

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 STATE OF CALIFORNIA

3 Case No. ADJ2708349 (SBR 0339433)

4 MELVIN LANE,

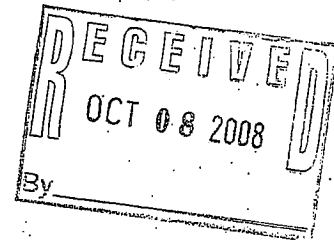
5 *Applicant,*

6 vs.

7  
8 **BIG LOTS STORES, INC., ZURICH**  
9 **INSURANCE, adjusted by SEDGWICK**  
10 **CLAIMS MANAGEMENT SERVICES,**

11 *Defendants.*

**OPINION AND ORDER  
GRANTING RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**



12 Applicant seeks reconsideration of the July 23, 2008 Findings and Order of the workers'  
13 compensation administrative law judge (WCJ), who found in pertinent part that "Defendant has  
14 provided adequate notice to applicant of the MPN [Medical Provider Network]," and that  
15 "Applicant must treat within the employer's MPN." Based on those findings, the WCJ ordered  
16 that "applicant treat" within the employer's MPN.

17 Applicant contends that he cannot be ordered to treat within defendant's MPN if he chooses  
18 to self-procure medical treatment pursuant to Labor Code section 4605.<sup>1</sup>

19 We grant reconsideration and as our decision after reconsideration rescind finding 7 and the  
20 order requiring applicant to treat within defendant's MPN. In their places we substitute a new  
21 finding that defendant satisfied its obligation to provide reasonable medical treatment pursuant to  
22 section 4600 by providing applicant with adequate notice of its MPN in conformity with applicable  
23 statutes and regulations, and a new order allowing applicant to self-procure medical treatment at  
24 his own expense in accordance with section 4605.

25 ///

26 \_\_\_\_\_  
27 <sup>1</sup> All further statutory references are to the Labor Code.

1 It is admitted that applicant sustained an industrial injury to his back while employed by  
2 defendant. At the time he was hired, and following his injury, applicant received adequate notice  
3 of defendant's MPN in conformity with applicable statutes and regulations.<sup>2</sup> However, applicant  
4 chose not to treat in the MPN and instead selected his own treating physician.<sup>3</sup> Defendant  
5 contended that applicant was obligated to treat within its MPN and filed a Declaration of  
6 Readiness to Proceed to obtain an order to that effect. Following the trial on July 7, 2008, the WCJ  
7 issued her decision as described above.

8 Turning to applicant's contentions, we agree that he cannot be ordered to treat within  
9 defendant's MPN when he chooses to self-procure treatment at his own expense as allowed by  
10 section 4605, which provides in full as follows: "Nothing contained in this chapter shall limit the  
11 right of the employee to provide, at his own expense, a consulting physician or any attending  
12 physicians whom he desires." Because section 4605 is within the same chapter as the sections  
13 authorizing a defendant to provide medical treatment through an MPN, it is apparent on the face of  
14 section 4605 that an injured worker cannot be ordered to treat within an MPN if he or she chooses  
15 to provide a physician at his or her "own expense." (Lab. Code, § 4605; c.f. *Credit Bureau of San*  
16 *Diego, Inc. v. Johnson* (1943) 61 Cal.App.2d Supp 834 [8 Cal.Comp.Cases 289]; *Bell v. Samaritan*  
17 *Medical Clinic, Inc.* (1976) 60 Cal.App.3d 486 [41 Cal.Comp.Cases 415].) When an applicant  
18 chooses to self-procure treatment as allowed by section 4605, a defendant is not liable for the costs  
19 of that medical treatment.

20 A failure of an employer or insurer to comply with applicable MPN statutes and regulations  
21 that results in a neglect or refusal to provide reasonable medical treatment renders the employer or  
22 insurer liable for medical treatment self-procured by the injured worker. (*Knight v. United Parcel*

23  
24 <sup>2</sup>Applicant does not dispute the WCJ's finding 6 that, "Defendant has provided adequate notice to applicant of the MPN."

25 <sup>3</sup> The parties and the WCJ in her Report and Recommendation on Petition for Reconsideration (Report) discuss liens  
26 filed by the physician selected by applicant and whether applicant is in fact paying for his own treatment or is  
27 attempting a subterfuge to circumvent the MPN and have defendant pay the physician. We express no opinion on  
those and other issues argued by the parties that are not before us. However, as discussed herein, defendant is **not**  
obligated to pay for medical treatment self-procured by applicant pursuant to section 4605 because it met its obligation  
to provide reasonable medical treatment through its MPN.

1 *Service* (2006) 71 Cal.Comp.Cases 1423 (Appeals Board en banc) (*Knight*.) However, an  
2 employer and its insurer may satisfy their obligation to provide an injured employee with  
3 reasonable medical treatment through an MPN if they act in conformity with applicable statutes  
4 and regulations. (Lab. Code, §§ 4600 and 4616 et. seq.; *Babbitt v. Ow Jing* (2007) 72  
5 Cal.Comp.Cases 70 (Appeals Board en banc) (*Babbitt*.) When a defendant has satisfied its  
6 obligation to provide medical treatment through an MPN by acting in conformity with applicable  
7 statutes and regulations but the employee chooses instead to self-procure treatment, the defendant  
8 not liable for the medical treatment self procured by the employee. (*Id.*)

9 Here, the WCJ found that defendant provided adequate notice of the MPN to applicant.  
10 Applicant does not contest that finding and it is supported by the record. Because defendant did  
11 not neglect or refuse to provide reasonable medical treatment through its MPN, applicant is liable  
12 for any medical treatment he chooses to self procure pursuant to section 4605 and he is not free to  
13 later assert that defendant is liable for the costs of any of that treatment. Nor may the treating  
14 physician seek payment from defendant for medical treatment that applicant chose to self-procure  
15 from the physician. If applicant at some future point requests that defendant initiate the provision  
16 of medical treatment, he may be directed by defendant to obtain medical treatment through the  
17 MPN in conformity with applicable statutes and regulations.

18 For the foregoing reasons,

19 **IT IS ORDERED** that applicant's petition for reconsideration of the July 23, 2008  
20 Findings and Order is **GRANTED**.

21 **IT IS FURTHER ORDERED** as the decision after reconsideration of the Appeals Board  
22 that the July 23, 2008 Findings and Order is **AFFIRMED** except that Finding of Fact 7 and the  
23 Order are **RESCINDED** and the following are **SUBSTITUTED** in their places:

24 **FINDINGS OF FACT**

25 \*\*\*\*\*

26 7. Defendant satisfied its obligation under Labor Code section 4600 to provide applicant  
27 with reasonable medical treatment to cure or relieve him from the effects of his injury by providing

1 him with adequate notice of its Medical Provider Network in conformity with applicable statutes  
2 and regulations, and defendant did not neglect or refuse to provide reasonable medical treatment.  
3 Applicant may choose to self-procure medical treatment at his own expense in accordance with  
4 Labor Code section 4605.

5 **ORDER**

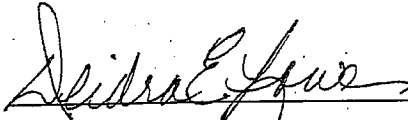
6 **IT IS ORDERED** that applicant may obtain, at his own expense, a consulting physician or  
7 any attending physicians whom he desires.

8 **WORKERS' COMPENSATION APPEALS BOARD**

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12 **RONNIE G. CAPLANE**

13 **I CONCUR,**

14 

15 **DEIDRA E. LOWE**

16  
17 

18 **FRANK M. BRASS**



19  
20 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

21 **OCT 06 2008**

22 **SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT  
23 THEIR ADDRESSES AS SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD:**

24 **Melvin Lane**

25 **Perona Langer, Beck, et. al.**

26 **Christopher Galichon**

27 **JFS/aml**

LANE, Melvin