setting that is not part of a general acute care facility, as defined in*
Section 1250, and *where anesthesia, except local anesthesia or*

1 *peripheral nerve blocks, or both, is used in compliance with the*
2 *community standard of practice, in doses that, when administered*
3 *have the probability of placing a patient at risk for loss of the*
4 *patient's life-preserving protective reflexes.” (Emphasis added.)*

5 In short, a “clinic” where anesthesia is used as described in Health and Safety Code section
6 1248(c) is an “outpatient setting” but not every “outpatient setting” is a “clinic.” A “clinic” under
7 Health and Safety Code section 1200 provides medical treatment as a clinic and must be separately
8 licensed by the Medical Board through one or more physicians or an associated medical group.³
9 An “outpatient setting” that is not a “clinic” does not provide medical treatment, although
10 surgeries may be performed there. An “outpatient setting” that is not a “clinic” does not require a
11 license from the Medical Board if it is “accredited by an accreditation agency approved by the
12 division pursuant to this chapter.” (Health & Saf. Code, §§ 1248.1(g), 1248.15.)⁴

13 In *Capi, supra*, the Court of Appeal addressed the licensure and accreditation requirements
14 for ambulatory surgical centers as provided in Health and Safety Code sections 1248(c), 1248.1
15 and 1248.8.⁵ In *Capi*, the WCJ allowed two lien claims by Beach Cities Surgery Center and Pain
16 Intervention Therapy of San Diego even though there was no proof in the record that either was
17 licensed or accredited. The Appeals Board denied the insurer’s petition for reconsideration and it
18 appealed.

19 In addressing the insurer’s appeal, the court in *Capi* found that the Legislature had
20 recognized that many surgical procedures are performed in numerous outpatient settings and
21 determined that, although the health professionals delivering the services are licensed, further

22 ³ Health and Safety Code section 1204 recognizes that “clinic” means both “primary clinics” and “specialty clinics”
23 such as a “surgical clinic,” which is defined in Health and Safety Code section 1204(b)(1) as: “[A] clinic that is not
24 part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours. A surgical
25 clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more
26 physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or
27 establishment, provided, however, that physicians or dentists may, at their option, apply for licensure.”

⁴ According to the Medical Board’s website, four agencies are now recognized to provide accreditation; the American
 Association for Accreditation of Ambulatory Surgery Facilities Inc. (AAAASF); the Accreditation Association for
 Ambulatory Health Care (AAAHC); the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);
 and The Institute for Medical Quality (IMQ). (See <http://www.medbd.ca.gov/Outpatient_Surgery.htm>)

⁵ The Administrative Director includes both surgical “clinics” and accredited “outpatient settings” where surgeries are
 performed by licensed physicians within the definition of “Ambulatory Surgical Center.” (Cal. Code Regs., tit. 8, §
 9789.30.)

1 quality assurance was needed to ensure that the services were safely and effectively performed.
2 (*Capi, supra*, 138 Cal.App.4th at 376.) The court concluded that “the lien claimants bore the
3 burden of proving they were properly licensed or accredited” as part of their burden of proof. (*Id.*,
4 at 377.) Based upon that conclusion, the Court annulled the Appeals Board’s decision denying the
5 insurer’s petition for reconsideration and returned the matter for further proceedings and decision.
6 (*Id.*) Although the court held that the surgical center lien claimant bore the burden of proving it
7 was properly licensed or accredited, it did not address the distinction between “clinics” and
8 “outpatient settings,” or the specific licensure or accreditation the surgical center was required to
9 prove it possessed.

10 **FICTITIOUS BUSINESS NAME STATEMENT AND FICTITIOUS-NAME PERMIT**

11 With regard to fictitious names, there are two requirements to consider. The first is that
12 “Every person who regularly transacts business in this state for profit under a fictitious name shall”
13 file a fictitious business name statement with the county clerk. (Bus. & Prof. Code, § 17910.)⁶
14 The second requires a “fictitious-name permit issued by the Division of Licensing” of the Medical
15 Board for any licensed “physician and surgeon” who practices under any name other than his or
16 her own. (Bus. & Prof. Code, §§ 2285 and 2415.)⁷ Both of these requirements have been
17 addressed in the case law, as discussed below.

18 _____
19 ⁶ Business and Professions Code section 17910 provides in full: “Every person who regularly transacts business in
20 this state for profit under a fictitious business name shall: (a) File a fictitious business name statement in accordance
21 with this chapter not later than 40 days from the time he commences to transact such business; and (b) File a new
22 statement in accordance with this chapter on or before the date of expiration of the statement on file.”

23 ⁷ Business and Professions Code section 2285 provides in full: “The use of any fictitious, false, or assumed name, or
24 any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the
25 name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her
26 practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This
27 section shall not apply to the following: (a) Licensees who are employed by a partnership, a group, or a professional
28 corporation that holds a fictitious name permit. (b) Licensees who contract with, are employed by, or are on the staff
29 of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200)
30 of Division 2 of the Health and Safety Code. (c) An outpatient surgery setting granted a certificate of accreditation
31 from an accreditation agency approved by the medical board. (d) Any medical school approved by the division or a
32 faculty practice plan connected with the medical school.

33 Business and Professions Code section 2415 provides in full: “(a) Any physician and surgeon or any doctor of
34 podiatric medicine, as the case may be, who as a sole proprietor, or in a partnership, group, or professional
35 corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice
36 under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-

1 **1. Fictitious Business Name Statement Under Business And Professions Code Section 17910.**

2 In *Hand Rehabilitation Center v. Workers' Comp. Appeals Bd. (Obernier)* (1995) 34
3 Cal.App.4th 1204 [60 Cal.Comp.Cases 289], the WCJ disallowed a lien claim because, among
4 other reasons, the lien claimant failed to file a fictitious business name statement with the county
5 clerk under Business and Professions Code section 17910. The statute provides that the effect of
6 such a failure is to bar a person from “maintaining any action upon or on account of any contract
7 made, or transaction had in any court of this state until the fictitious business name statement has
8 been executed, filed, and published.” (Bus. & Prof. Code, § 17918.) The WCJ and the Appeals
9 Board rejected the lien claimant’s contention that it was not “maintaining” an action but was
10 merely a party to a proceeding filed by someone else, i.e. the injured worker. In affirming, the
11 Court of Appeal noted that the verb “maintain” does not mean the same as “to commence” the

12 name permit issued by the Division of Licensing, or, in the case of doctors of podiatric medicine, the California Board
13 of Podiatric Medicine, under the provisions of this section.

14 (b) The division or the board shall issue a fictitious-name permit authorizing the holder thereof to use the name
15 specified in the permit in connection with his, her, or its practice if the division or the board finds to its satisfaction
16 that:

17 (1) The applicant or applicants or shareholders of the professional corporation hold valid and current licenses as
18 physicians and surgeons or doctors of podiatric medicine, as the case may be.

19 (2) The professional practice of the applicant or applicants is wholly owned and entirely controlled by the applicant
20 or applicants.

21 (3) The name under which the applicant or applicants propose to practice is not deceptive, misleading, or confusing.

22 (c) Each permit shall be accompanied by a notice that shall be displayed in a location readily visible to patients and
23 staff. The notice shall be displayed at each place of business identified in the permit.

24 (d) This section shall not apply to licensees who contract with, are employed by, or are on the staff of, any clinic
25 licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2
26 of the Health and Safety Code or any medical school approved by the division or a faculty practice plan connected
27 with that medical school.

(e) Fictitious-name permits issued under this section shall be subject to Article 19 (commencing with Section 2420)
pertaining to renewal of licenses, except the division shall establish procedures for the renewal of fictitious-name
permits every two years on an anniversary basis. For the purpose of the conversion of existing permits to this
schedule the division may fix prorated renewal fees.

(f) The division or the board may revoke or suspend any permit issued if it finds that the holder or holders of the
permit are not in compliance with the provisions of this section or any regulations adopted pursuant to this section. A
proceeding to revoke or suspend a fictitious-name permit shall be conducted in accordance with Section 2230.

(g) A fictitious-name permit issued to any licensee in a sole practice is automatically revoked in the event the
licensee's certificate to practice medicine or podiatric medicine is revoked.

(h) The division or the board may delegate to the executive director, or to another official of the board, its authority to
review and approve applications for fictitious-name permits and to issue those permits.

(i) The California Board of Podiatric Medicine shall administer and enforce this section as to doctors of podiatric
medicine and shall adopt and administer regulations specifying appropriate podiatric medical name designations.”

1 action, but means to support what already exists. (34 Cal.App.4th at p. 1214 [60 Cal.Comp.Cases
2 at p. 295], citing to *Nicholson v. Auburn Gold Min. etc.* (1907) 6 Cal.App. 547.) It also noted that
3 a lien claimant may institute workers' compensation proceedings on its own. (*Id.*, citing to
4 *Independence Indem. Co. v. Industrial Acc. Com. (Lohnes)* (1935) 2 Cal.2d 397 [20 I.A.C. 311].)

5 The Court of Appeal in *Obernier* also addressed the purpose of the fictitious business name
6 statute:

7 "The purpose of the section is to give public notice of the
8 individual members of partnerships 'with such definiteness and
9 particularity that those dealing with them may at all times know
10 who are the individuals with whom they are dealing' An
11 employer being asked to pay substantial therapy bills, and
12 attempting to verify their reasonableness, has a legitimate interest
13 in knowing the economic relationship between the rehabilitation
14 provider and the physician prescribing the therapy." (34
15 Cal.App.4th at p. 1214 [60 Cal.Comp.Cases at p. 295], citations
16 omitted.)

17 The Court agreed with the view that the failure to show proof of filing of the fictitious
18 business name statement at hearing was a "technical" defect that should not deprive a lien claimant
19 of an otherwise valid claim, and endorsed the approach of allowing the lien claimant 45 days to
20 submit proof that a fictitious business name statement had been filed. However, because the lien
21 claimant did not submit such proof within that time, the Court concluded that the lien was properly
22 disallowed and affirmed the decision.

23 **2. Fictitious-Name Permit Under Business And Professions Code Sections 2285 And 2415.**

24 To determine if a fictitious-name permit from the Medical Board is required it is necessary
25 to distinguish between a "clinic" that directly provides medical treatment and an "outpatient
26 setting" that does not. Business And Professions Code section 2415(a) provides that "Any
27 *physician and surgeon*" who desires to "practice" under a fictitious name must obtain a fictitious-
name permit from the Medical Board. (Emphasis added.) It is "unprofessional conduct" for a
physician not to have such a permit. (Bus. & Prof. Code, § 2285.) Thus, a physician or surgeon
who practices in the name of the "clinic" must have a fictitious-name permit for the clinic. A 2003

1 amendment to Business and Professions Code section 2285(c) confirms that it is not
2 unprofessional conduct for an “outpatient surgery setting” that has been “granted a certificate of
3 accreditation from an accreditation agency approved by the Medical Board” to use a fictitious
4 name without obtaining a fictitious-name permit from the Medical Board.

5 The requirements of Business and Professions Code section 2415 were addressed in
6 *Gandhi v. Workers’ Comp. Appeals Bd. (Matus)* (2000) 65 Cal.Comp.Cases 719 (writ den.). In
7 that case, Anil K. Gandhi, M.D., who had incorporated his practice as Anil K. Gandhi, M.D., Inc.,
8 a medical corporation, was doing business under the fictitious name of Figueroa Medical Clinic.
9 Although he had a valid fictitious name statement filed with the County of Los Angeles pursuant
10 to Business and Professions Code section 17910, he did not have a fictitious-name permit from the
11 Medical Board of California. Defendant objected to liability for Dr. Gandhi’s charges on the
12 grounds that he was providing medical services in violation of Business and Professions Code
13 section 2415 and the WCJ disallowed the lien, also citing California Code of Regulations, title 16,
14 section 1350.2(c), which provides:

15 “No licensed person shall render professional services using a
16 fictitious, false or assumed name or any name other than his or her
17 own unless and until a Fictitious Name Permit has been issued by
18 the Medical Board of California, Division of Licensing.”
(Emphasis added.)

19 In responding to Dr. Gandhi’s petition for reconsideration, the Appeals Board addressed
20 the case of *Schantz v. Ellsworth* (1971) 19 Cal.App.3d 289, where the Court of Appeal held that a
21 real estate broker could recover a commission notwithstanding the fact that his office used a
22 fictitious name. In *Schantz*, the court noted that the plaintiff was a duly licensed real estate broker
23 and that there was no literal requirement in the statute that the plaintiff had to prove that he had a
24 fictitious name license. Because the statutory purpose of the real estate licensing law was to
25 protect the public from incompetent or untrustworthy real estate practitioners and the plaintiff had
26 a valid real estate broker’s license, the court concluded that the statutory purpose had not been
27 thwarted and the broker could recover the commission. The Appeals Board distinguished *Schantz*

1 by citing the explicit regulation requiring a fictitious-name permit and noted:

2 “Thus, unlike *Schantz*, this case involves an explicit regulation
3 which prohibited petitioner from rendering professional services
4 using a fictitious, false or assumed name or any other name other
5 than petitioner’s own prior to the issuance of a fictitious name
6 permit.” (*Matus, supra*, 65 Cal.Comp.Cases at p. 721.)

6 The Court of Appeal denied review and agreed that the lien was properly disallowed because Dr.
7 Gandhi was practicing as a medical corporation and doing business under a fictitious name without
8 obtaining a fictitious-name permit.

9 A similar result was reached in *Continental Medical Center of Paramount v. Workers’*
10 *Comp. Appeals Bd. (Greene)* (2000) 65 Cal.Comp.Cases 162 (writ den.) wherein the lien claim of
11 Continental Medical Center of Paramount (Continental) was disallowed because it was not a
12 professional corporation at the time medical treatment was provided to the injured worker and it
13 did not have a fictitious-name permit from the Medical Board. In disallowing the lien claim the
14 WCJ held that the corporation had no professional rights pursuant to Business and Professions
15 Code Section 2400 because it was authorized to render professional services only so long as it was
16 in compliance with the Moscone-Knox Professional Corporation Act. The WCJ found that even
17 though Continental became a professional medical corporation after the period treatment was
18 provided, the defect could not be cured retroactively.

19 In addressing the lien claim in *Greene*, the WCJ also noted that another lien claimant,
20 Doctors’ Medical Group, was a medical group doing business under a fictitious name without the
21 fictitious-name permit required by Business and Professions Code sections 2285 and 2415. In her
22 Report and Recommendation on Petition for Reconsideration (Report), the WCJ wrote:

23 “[T]here is no reason why the WCAB should not have jurisdiction
24 to inquire into the proper licensing of lien claimants, otherwise, the
25 WCAB should only order payment to the licensed person who
26 actually performed the service as opposed to clinics or medical
27 groups...The Legislature required the fictitious business name
28 permit for a purpose.

1 “The entire purpose of such a statute is to allow the public to check
2 and determine who owns the medical provider and to allow the
3 patient to properly name and sue the proper party in the
4 unfortunate event that the patient might have been subjected to
5 some type of medical malpractice. It also allows patients to
6 determine that those who are rendering treatment are in fact
7 physicians licensed to practice in the State of California.

8 “These public policy objectives are not mere technicalities, but
9 designed to protect the public health. As such, I do not believe
10 that I have the power to undermine the intent of the Legislature.”
11 (65 Cal.Comp.Cases at p. 164, emphasis added.)

12 The Court of Appeal denied review.

13 **EVALUATING THE LICENSURE AND FICTITIOUS BUSINESS NAME** 14 **REQUIREMENTS OF A LIEN CLAIMANT**

15 In order to determine what a lien claimant must prove as part of its burden under Labor
16 Code section 5705, it is necessary to consider what service it claims to have provided. If the lien
17 claimant claims that it provided medical treatment to the injured worker, it is obligated to show
18 that it is licensed by the Medical Board to provide such medical treatment or otherwise meets the
19 requirements of Business and Professions Code section 1248.1.⁸ (Bus. & Prof. Code, § 2415;

20 _____
21 ⁸ Health and Safety Code section 1248.1 provides in full: “No association, corporation, firm, partnership, or person
22 shall operate, manage, conduct, or maintain an outpatient setting in this state, unless the setting is one of the
23 following:

24 (a) An ambulatory surgical center that is certified to participate in the Medicare program under Title XVIII (42 U.S.C.
25 Sec. 1395 et seq.) of the federal Social Security Act.

26 (b) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as
27 defined in Section 450 or 1601 of Title 25 of the United States Code, and located on land recognized as tribal land by
the federal government.

(c) Any clinic directly conducted, maintained, or operated by the United States or by any of its departments, officers,
or agencies.

(d) Any primary care clinic licensed under subdivision (a) and any surgical clinic licensed under subdivision (b) of
Section 1204.

(e) Any health facility licensed as a general acute care hospital under Chapter 2 (commencing with Section 1250).

(f) Any outpatient setting to the extent that it is used by a dentist or physician and surgeon in compliance with Article
2.7 (commencing with Section 1646) or Article 2.8 (commencing with Section 1647) of Chapter 4 of Division 2 of the
Business and Professions Code.

(g) An outpatient setting accredited by an accreditation agency approved by the division pursuant to this chapter.

(h) A setting, including, but not limited to, a mobile van, in which equipment is used to treat patients admitted to a
facility described in subdivision (a), (d), or (e), and in which the procedures performed are staffed by the medical staff
of, or other healthcare practitioners with clinical privileges at, the facility and are subject to the peer review process of
the facility but which setting is not a part of a facility described in subdivision (a), (d), or (e).

1 *Capi, supra.*) In addition, if the lien claimant provided medical treatment under a fictitious name,
2 it also must show that it filed a fictitious business name statement with the county clerk *and* that it
3 has a fictitious-name permit from the Medical Board. (Bus. & Prof. Code, §§ 2285, 2415 and
4 17910; *Obernier, supra; Matus, supra; Greene, supra.*)

5 However, if the lien claimant does not claim that it provided medical treatment, but that it
6 *only* provided an “outpatient setting” where a licensed physician provided medical treatment, it
7 must prove *either* that it operated under a license issued by the Medical Board *or* that it was
8 properly accredited by an approved accreditation agency as such an “outpatient setting” at the time
9 the services were provided. (Health & Saf. Code, § 1248.1.) If the lien claimant provided services
10 under a fictitious name, it must show that it filed a fictitious business name statement with the
11 county clerk. (Bus. & Prof. Code, § 17910; *Obernier, supra.*) However, a lien claimant *would not*
12 *be obligated* to prove that it had a fictitious-name permit from the Medical Board if it did not
13 provide medical treatment in its own name as a “clinic.” (Bus. & Prof. Code, §§ 2285(c).)

14 Once a lien claimant has met its obligation under *Capi* to prove that it has the proper
15 license, accreditation, fictitious business name statement and/or fictitious business name permit
16 required to provide the services for which it claims payment, the burden shifts to the defendant to
17 prove why it does not.

18 **DISPOSITION OF THIS CASE**

19 In its petition for reconsideration, ASCP does not dispute the WCJ’s finding that it “did not
20 have a fictitious-name permit issued by the Division of Licensing of the Medical Board of
21 California prior to rendering professional services to the applicant” but claims that such a permit is
22 not required because it is an accredited “outpatient setting.” However, ASCP also states in its
23 petition for reconsideration that it “provided medical treatment to the applicant.” Among the
24 exhibits marked by the WCJ are copies of certificates of accreditation by AAAHC for both
25 “Pomona Surgical Center” and Dr. Calaycay, and copy of a fictitious business name statement
26

27 Nothing in this section shall relieve an association, corporation, firm, partnership, or person from complying with all other provisions of law that are otherwise applicable.”

1 filed with the County Clerk pursuant to Business and Professions Code section 17910, which states
2 that Pomona Surgery Center, Inc. is doing business under the fictitious name of Ambulatory
3 Surgical Center of Pomona.

4 It cannot be determined from this record if Pomona Surgery Center, Inc., doing business as
5 Ambulatory Surgical Center of Pomona, is claiming only that it is a properly accredited
6 “outpatient setting” where surgeries are performed as allowed by Health and Safety Code section
7 1248(c) and Business and Professions Code section 2285, such that a fictitious-name permit from
8 the Medical Board is not required, or if it is claiming that it provided medical treatment as a
9 “clinic” within the definition of Health and Safety Code sections 1200 and 1204(b)(1), such that it
10 is required to possess both a license and a fictitious-name permit from the Medical Board.
11 Moreover, even if it is claimed by ASCP that it is an “outpatient setting” that does not need a
12 license from the Medical Board, the record is unclear if the AAAHC accreditation identified at
13 trial properly applies to ASCP. In this regard, it is the burden of ASCP to prove that it is properly
14 licensed or accredited. (*Capi, supra.*)

15 In order to allow a proper record to be developed and to allow the parties a full the
16 opportunity to address the issues described above and any others deemed necessary, we conclude
17 that it is appropriate to rescind the WCJ’s June 28, 2006 Findings and Order and return the matter
18 to the trial level for further proceedings and decision by the WCJ. The “principle of allowing full
19 development of the evidentiary record to enable a complete adjudication of the issues is consistent
20 with due process in connection with workers’ compensation claims.” (*Tyler v. Workers’ Comp.*
21 *Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; cf. *M/A Com-Phi v. Workers’*
22 *Comp. Appeals Bd. (Sevadjan)* 65 Cal.App.4th 1020 [63 Cal.Comp.Cases 821].)

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For the foregoing reasons,

IT IS ORDERED as the decision after reconsideration of the Appeals Board that the June 28, 2006 Findings and Order is **RESCINDED**, and the case is **RETURNED** to the trial level for further proceedings and decision by the workers' compensation administrative law judge in accordance with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ Janice Jamison Murray

I CONCUR,

/s/ F. M. Brass

/s/ James C. Cuneo

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA 7/9/2007

SERVICE BY MAIL ON SAID DATE TO PARTIES SHOWN BELOW:

Spalding & Spalding, P.O. Box 967, Alta Loma, CA 91701

SCIF, P.O. Box 59901, Riverside, CA 92517

Primary Care Management Services, 417 West Allen Avenue # 116, San Dimas, CA 91773

Ambulatory Surgery Center of Pomona, P.O. Box 607, San Dimas, CA 91773

JFS/ams