

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3 **Case No. ADJ163338 (LAO 0873468)**

4 **JOSE GUITRON,**

5 *Applicant,*

6 **vs.**

7 **SANTA FE EXTRUDERS; and STATE**
8 **COMPENSATION INSURANCE FUND,**

9 *Defendant(s).*

10 **OPINION AND DECISION**
11 **AFTER RECONSIDERATION**
12 **(EN BANC)**

13 The Appeals Board granted the petition for reconsideration of lien claimant, E&M
14 Interpreting (E&M), to allow time to study the record and applicable law. The workers'
15 compensation administrative law judge (WCJ) had found, in his October 1, 2010 Findings, Award
16 and Order Re: Lien of E&M Interpreting (FA&O), that the interpreting services rendered by E&M
17 on June 20, 2006, and February 9, 2007, were reasonably required to cure or relieve the effects of
18 applicant's industrial injury, and that the remainder of E&M's unpaid services were not reasonable
19 or necessary. On reconsideration, E&M contends the WCJ erred in denying most of its lien for
20 interpreting services provided during applicant's medical treatment. Because of the important legal
21 issues regarding the right to payment for interpreting services during medical treatment, and to
22 secure uniformity of decision in the future, the Chairman of the Appeals Board, upon a majority
23 vote of its members, assigned this case to the Appeals Board as a whole for an en banc decision.
(Lab. Code, § 115.)¹

24
25 ¹ En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal.
26 Code Regs., tit. 8, § 10341; *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298,
27 313, fn. 5 [70 Cal.Comp.Cases 109, 120, fn. 5]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418,
1425, fn. 6 [67 Cal.Comp.Cases 236, 239, fn. 6] (*Gee*)). In addition to being adopted as a precedential decision in
accordance with Labor Code section 115 and WCAB Rule 10341, this en banc decision is being adopted as a
precedential decision in accordance with Government Code section 11425.60(b).

1 For the reasons discussed below, we hold the following:

2 1) pursuant to the employer's obligation under Labor Code section 4600² to provide
3 medical treatment reasonably required to cure or relieve the injured worker from the effects of his
4 or her injury, the employer is required to provide reasonably required interpreter services during
5 medical treatment appointments for an injured worker who is unable to speak, understand, or
6 communicate in English;

7 2) to recover its charges for interpreter services, the interpreter lien claimant has the burden
8 of proving, among other things, that the services it provided were reasonably required, that the
9 services were actually provided, that the interpreter was qualified to provide the services, and that
10 the fees charged were reasonable.

11 In reaching our holding on an interpreter lien claimant's burden of proof, we emphasize that
12 the discussion which follows is not all-inclusive and that, in any given case, the lien claimant also
13 might be required to carry its burden with respect to issues we have not addressed, including but
14 not limited to the issue of injury arising out of and in the course of employment, if contested. The
15 methods we discuss are neither exclusive nor mandatory.

16 **BACKGROUND**

17 Applicant sustained an admitted injury to his left elbow and psyche, while employed on
18 April 14, 2006, as a machine operator by Santa Fe Extruders, the insured of defendant, State
19 Compensation Insurance Fund (SCIF). His case in chief was resolved by Compromise and Release
20 (C&R) for \$22,000. The Order approving the C&R issued on June 11, 2008.

21 On June 21, 2010, a trial was held on E&M's \$13,988.00 lien — the unpaid amount of its
22 billing for Spanish interpreting services provided at medical examinations, chiropractic treatments,
23 and physical therapy treatments from June 20, 2006, through February 9, 2007. The issues framed
24 by the parties were 1) whether E&M's interpreting services were reasonably required to cure or
25 relieve the effects of applicant's industrial injury, and 2) whether SCIF must pay for E&M's

26 ² All further statutory references are to the Labor Code, unless otherwise indicated.
27

1 interpreting services. The WCJ also noted in the Minutes of Hearing SCIF's arguments that some
2 of the services were rendered in connection with work conditioning, that some were rendered in
3 connection with physical therapy visits beyond the 24-visit cap,³ and that the interpreters were not
4 certified. Two additional issues, the reasonable value of the services rendered and E&M's
5 entitlement to penalties and interest, were bifurcated and deferred, with jurisdiction reserved.

6 No testimony was taken at trial, but various exhibits were admitted. SCIF introduced into
7 evidence its claims adjuster's objection to lien claimant's billing, which stated that the billings
8 were for self-procured medical treatment, that the treatment and the charges were not reasonable or
9 necessary, that the interpreting services were for an examination that SCIF had objected to, and
10 that the treating doctors are not part of SCIF's medical provider network. SCIF also introduced its
11 Individual Payment Reports, which included "Reviewer's Comments" explaining why particular
12 billings were not paid — for example, that there was no record of medical treatment occurring on
13 the date billed by the interpreter, and that there was insufficient documentation of the medical
14 necessity for an interpreter at the treatment visit.

15 The parties filed post-trial briefs on two issues: 1) whether SCIF is liable for interpreting
16 services rendered at physical therapy appointments and chiropractic manipulations, and 2) whether
17 interpreters for medical treatment must be "certified" or "qualified," and whether there is a material
18 difference between the two.

19 E&M argued in its brief that applicant was entitled to the services of a qualified interpreter
20 during medical treatment appointments, pursuant to section 4600 and Administrative Director
21 (AD) Rule 9795.3 (Cal. Code Regs., tit. 8, § 9795.3).

22 SCIF argued that interpreter fees are allowable only in connection with medical-legal
23 expenses or evaluations, and not in connection with physical therapy and chiropractor visits. SCIF
24 reviewed the various statutes and regulations authorizing interpreter services and pointed out that
25

26 ³ Labor Code section 4604.5(d)(1) limits an employee to no more than 24 chiropractic, occupational therapy,
27 and physical therapy visits for each injury occurring on or after January 1, 2004, with exceptions for additional
authorized treatment and post-surgical treatment.

1 none authorizes interpreter services at medical appointments that are strictly for treatment. SCIF
2 argued that, even if such services are found to be reasonable and necessary for medical treatment,
3 the interpreter should be required to provide the information required by section 4628(b) for
4 physicians preparing medical-legal reports.⁴ SCIF complained that, in this case, “The reports for
5 physical therapy and chiropractic treatment do not indicate that an interpreter was used, let alone
6 disclose the name or qualifications of the interpreter. If there is no indication on the report that an
7 interpreter was used, how can State Fund verify that interpreting services were actually provided.”
8 (Defendant’s Trial Brief on Lien of E&M Interpreting, 4:6-10.)

9 On October 1, 2010, the WCJ found that the services rendered by E&M on June 20, 2006,
10 and February 9, 2007 (primary treating physician Igor Boyarsky, D.O.’s initial and final
11 evaluations) were reasonably required to cure or relieve the effects of applicant’s industrial injury,
12 and that SCIF is liable for payment for those services. He found that the other services billed by
13 E&M were not reasonable or necessary, and that the issue of SCIF’s liability for payment for the
14 other dates of service was, therefore, moot.

15 The WCJ distinguished the cases cited by E&M that allowed reimbursement for medical
16 transportation expenses, stating that medical transportation is reimbursed when there is substantial
17 medical evidence that it is necessary to obtaining medical treatment. By contrast, he reasoned,
18 there was no evidence in this case “that Spanish interpreting services were *necessary* in order for
19 Mr. Guitron to obtain physical therapy and chiropractic treatment. The mere fact that the applicant
20 does not speak English is not enough.” (Opinion on Decision, p. 3.)

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23 _____
24 ⁴ Section 4628(b) provides, “The report shall disclose the date when and location where the evaluation was
25 performed; that the physician or physicians signing the report actually performed the evaluation; whether the evaluation
26 performed and the time spent performing the evaluation was in compliance with the guidelines established by the
27 administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2 or Section 5307.6 and shall
disclose the name and qualifications of each person who performed any services in connection with the report,
including diagnostic studies, other than its clerical preparation. If the report discloses that the evaluation performed or
the time spent performing the evaluation was not in compliance with the guidelines established by the administrative
director, the report shall explain, in detail, any variance and the reason or reasons therefor.”

1 E&M filed a timely petition for reconsideration.⁵ We have not received an Answer from
2 SCIF.

3 In his Report and Recommendation on Petition for Reconsideration (Report), the WCJ
4 reviewed the various statutes and regulations governing interpreter fees and expressed his
5 agreement, "in theory," with E&M's position that interpreter services can be a necessary
6 component of medical treatment under section 4600. He said, "If an interpreter is necessary to
7 enable an injured worker to communicate with his or her medical provider, understand treatment
8 recommendations and make decisions regarding them, and to participate in treatment, then an
9 interpreter should be provided as part of the cost of the injured worker's medical care." (Report, p.
10 3.) He added, however,

11 "In the present case, there is no evidence that Spanish interpreting
12 services were necessary in order for Mr. Guitron to obtain physical
13 therapy and chiropractic treatment. Lien claimant's Exhibit 2
14 reveals that the interpreting services were performed at offices in
15 East Los Angeles. In that part of the city, Spanish is the primary
16 language, and it is reasonable to believe that medical offices
17 (physicians, chiropractors and physical therapists) serving that
18 community are staffed primarily (if not entirely) by people who
19 speak Spanish. Because the lien claimant has the burden of proof,
20 it is lien claimant's burden to prove that the offices at which
21 interpreting services were performed did *not* have a Spanish-
22 speaking staff member available to interpret, as well as whether
interpretation was required. Even if those offices did not have the
ability to speak directly to the patient in his language, it would not
necessarily render Spanish interpreting services reasonable and
necessary, since East Los Angeles (and all of Southeast Los
Angeles County, where applicant lived and worked) has numerous
physical therapy and chiropractic offices which are Spanish-
speaking." (*Id.* at pp. 3-4.)

23 The WCJ explained that the question of whether interpreting services for *all* medical visits
24 are reimbursable, when the injured worker does not speak English, is an unsettled issue on which
25 there is no binding case authority, and is an issue of great importance in Southern California. He

26 ⁵ Lien claimant, represented by a hearing representative, seems not to understand that, to be considered,
27 exhibits must be formally admitted into evidence. Both its post-trial brief and petition for reconsideration improperly
included exhibits that were not admitted into evidence.

1 noted that, according to the Presiding Judge, the Los Angeles District Office alone receives
2 approximately 700 interpreter liens per month, the majority of which are for services related to
3 medical treatment. While the WCJ's comments refer to matters not in evidence and not judicially
4 noticed, we nonetheless acknowledge that the issues in dispute in this case are of broad concern to
5 the workers' compensation community, and that the issue has not, until now, been addressed in a
6 precedential decision.

7 DISCUSSION

8 Explicit Legal Authority for Interpreter Fees

9 The Labor Code and the AD Rules require a defendant to provide interpretation services in
10 several specified circumstances. We review them here, in the absence of any specific provision
11 concerning interpretation services at medical treatment appointments.

12 Section 5710(b)(5) provides that, when a defendant requests the deposition of an injured
13 worker or person claiming dependent benefits, the deponent is entitled to,

14 "A reasonable allowance for interpreter's fees for the deponent, if
15 interpretation services are needed and provided by a language
16 interpreter certified or deemed certified pursuant to Article 8
17 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of
18 Division 3 of Title 2 of, or Section 68566 of, the Government
19 Code. The fee shall be in accordance with the fee schedule set by
20 the administrative director and paid by the employer or his or her
insurer. Payment for interpreter's services shall be allowed for
deposition of a non-English-speaking injured worker, and for any
other deposition-related events as permitted by the administrative
director."

21 Section 4600(f) provides for a reasonable fee for "qualified interpreters" at a required
22 medical "examination":

23 "When at the request of the employer, the employer's insurer, the
24 administrative director, the appeals board, or a workers'
25 compensation administrative law judge, an employee submits to
26 examination by a physician and the employee does not proficiently
27 speak or understand the English language, he or she shall be
entitled to the services of a qualified interpreter in accordance with
conditions and a fee schedule prescribed by the administrative

1 director. These services shall be provided by the employer. For
2 purposes of this section, 'qualified interpreter' means a language
3 interpreter certified, or deemed certified, pursuant to Article 8
4 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of
5 Division 3 of Title 2 of, or Section 68566 of, the Government
6 Code."

7 Section 4620(a) includes interpreter's fees within the definition of medical-legal expenses,
8 if "the medical report is capable of proving or disproving a disputed medical fact." (Lab. Code, §
9 4620(c).) Section 4621(a) includes the cost of interpreter services among medical-legal expenses
10 "reasonably, actually, and necessarily incurred," which shall be reimbursed.

11 Section 5811(b) addresses interpreter fees as a cost of workers' compensation litigation and
12 provides in full:

13 "(b) It shall be the responsibility of any party producing a witness
14 requiring an interpreter to arrange for the presence of a qualified
15 interpreter. A qualified interpreter is a language interpreter who is
16 certified, or deemed certified, pursuant to Article 8 (commencing
17 with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of
18 Title 2 of, or Section 68566 of, the Government Code.

19 "Interpreter fees which are reasonably, actually, and necessarily
20 incurred shall be allowed as cost under this section, provided they
21 are in accordance with the fee schedule set by the administrative
22 director.

23 "A qualified interpreter may render services during the following:

24 "(1) A deposition.

25 "(2) An appeals board hearing.

26 "(3) During those settings which the administrative director
27 determines are reasonably necessary to ascertain the validity or
extent of injury to an employee who cannot communicate in
English."

AD Rule 9795.3 (Cal. Code Regs., tit. 8, § 9795.3) enumerates the settings in which
qualified interpreters are specifically authorized, and establishes the fees for interpreter services in
the various settings.

1 Rule 9795.3 provides,

2 “(a) Fees for services performed by a qualified interpreter, where
3 the employee does not proficiently speak or understand the English
4 language, shall be paid by the claims administrator for any of the
5 following events:

6 “(1) An examination by a physician to which an injured
7 employee submits at the requests of the claims administrator, the
8 administrative director, or the appeals board;

9 “(2) A comprehensive medical-legal evaluation as defined in
10 subdivision (c) of Section 9793, a follow-up medical-legal
11 evaluation as defined in subdivision (f) of Section 9793, or a
12 supplemental medical-legal evaluation as defined in subdivision
13 (k) of Section 9793; provided, however, that payment for
14 interpreter’s fees by the claims administrator shall not be required
15 under this paragraph unless the medical report to which the
16 services apply is compensable in accordance with Article 5.6.
17 Nothing in this paragraph, however, shall be construed to relieve
18 the party who retains an interpreter from liability to pay the
19 interpreter’s fees in the event the claims administrator is not
20 liable.”

21 The rule also includes payment for interpreting services at depositions, hearings, conferences,
22 arbitration, and

23 “(7) Other similar settings determined by the Workers’
24 Compensation Appeals Board to be reasonable and necessary to
25 determine the validity and extent of injury to an employee.”

26 As to payment, Rule 9795.3 provides,

27 “(b) The following fees for interpreter services provided by a
certified interpreter shall be presumed to be reasonable:

“(1) For an appeal board hearing, arbitration, deposition, or
formal rehabilitation conference: interpreter fees shall be billed and
paid at the greater of the following (i) at the rate for one-half day or
one full day as set forth in the Superior Court fee schedule for
interpreters in the county where the service was provided, or (ii) at
the market rate. The interpreter shall establish the market rate for
the interpreter’s services by submitting documentation to the
claims administrator, including a list of recent similar services
performed and the amounts paid for those services. Services over 8

1 hours shall be paid at the rate of one-eighth the full day rate for
2 each hour of service over 8 hours.

3 “(2) For all other events listed under subdivision (a), interpreter
4 fees shall be billed and paid at the rate of \$11.25 per quarter hour
5 or portion thereof, with a minimum payment of two hours, or the
6 market rate, whichever is greater. The interpreter shall establish the
7 market rate for the interpreter’s services by submitting
8 documentation to the claims administrator, including a list of
9 recent similar services performed and the amounts paid for those
10 services.

11 “(3) The fee in paragraph (1) or (2) shall include, when
12 requested and adequately documented by the interpreter, payment
13 for mileage and travel time where reasonable and necessary to
14 provide the service, and where the distance between the
15 interpreter’s place of business and the place where the service was
16 rendered is over 25 miles. Travel time is not deemed reasonable
17 and necessary where a qualified interpreter listed in the master
18 listing for the county where the service is to be provided can be
19 present to provide the service without the necessity of excessive
20 travel.

21 “(i) Mileage shall be paid at the minimum rate adopted by the
22 Director of the Department of Personnel Administration pursuant
23 to Section 19820 of the Government Code for non-represented
24 (excluded) employees at Title 2, CCR § 599.631(a).

25 “(ii) Travel time shall be paid at the rate of \$5.00 per quarter
26 hour or portion thereof.

27 “(c) Unless notified of a cancellation at least 24 hours prior to the
time the service is to be provided, the interpreter shall be paid no
less than the minimum fee.

“(d) Nothing in this section shall preclude payment to an
interpreter or agency for interpreting services based on an
agreement made in advance of services between the interpreter or
agency and the claims administrator, regardless of whether or not
such payment is less than, or exceeds, the fees set forth in this
section.

“(e) The fees set forth in subdivision (b) shall be presumed
reasonable for services provided by provisionally certified
interpreters only if efforts to obtain a certified interpreter are

1 documented and submitted to the claims administrator with the bill
2 for services. Efforts to obtain a certified interpreter shall also be
3 disclosed in any document based in whole or in part on information
4 obtained through a provisionally certified interpreter.”

5 AD Rule 9795.1 (Cal. Code Regs., tit. 8, § 9795.1) contains the definitions of the terms
6 used in the regulations governing interpreter services. Rule 9795.1 provides, in pertinent part,

7 “(a) ‘Certified’ means an interpreter who is certified in accordance
8 with subdivision (e) of Section 11513 [sic] of the Government
9 Code or Section 68562 of the Government Code.

10 ...

11 “(e) ‘Provisionally certified’ means an interpreter who is deemed to
12 be qualified to perform services under this article, when a certified
13 interpreter cannot be present, by (A) the residing officer at an
14 appeals board hearing, arbitration, or formal rehabilitation
15 conference, at the request of a party or parties, or (B) agreement of
16 the parties for any services provided under this article other than at
17 an appeals board hearing, arbitration, or formal rehabilitation
18 conference.

19 “(f) ‘Qualified interpreter’ means an interpreter who is certified or
20 provisionally certified.

21 “(g) ‘Travel time’ means the time an interpreter actually travels to
22 and from the place where service is to be rendered and his or her
23 place of business.

24 “(h) ‘Market rate’ means that amount an interpreter has actually
25 been paid for recent interpreter services provided in connection
26 with the preparation and resolution of an employee's claim.”

27 AD Rule 9795.2 requires that notice be given of the right to an interpreter: “The notice of
hearing, deposition, or other setting shall include a statement explaining the right to have an
interpreter present if they do not proficiently speak or understand the English language. Where a
party is designated to serve a notice, it shall be the responsibility of that party to include this
statement in the notice.” (Cal. Code Regs., tit. 8, § 9795.2.)

AD Rule 9795.4 (Cal. Code Regs., tit. 8, § 9795.4) governs the time for payment of, and
objections to, interpreter expenses:

1 “(a) All expenses for interpreter services shall be paid within 60
2 days after receipt by the claims administrator of the bill for services
3 unless the claims administrator, within this period, contests its
4 liability for such payment, or the reasonableness or the necessity of
5 incurring such expenses. A claims administrator who contests all
6 or any part of a bill for interpreter services shall pay the
7 uncontested amount and notify the interpreter of the objection
8 within 60 days after receipt of the bill. Any notice of objection
9 shall include all of the following:

10 “(1) An explanation of the basis of the objection.

11 “(2) If additional information is needed as a prerequisite to
12 payment of a contested bill or portions thereof, a clear description
13 of the information required.

14 “(3) The name, address and telephone number of the person or
15 office to contact for additional information concerning the
16 objection.

17 “(4) A statement that the interpreter may adjudicate the issue of
18 the contested charge before the Workers' Compensation Appeals
19 Board.

20 “(b) Any bill for interpreter's services which constitutes a medical-
21 legal expense as defined in subdivision (g) of Section 9793 and
22 which is neither paid nor contested within the time limits set forth
23 herein shall be subject to the penalties and interest set forth in
24 Section 4622 of the Labor Code.

25 “(c) This article shall be effective for services provided on and
26 after the effective date of this article which pertain to injuries
27 occurring on or after January 1, 1994. Amendments to this article
which became effective in 1996 shall apply to interpreting services
provided on or after April 1, 1997.”

In addition, WCAB Rule 10564 (Cal. Code Regs., tit. 8, § 10564) provides,

“Subject to the Rules of the Administrative Director, the Workers'
Compensation Appeals Board may in any case appoint an
interpreter and fix the interpreter's compensation. It shall be the
responsibility of any party producing a witness requiring an
interpreter to arrange for the presence of a qualified interpreter.

“For injuries before January 1, 1994, interpreter's fees that are
reasonably, actually and necessarily incurred and that are not

1 allowed under Labor Code Section 4600 shall be allowed as costs
2 under Labor Code Section 5811. Recovery shall be allowed in the
amount charged by the interpreter unless:

3 “(1) proof of unreasonableness is entered by the party contesting
4 the reasonableness of the charge, or

5 “(2) the charge is manifestly unreasonable.

6 “For injuries on or after January 1, 1994, interpreter's fees that are
7 reasonably, actually and necessarily incurred shall be allowed as
8 provided by Labor Code Sections 4600, 5710 and 5811 as amended
9 July 16, 1993. Interpreter's fees as defined in Labor Code section
10 4620, that are reasonably, actually and necessarily incurred as
provided in Labor Code section 4621, shall be allowed in
accordance with the fee schedule set by the Administrative
Director.”

11 Labor Code sections 5811(b), 4600(f), and 5710(b)(5) refer to the Government Code
12 provisions regarding certification of interpreters: “Article 8 (commencing with Section 11435.05)
13 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.”
14 Article 8 sets forth the procedures for qualifying interpreters in state agency proceedings to provide
15 “‘language assistance’ for a party or witness who cannot speak or understand English or who can
16 do so only with difficulty.” (Gov. Code, § 11435.05.) Article 8 expressly applies to WCAB
17 adjudicative proceedings (Gov. Code, § 11435.15(a));⁶ however, “[n]othing in this section
18 prohibits an agency from providing an interpreter during a proceeding to which this chapter does
19 not apply, including an informal factfinding or informal investigatory hearing.” (Gov. Code, §
20 11435.15(c).)

21 Government Code section 11435.30 directs the State Personnel Board to establish a list of
22 “certified administrative hearing interpreters,” and Government Code section 11435.35 directs the
23 State Personnel Board to establish a list of “certified medical examination interpreters.”
24

25 ⁶ Subdivision (d) of Government Code section 11435.15 provides, “this article applies to an agency listed in
26 subdivision (a) notwithstanding a general provision that this chapter does not apply to some or all of an agency’s
27 adjudicative proceedings.” The WCAB is one of those agencies referenced in subdivision (d) because Article 8’s
provisions on interpreters apply to the WCAB, but its adjudicative proceedings are expressly governed by the Labor
Code and by its own rules of practice and procedure. (See Lab. Code, §§ 5309, 5708; Gov. Code, § 11415.10(a).)

1 Government Code section 11435.35 further provides that court interpreters certified through the
2 program established by the Judicial Council, pursuant to Government Code section 68562, and
3 administrative hearing interpreters certified by the State Personnel Board pursuant to Government
4 Code section 11435.30, shall be deemed certified for purposes of Government Code section
5 11435.35, which pertains only to certified medical examination interpreters.

6 Government Code section 11435.55(b) provides,

7 “(b) An interpreter used in a medical examination shall be certified
8 pursuant to Section 11435.35. However, if an interpreter certified
9 pursuant to Section 11435.35 cannot be present at the medical
10 examination, the physician provisionally may use another
11 interpreter if that fact is noted in the record of the medical
12 evaluation.”

13 Government Code sections 68560, et seq. govern certification of court interpreters.
14 Government Code section 68566 establishes who is entitled to use the designation "certified court
15 interpreter."

16 **Pursuant to the Employer’s Obligation Under Labor Code Section 4600 to Provide Medical**
17 **Treatment Reasonably Required to Cure or Relieve the Injured Worker from the Effects of**
18 **His or Her Injury, the Employer is Required to Provide Reasonably Required Interpreter**
19 **Services During Medical Treatment Appointments for an Injured Worker Who Is Unable to**
20 **Speak, Understand, or Communicate in English.**

21 As the review above demonstrates, there is a wealth of authority on interpreter services, but
22 none directly applicable to medical treatment. Although no statutory or regulatory provision
23 specifically provides for interpretation services during medical treatment appointments, we hold
24 that, pursuant to the employer’s obligation under section 4600 to provide medical treatment
25 reasonably required to cure or relieve the injured worker from the effects of his or her injury, the
26 employer is required to provide reasonably required interpreter services during medical treatment
27 appointments for an injured worker who is unable to speak, understand, or communicate in
English.

Article XIV, section 4 of the California Constitution directs the Legislature to create a
complete workers’ compensation system, which includes “full provision of such medical, surgical

1 hospital and other remedial treatment as is requisite to cure and relieve from the effects of” an
2 injury sustained in the course of employment. Pursuant to this mandate, the Legislature enacted
3 section 4600(a), which provides that the employer shall provide an injured employee “[m]edical,
4 surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical
5 and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and
6 services, that is reasonably required to cure or relieve the injured worker from the effects of his or
7 her injury....”

8 The California Supreme Court has long recognized the important purpose served by
9 provision of medical treatment necessitated by an industrial injury.

10 “The primary purpose of industrial compensation is to insure to the
11 injured employee and those dependent upon him adequate means
12 of subsistence while he is unable to work and also to bring about
13 his recovery as soon as possible in order that he may be returned to
14 the ranks of productive labor. By this means society as a whole is
15 relieved of the burden of caring for the injured workman and his
16 family, and the burden is placed upon the industry. That the
17 injured workman and his dependents may be cared for,
18 compensation in the form of disability benefits is provided for by
19 the act approximating the wages earned by the employee and
20 varying with the degree of disability and dependency. And to
21 secure the speedy return of the workman to productive employment
22 it is provided that medical and surgical services shall be furnished
23 by the employer. This liability for medical and surgical services is
24 not, therefore, a burden placed upon the employer as a penalty for
25 any failure of duty on his part, but is merely a part of the whole
26 compensation due the employee as the result of his injury. It
27 therefore follows that the medical and surgical services
contemplated and called for by the statute in question should be
such as will tend to secure the return of the workman to productive
employment. In other words, and perhaps more precisely stated,
the treatment required by the statute is such as will reasonably and
seasonably tend to relieve and cure the injured employee from the
effects of the injury....” (*United Iron Works v. Industrial Acc.
Com. (Henneberry)* (1922) 190 Cal. 33 [9 I.A.C. 223, 226].)

“Employer liability for medical and surgical services is provided in major part in order to
facilitate the worker’s speedy recovery and to maximize his productive employment.” (*J. T. Thorp,*

1 *Inc. and Insurance Co. of North America v. Workers' Comp. Appeals Bd. (Butler)* (1984) 153
2 Cal.App.3d 33 [49 Cal.Comp.Cases 224, 228].) The Supreme Court said, in *Zeeb v. Workmen's*
3 *Comp. Appeals Bd.* (1967) 67 Cal.2d 496, 501-503 [32 Cal.Comp.Cases 441, 443], "Obviously, it
4 will ordinarily be in the interests of both the employer and the employee to secure adequate
5 medical treatment so that the employee may recover from his injury and return to work as soon as
6 possible."

7 While section 4600 does not specifically list interpreter services as an element of medical
8 treatment, section 4600 has been construed to include the costs of transportation to obtain
9 treatment and medication, even though such transportation costs also are not specifically listed in
10 section 4600. As stated in *Avalon Bay Foods v. Workers' Comp. Appeals Bd. (Moore)* (1998) 18
11 Cal.4th 1165, 1173-1175 [63 Cal.Comp.Cases 902, 907-909] (*Moore*),

12 "Although Labor Code section 4600 does not expressly refer to
13 medical treatment transportation expenses as an aspect of medical
14 treatment benefits, they have consistently been so regarded under
15 the workers' compensation laws. ... [¶] ... [T]he right to medical
16 treatment transportation expenses under Labor Code section 4600
17 has been implied as dependent on and ancillary to medical
18 treatment benefits, not as a different benefit. Medical treatment
19 transportation benefits have not been treated as having a separate
20 existence from all other medical treatment benefits, but, instead,
21 have been included as derivative of medical treatment benefits. As
22 such, they have been viewed as a necessary means to the end of
23 ensuring prompt medical treatment so that an injured worker may
24 return to the workplace."

25 In *Hutchinson v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 372 [54
26 Cal.Comp.Cases 124, 126], the Court held that an injured worker was entitled to transportation
27 expenses to obtain prescribed medication, stating,

28 "Section 3202 requires us to construe section 4600 liberally to
29 extend its benefits for the protection of persons injured in the
30 course of their employment...[¶] We must bear in mind that the
31 underlying policy of the workers' compensation statutes and their
32 constitutional foundation (Cal. Const., art XIV, § 4), as well as the
33 recurrent theme of countless appellate decisions on the matter, has
34 been one of pervasive and abiding solicitude for the worker."

1 Citing *Remedy Home Health Care, Inc. v. Workers' Comp. Appeals Bd. (Sharp)* (1996) 61
2 Cal.Comp.Cases 891 (writ denied), the Appeals Board stated, in *Jones v. Ukiah Timber Products*
3 (1997) 62 Cal.Comp.Cases 1257, 1259-1260 (Appeals Board en banc) (*Jones*), “Were
4 transportation costs not included in medical treatment benefits, the injured worker might be
5 deprived of necessary benefits, defeating the fundamental purpose of extending benefits for the
6 protection of persons injured in the course of their employment.”

7 Like transportation, effective communication between an injured employee and a medical
8 provider is an essential adjunct to treatment. This common sense principle has been recognized in
9 a number of Appeals Board panel decisions. (E.g., *Garcia v. State Comp. Ins. Fund* (2001) 29 Cal.
10 Workers' Comp. Rptr. 310; *Paguada v. Amberwood Products* (2008) 2008 Cal. Wrk. Comp. P.D.
11 LEXIS 92; *Saldana v. 3M Espe* (2008) 2008 Cal. Wrk. Comp. P.D. LEXIS 417 (*Saldana*); *Gil v.*
12 *Shea-Kenny Joint Venture* (2007) 2007 Cal. Wrk. Comp. P.D. LEXIS 219; *Perez v. A's Match*
13 *Dyeing* (2007) 2007 Cal. Wrk. Comp. P.D. LEXIS 112.)⁷ To paraphrase our admonition in *Jones*,
14 *supra*, 62 Cal.Comp.Cases at pp. 1259-1260, quoted above with regard to transportation expenses,
15 were the cost of an interpreter not included in medical treatment benefits, the injured worker might
16 be deprived of necessary benefits, defeating the fundamental purpose of extending benefits for the
17 protection of persons injured in the course of their employment.

18 SCIF appears to draw a distinction between types of treatment, implying that compensation
19 for interpreter services at some treatment appointments might be justified, but not at others, such as
20 chiropractic manipulations, physical therapy, and, particularly, work conditioning. We find no
21 *legal* basis for drawing such a distinction. If the services provided constituted “medical treatment,”
22 if the treatment was reasonably required to cure or relieve from the effects of an industrial injury,
23 and if qualified interpreter services were required and provided during the treatment, then the

24
25 ⁷ While it is true that Appeals Board panel decisions are not binding precedent and have no stare decisis effect
26 (*Gee, supra*, 96 Cal.App.4th at p. 1425, fn. 6 [67 Cal.Comp.Cases 236]), we consider them to the extent we find their
27 reasoning persuasive. Unlike unpublished appellate court opinions, which, pursuant to California Rules of Court, rule
8.1115(a), may not be cited or relied on, except as specified by rule 8.1115(b), Appeals Board panel decisions are
citable, even though they have no precedential value. (See *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209
Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].)

1 interpreter services may be compensable under section 4600, regardless of the nature of the
2 medical treatment involved.

3 Our construction of section 4600, to allow for interpreter expenses in conjunction with
4 medical treatment, is consistent with the other provisions of law allowing for interpreter costs for
5 medical-legal examinations (Lab. Code, §§ 4600(f), 4620(a) & (c), 4621(a)), depositions (Lab.
6 Code, §§ 5710(b)(5), 5811(b)(1)), hearings (Lab. Code, § 5811(b)(2)), and other settings (Lab.
7 Code, § 5811(b)(3)). The fact that section 4600 was amended in 1993 to provide for interpreter
8 costs in conjunction with medical-legal examinations (see Stats. 1993, ch. 121, § 38) does not
9 reflect a legislative intent to disallow interpreter costs for medical treatment. (Cf. *Moore, supra*, 18
10 Cal.4th at pp. 1174-1175 & fn. 4 [noting that a 1959 amendment to section 4600 allowing
11 transportation costs for medical-legal examinations did not reflect a legislative intent not to allow
12 transportation costs for medical treatment]; *Caldwell v. Workmen's Comp. Appeals Bd.* (1969) 268
13 Cal.App.2d 912, 915 [34 Cal.Comp.Cases 37] [same conclusion re 1959 amendment and stating,
14 "Applying the logic of the appeals board to the lack of a provision in the first paragraph [of section
15 4600] allowing the workmen transportation expenses to obtain treatment (the only express
16 provision in the whole section allowing transportation costs is in the third paragraph and then only
17 for submitting to employer or board-directed *examination*, not *treatment*), would attribute to the
18 Legislature the illogical design of authorizing transportation expenses for *examination*, but not for
19 treatment." (Court's italics)].) Moreover, that payment of interpreter costs is expressly authorized
20 in certain contexts does not mean that payment is prohibited in all other contexts. (See *Osuna v.*
21 *Sun View* (2005) 2005 Cal. Wrk. Comp. P.D. LEXIS 21 (Appeals Board panel decision) [lien
22 claimant interpreter found entitled to fees for explaining terms of complex C&R, at the applicant's
23 attorney's office].)

24 The WCJ's decision in the present case does not reflect any disagreement with the
25 principles discussed above. Rather, he denied most of E&M's lien because he found, as a factual
26 matter, that, except for Dr. Boyarsky's initial and final evaluations, the billed interpreter services
27

1 were not reasonable or necessary. In other words, the WCJ determined that E&M had not met its
2 burden of proving its right to payment of its lien.

3 **To Recover Its Charges for Interpreter Services, the Interpreter Lien Claimant Has the**
4 **Burden of Proving, Among Other Things, That the Services It Provided Were Reasonably**
5 **Required, That the Services Were Actually Provided, That the Interpreter was Qualified to**
6 **Provide the Services, and That the Fees Charged Were Reasonable.**

7 “The burden of proof rests upon the party or lien claimant holding the affirmative of the
8 issue.” (Lab. Code, § 5705.) Section 3202.5 provides that, “All parties and lien claimants shall
9 meet the evidentiary burden of proof on all issues by a preponderance of the evidence....”

10 Although we agree with E&M that, as a general principle, interpreter fees may be allowed
11 in conjunction with, and as a component of, medical treatment, this does not mean that interpreter
12 liens are automatically payable. As explained above, interpreter services are authorized under
13 section 4600’s general requirement that employers provide medical treatment reasonably required
14 to cure or relieve the injured worker from the effects of the industrial injury. Therefore, like other
15 medical lien claimants, interpreter lien claimants have the burden of proving their right to payment.
16 (Lab. Code, §§ 3202.5, 5705; *Zenith Ins. Co. v. Workers’ Comp. Appeals Bd. (Capi)* (2006) 138
17 Cal.App.4th 373, 376-377 [71 Cal.Comp.Cases 374] (*Capi*); *Kunz v. Patterson Floor Coverings,*
18 *Inc.* (2002) 67 Cal.Comp.Cases 1588 (Appeals Board en banc) (*Kunz*); *Tapia v. Skill Master*
19 *Staffing* (2008) 73 Cal.Comp.Cases 1338 (Appeals Board en banc) (*Tapia*)). For guidance to the
20 workers’ compensation community, we will now consider the various elements of the interpreter
21 lien claimant’s burden of proof, and what evidence may satisfy that burden.

22 One element of an interpreter lien claimant’s burden is to show that the injured worker
23 required an interpreter. If an injured worker used an interpreter, but did not need one, the
24 defendant would not be obligated to pay for the interpreter services. The statutes governing
25 interpretation services in settings other than medical treatment provide guidance as to when an
26 interpreter is needed. Section 5710(b)(5) authorizes payment for interpreter’s services for the
27 deposition of a “non-English-speaking injured worker.” Section 5811 allows interpreter services
“which are reasonably, actually, and necessarily incurred” for “an employee who cannot

1 communicate in English” during a deposition, an appeals board hearing, and those settings the AD
2 determines are reasonably necessary to ascertain the validity or extent of injury. Under section
3 4600(f), an employee who “does not proficiently speak or understand the English language” is
4 entitled to interpreter services during a medical examination set at the request of the employer,
5 insurance company, AD, Appeals Board, or WCJ. AD Rule 9795.2 requires notice of the right to
6 an interpreter for those who “do not proficiently speak or understand the English language.” AD
7 Rule 9795.3(a) allows fees for interpreter services in various settings “where the employee does
8 not proficiently speak or understand the English language.” The Government Code provisions on
9 “language assistance” are for parties or witnesses in state agency proceedings “who cannot speak
10 or understand English or who can do so only with difficulty.” (Gov. Code, § 11435.05.) These
11 provisions are essentially consistent. In the various settings for which the right to an interpreter is
12 expressly authorized by statute or regulation, the injured worker must need assistance because he
13 or she does not adequately speak or understand or communicate in English.

14 An injured worker’s need for an interpreter could be demonstrated in many ways. If, for
15 example, an interpreter was used during the deposition of the worker (see Lab. Code, §§
16 5710(b)(5), 5811(b)(1)) or at an agreed or qualified medical evaluation (see Lab. Code, §§ 4600(f),
17 4620(a) & (c), 4621(a); Cal. Code Regs., tit. 8, § 9795.3(a)), although not conclusive, it might be
18 reasonable to infer that the worker needed interpreting services during medical treatment.⁸ A
19 physician’s statement that an interpreter was required, an interpreter’s testimony or sworn
20 statement that he or she confirmed with the physician that interpreting services were needed, or the
21 worker’s testimony through an interpreter that he or she needed an interpreter to communicate with
22 a medical provider could all constitute evidence of the need for an interpreter. If the defendant
23 authorized interpreter services for some medical treatment appointments, it should not be necessary
24 for the interpreter lien claimant to prove that interpreter services were required for each individual
25 appointment, unless defendant raises a legitimate objection to a particular date of service.

26 _____
27 ⁸ Here, for example, the February 27, 2008 agreed medical evaluation report of Dr. Andrew Sew Hoy reflects that a Spanish-language interpreter was used at the February 7, 2008 evaluation.

1 Ultimately, if there is a dispute, it will be up to the trier-of-fact to determine whether the interpreter
2 lien claimant has demonstrated that the interpreter services were reasonably required. The parties
3 may present any evidence that is probative on the issue.

4 We observe that, in the WCJ's consideration of this element of E&M's burden of proof, he
5 indicated that it was E&M's responsibility to prove that no one on the medical provider's staff was
6 available to interpret. Certainly evidence to that effect could be probative as to the need for an
7 interpreter for a non-English speaking worker. If the physician speaks the injured worker's
8 language, or if the physician chooses to use a member of his or her staff to interpret, then it is
9 unlikely that other interpreter services would be reasonably required. However, we would not
10 require a physician to use an employee with other work responsibilities as an interpreter, merely
11 because that employee was able to speak the patient/injured worker's language. The standard
12 adopted by the WCJ appears to imply such a requirement.

13 The WCJ also implied that E&M must prove that there were no *other* medical providers in
14 the area who could provide the treatment, using the injured worker's language. This would limit
15 an injured worker's choice of providers to those who speak his or her language. We do not accept
16 the notion that non-English speaking workers have restrictions on their choice of medical providers
17 that are not applicable to English speakers. By affirming the non-English speaking worker's right
18 to choose a medical provider, regardless of the provider's proficiency in the worker's language, we
19 do not, however, abandon or minimize the requirement that the interpreter lien claimant must
20 prove that its interpreting services were reasonably required.

21 In sum, we emphasize that we neither prescribe nor proscribe any particular admissible
22 evidence that may prove that the lien claimant interpreter's services were reasonably required in a
23 given case.

24 The interpreter lien claimant must also establish that an interpreter was actually present at
25 the medical appointments in question, i.e., that the interpreter actually rendered the services being
26
27

1 billed.⁹ As part of this burden, if the issue is disputed, the interpreter lien claimant must also
2 establish that the medical treatment occurred on the interpreter's billed dates of service. There are
3 a variety of ways in which this burden of proving the services were rendered might be carried. For
4 example, an interpreter might be able to rely on a medical report regarding the visit, reciting that
5 the interpreter was present. Although there is no current requirement for a treating physician to
6 indicate the presence of an interpreter (see Cal. Code Regs., tit. 8, §§ 9785.2, 9785.3, 9785.4,
7 10606), it is certainly appropriate and helpful for a physician to do so. SCIF's suggestion that
8 interpreter lien claimants prepare disclosures similar to those required for physicians by section
9 4628(b) provides another option for a lien claimant to demonstrate satisfaction of this element.

10 The burden of proving that the services were required, and that they were provided, may
11 also be satisfied by the interpreter using a form, signed by the medical provider in conjunction with
12 the visit, containing a statement to the effect that a named interpreter was present, the medical
13 practitioner is not proficient in the injured employee's language, the practitioner's office does not
14 provide interpreters, and the office's policy is that patients who are not proficient in English should
15 be accompanied by an interpreter. (See *Saldana, supra*, 2008 Cal. Wrk. Comp. P.D. LEXIS 417.)

16 The methods discussed above are neither mandatory nor exclusive. There may well be
17 other ways to satisfy lien claimant's burden. To avoid these issues, however, the preferred practice
18 is to obtain pre-authorization. (*Saldana, supra*, 2008 Cal. Wrk. Comp. P.D. LEXIS 417.) When a
19 treating physician requests authorization for treatment by another practitioner, such as a physical
20 therapist, chiropractor, or acupuncturist, the treating physician could include in the request a
21 statement that the injured worker requires the services of an interpreter. The defendant could then
22 efficiently and unambiguously authorize use of an interpreter in conjunction with the requested
23 treatment. However, a treating physician's failure to expressly request an interpreter, by itself, is
24 not a basis to conclude that an interpreter is not reasonably required.

25
26 ⁹ Of course, a lien claimant claiming entitlement to payment for services not actually rendered would be subject
27 to sanctions under section 5813 and WCAB Rule 10561 (Cal. Code Regs., tit. 8, § 10561), as well as criminal
prosecution for insurance fraud, pursuant to Insurance Code sections 1871, et seq.

1 An interpreter lien claimant must also prove that the interpreter was qualified to provide the
2 billed services. (Lab. Code, § 5705; *Capi, supra*, 138 Cal.App.4th 373 [71 Cal.Comp.Cases 374];
3 *Stokes v. Patton State Hospital* (2007) 72 Cal.Comp.Cases 996 (Significant Panel Decision).)
4 Pursuant to AD Rule 9795.3(a), a “qualified interpreter” may provide services for a medical
5 examination requested by the claims administrator, AD, or appeals board, or at a comprehensive
6 medical-legal evaluation. A “qualified interpreter” means a “certified” or “provisionally certified”
7 interpreter pursuant to AD Rule 9795.1(f) (Cal. Code Regs., tit. 8, § 9795.1(f)), or, for purposes of
8 section 4600, a “qualified interpreter” means an interpreter certified or deemed certified pursuant
9 to the Government Code.

10 When the setting is not “an appeals board hearing, arbitration, or formal rehabilitation
11 conference,” and when a certified interpreter cannot be present, a “provisionally certified”
12 interpreter is one deemed qualified to perform interpreting services *by agreement of the parties*.
13 (Cal. Code Regs., tit. 8, § 9795.1(e).) Thus, for a medical examination, a provisionally certified
14 interpreter is one deemed qualified by agreement of the parties, when a certified interpreter is
15 unavailable. While a treatment appointment is not strictly governed by these provisions, we see no
16 logical reason why the qualifications for an interpreter at a treatment appointment should be any
17 different or less rigorous than the qualifications for an interpreter at a medical examination. If
18 certified interpreters are difficult to obtain, as stated by E&M, agreement by the parties is
19 unquestionably the best option for obtaining a “provisionally certified” and, therefore, “qualified”
20 interpreter.

21 Government Code section 11435.55 suggests another option. It provides that, when a
22 certified interpreter cannot be present at a medical examination, “the physician provisionally may
23 use another interpreter if that fact is noted in the record of the medical evaluation.” While
24 agreement between the parties is preferred, a non-certified interpreter lien claimant seeking
25 payment for services performed during medical treatment could show that it was selected
26 “provisionally,” under Government Code section 11435.55, if use of the non-certified interpreter is
27 recorded by the physician.

1 Thus, in the absence of any directly applicable authority on qualifications for interpreters
2 during medical treatment, an interpreter may be qualified to interpret at medical treatment
3 appointments because he or she is certified for interpreting at medical examinations or deemed
4 certified for medical examinations by virtue of being certified for court or administrative hearing
5 interpreting, or, if a certified interpreter is unavailable, the interpreter is provisionally certified by
6 agreement of the parties or selected for provisional use by the treating physician.

7 In some cases, such as when an injured worker has settled the case by C&R, and the
8 defendant has not admitted liability, it could fall to the interpreter lien claimant, like any other
9 medical lien claimant, to prove that the injury arose out of and occurred in the course of
10 employment, and that the medical treatment itself was reasonable and necessary. “Where a lien
11 claimant (rather than the injured employee) is litigating the issue of entitlement to payment for
12 industrially-related medical treatment, the lien claimant stands in the shoes of the injured employee
13 and the lien claimant must prove by preponderance of the evidence all of the elements necessary to
14 the establishment of its lien.” (*Kunz, supra*, 67 Cal.Comp.Cases at p. 1592.)

15 If a lien claimant succeeds in proving that its interpreter was qualified, that it provided the
16 billed services, and that the services were reasonably required, the lien claimant must still prove
17 the reasonableness of its charges.¹⁰ In *Kunz*, with regard to outpatient surgery facility fees, we
18 stated that a number of factors should be considered in determining if a fee is reasonable, including
19 but not limited to: 1) the usual fee accepted (not charged) by the provider, 2) the usual fee accepted
20 by other medical providers in the same geographical area, 3) other aspects of the economics of the
21 medical provider’s practice that are relevant, and 4) any unusual circumstances in the case. (*Kunz*,
22 *supra*, 67 Cal.Comp.Cases at p. 1598.) In *Tapia*, we further considered the question of
23 reasonableness, with regard to outpatient surgery center fees, and held,

24 “consistent with *Kunz*: (1) an outpatient surgery center lien
25 claimant (**or any medical lien claimant**) has the burden of proving
26 that its charges are reasonable; (2) the outpatient surgery center lien
claimant’s billing, by itself, does not establish that the claimed fee

27 ¹⁰ The issue of the value of lien’s claimant’s services was bifurcated and deferred in this case.

1 is 'reasonable'; therefore, even in the absence of rebuttal evidence,
2 the lien need not be allowed in full if it is unreasonable on its face;
3 and (3) any evidence relevant to reasonableness may be offered to
4 support or rebut the lien; therefore, evidence is not limited to the
5 fees accepted by other outpatient surgery centers in the same
6 geographic area for the services provided.” (*Tapia, supra*, 73
7 Cal.Comp.Cases at p. 1340.) (Emphasis added.)

8 AD Rule 9795.3(b)(2) (Cal. Code Regs., tit. 8, § 9795.3(b)(2)) provides the following fee
9 schedule for interpretation at all events listed in subdivision (a), other than a hearing, arbitration,
10 deposition, or rehabilitation conference:

11 “interpreter fees shall be billed and paid at the rate of \$11.25 per
12 quarter hour or portion thereof, with a minimum payment of two
13 hours, or the market rate, whichever is greater. The interpreter
14 shall establish the market rate for the interpreter’s services by
15 submitting documentation to the claims administrator, including a
16 list of recent similar services performed and the amounts paid for
17 those services.”

18 “Market rate” is defined as “that amount an interpreter has actually been paid for recent interpreter
19 services provided in connection with the preparation and resolution of an employee's claim.” (Cal.
20 Code Regs., tit. 8, § 9795.1(h).)

21 The fee schedule does not apply directly to interpreter services for medical treatment, since
22 treatment is not one of the enumerated settings. Still, we may look to the fee schedule for guidance
23 as to what a reasonable fee may be. (Cf. *Roberson v. Atlantic Mut. Ins. Co.* (2006) 34 Cal.
24 Workers’ Comp. Rptr. 190 (Appeals Board panel decision) [the fee schedule for ambulatory
25 surgery centers may reasonably serve as a guide for the reasonableness of charges incurred before
26 the effective date of the schedule].) While \$11.25 per quarter hour, or market rate, as proven by
27 lien claimant, appears to be a reasonable standard, we are not prepared to conclude that the two-
hour minimum applies to all medical treatment appointments, some of which might take only 10 to
15 minutes. (See *Di Giuseppe v. Workers’ Comp. Appeals Bd. (Menjivar)* (2002) 67
Cal.Comp.Cases 1003 (writ denied) [\$45.00 per visit was considered adequate payment for
interpreting services at medical treatment appointments that were not shown to last longer than one
hour].) On the other hand, we understand that, without some minimum rate of reimbursement,

1 there might not be a sufficient incentive for interpreters to provide services during medical
2 treatment, and injured workers would, therefore, be deprived of this necessary adjunct to medical
3 treatment.

4 As with selection of a qualified interpreter, the preferred practice with regard to fees is for
5 the parties to agree in advance. This practice is specifically endorsed by AD Rule 9795.3(d),
6 which states, “Nothing in this section shall preclude payment to an interpreter or agency for
7 interpreting services based on an agreement made in advance of services between the interpreter or
8 agency and the claims administrator, regardless of whether or not such payment is less than, or
9 exceeds, the fees set forth in this section.” (Cal. Code Regs., tit. 8, § 9795.3(d).)

10 If the parties have not agreed in advance, and cannot agree after the fact, it will be the
11 interpreter lien claimant’s responsibility to offer any probative evidence as to the reasonableness of
12 its charges; and it will be the trier of fact’s responsibility to determine whether the lien claimant
13 has succeeded in proving its fee was reasonable. If the lien claimant has not proved its fee was
14 reasonable, but has otherwise proved its right to recover, the trier of fact must determine and award
15 a reasonable fee.

16 **Disposition**

17 In this case, the WCJ expressly stated that his reasoning was limited to Spanish-language
18 interpreting. He appears to have concluded, without any evidence in the record, that the use of the
19 Spanish language is so pervasive in East Los Angeles that Spanish interpretation services during a
20 medical treatment appointment in that location would never be “reasonably required” under section
21 4600. Under the WCJ’s reasoning, all claims for Spanish interpreting fees in East Los Angeles that
22 do not fall within a specific provision authorizing recovery should be denied. We disagree. It
23 cannot be said categorically that provision of Spanish interpretation services at a medical treatment
24 appointment in East Los Angeles is never reasonably required, and therefore never compensable.
25 The compensability of interpretation services must be decided based on the evidence in each case,
26 regardless of the language or location involved. California’s population is highly diverse.
27 Undoubtedly, there are other areas of the state where neither English nor Spanish is the

1 predominant language. Under the WCJ's reasoning, separate standards would prevail for each of
2 these ethnic enclaves.

3 None of the statutory or regulatory provisions relating to interpreter fees limits or any way
4 distinguishes compensation for Spanish interpretation services, from interpretation services for
5 other languages, and there is no need or justification to create such a distinction with regard to
6 interpreter services for medical treatment.

7 SCIF argued that E&M did not prove that its services were necessary, that its interpreters
8 were qualified, that interpreter services were provided on all the dates billed, or even that medical
9 treatment took place on all of those dates. Because these elements were part of E&M's burden of
10 proof, it was E&M's responsibility to offer evidence on those issues.

11 SCIF further objected to payment of most of the billed services on the following grounds:
12 the medical treatment was unauthorized, the medical provider was not part of defendant's medical
13 provider network, and the treatment exceeded the 24-visit limitation on chiropractic care and
14 physical therapy established in section 4604.5(d)(1). Once these objections were raised by
15 defendant, it fell to lien claimant to rebut them. If the injured worker was not entitled to the
16 underlying medical treatment, the interpreter's lien must be disallowed for the services in question.
17 Of course, if a defendant has no reasonable basis for disputing an interpreter's lien, or if a
18 defendant frivolously asserts defenses, while possessing proof that its allegations are false, the
19 defendant will expose itself to potential penalties under section 5814 and sanctions under section
20 5813.

21 The WCJ did not reach any of these issues because he found preliminarily that E&M had
22 failed to prove that most of its services were reasonable and necessary. Because, in some respects,
23 the WCJ misapplied E&M's burden of proving that its services were reasonably required during
24 medical treatment, and because he improperly distinguished Spanish from other languages, we will
25 amend his decision to defer decision on those parts of the lien disallowed by the WCJ, and return
26 the matter to the trial level for further proceedings and decision, consistent with this opinion.
27 Because this opinion represents the first detailed and binding explanation of the interpreter lien

1 claimant's burden of proof with regard to medical treatment, we think it appropriate in this case to
2 reopen the record and allow the parties to conduct further discovery, if necessary, and to introduce
3 additional evidence on the issues addressed in this opinion. If, upon return of this matter, the WCJ
4 reaches a different conclusion as to whether E&M's services were reasonably required, it will then
5 be necessary for him to consider defendant's other defenses.

6 Only the disallowed parts of the lien require further consideration by the WCJ in light of
7 this opinion. There has been no challenge to the WCJ's allowance of the lien for the June 20, 2006
8 and February 9, 2007 dates of service, or to his admission into evidence of lien claimant's Exhibits
9 12 and 13. Therefore, we will affirm the FA&O, except that we will amend it to defer decision on
10 the remainder of the lien, i.e., those dates of service found by the WCJ to be not reasonable and
11 necessary.

12 For the foregoing reasons,

13 **IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation
14 Appeals Board, that the October 1, 2010 Findings, Award and Order Re: Lien of E&M Interpreting
15 is **AFFIRMED, EXCEPT** that Findings of Fact Nos.1 and 2 are **AMENDED** as follows:

16 **FINDINGS OF FACT**

- 17 1. The services rendered by lien claimant E&M Interpreting on June 20,
18 2006, and February 9, 2007, were reasonably required to cure or relieve
19 the effects of applicant's industrial injury. Decision on the remainder of
20 the services billed by lien claimant is deferred.
- 21 2. Defendant is liable for payment to E&M Interpreting for services rendered
22 on June 20, 2006, and February 9, 2007.

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1 **IT IS FURTHER ORDERED** that this matter is **RETURNED** to the trial level for further
2 proceedings and decision by the WCJ, consistent with this opinion.

3
4 **WORKERS' COMPENSATION APPEALS BOARD**

5 /s/ Joseph M. Miller
6 **JOSEPH M. MILLER, Chairman**

7 /s/ James C. Cuneo
8 **JAMES C. CUNEO, Commissioner**

9 /s/ Frank M. Brass
10 **FRANK M. BRASS, Commissioner**

11 /s/ Ronnie G. Caplane
12 **RONNIE G. CAPLANE, Commissioner**

13 /s/ Alfonso J. Moresi
14 **ALFONSO J. MORESI, Commissioner**

15 /s/ Deidra E. Lowe
16 **DEIDRA E. LOWE, Commissioner**

17
18
19 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

20 **11/17/2011**

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

23 **QUALIFIED BILLING & COLLECTIONS LLC**
24 **STATE COMPENSATION INSURANCE FUND**
25 **E & M INTERPRETING**
26 **BERNARDO DE LA TORRE**

27 **CB/bea**