



New Case Brief
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April 10, 2005

Zenith Insurance Company v. WCAB (Capi)
(2006) WCC 314822006 CA

The Fourth District Court of Appeal annulled the WCAB's refusal to grant reconsideration of the decision of a Workers' Compensation judge, which awarded facility fees to two outpatient medical treatment centers, holding that lien claimants must prove proper licensure and accreditation at trial.

In *Capi*, the injured worker had received outpatient medical treatment for his low back injury from various providers. The claim was settled via a Compromise and Release. However the carrier, Zenith Insurance Company, disputed the reimbursement claim made by several of applicant's health providers including the claims for facility fees sought by the lien claimants. At a lien conference, the carrier informed the workers' compensation judge that it had filed a civil action against lien claimants alleging, among other things, that the lien claimants illegally billed for facility fees when they were unlicensed and unaccredited in violation of the Business and Professions Code and the Health and Safety Code. The workers' compensation judge refused to continue the matter to complete additional discovery, and in his Findings of Fact and Order, awarded the lien claimants' fees. The carrier filed a Petition for Reconsideration challenging the award of the fees. The workers' compensation judge recommended denial of reconsideration stating that Zenith had waived the issues raised in its petition by not raising them at trial and could not shift the burden of proof to the lien claimants. Adopting the recommendations of the workers' compensation judge, the WCAB denied reconsideration.

The issue of whether proof of proper licensure and accreditation is required was decided by looking at the Business & Professions Code which contains regulatory and licensing provisions to ensure that services are safely and effectively performed. In particular, it is illegal to operate an outpatient setting in California, including ambulatory surgical centers and clinics, if they are not properly licensed or accredited. Hence, the Fourth District Court of Appeal held that in order to establish their right to reimbursement, the lien claimants bore the burden of proving they were properly licensed or accredited. Although the Board stated that the carrier, Zenith, was indeed attempting to shift the burden of proof to the lien claimants, it held that lien claimants have the initial burden of proof on this issue. Thus, the initial refusal to grant reconsideration was determined to be not supported by substantial evidence.