

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **LUIS MARTINEZ,**

5 *Applicant,*

6 **vs.**

7 **ANA TERRAZAS; ALLSTATE INSURANCE**
8 **CO., ADMINISTERED BY SPECIALTY RISK**
9 **SERVICES,**

10 *Defendants.*

Case No. ADJ7613459
(Marina del Rey District Office)

OPINION AND DECISION
AFTER RECONSIDERATION
(En Banc)

11 **INTRODUCTION**

12 The Appeals Board granted the Petition for Reconsideration filed by New Age Imaging, Inc.
13 (New Age) to further study the factual and legal issues presented. Thereafter, to secure uniformity of
14 decision in the future, the Chairwoman of the Appeals Board, upon a majority vote of its members,
15 assigned this case to the Appeals Board as a whole for an en banc decision.¹

16 On August 8, 2011, New Age filed a lien for copying and related expenses. After January 1,
17 2013, the effective date of Senate Bill 863 (SB 863), but prior to any lien proceedings, New Age
18 withdrew its lien and in lieu of it filed a petition for costs under Labor Code section 5811,² apparently in
19 an attempt to avoid payment of a lien activation fee under section 4903.06. The workers' compensation
20 administrative law judge (WCJ) denied the petition for costs, determining that New Age could not
21 "abrogate" its obligation to pay the lien activation fee.

22 We hold: (1) a claim for medical-legal expenses may not be filed as a petition for costs under
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24 ¹ En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs.
25 (Cal. Code Regs., tit. 8, § 10341; *Signature Fruit Co. v. Workers' Comp. Appeals Bd. (Ochoa)* (2006) 142
26 Cal.App.4th 790, 796, fn. 2 [71 Cal.Comp.Cases 1044]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96
27 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) In addition to being adopted as a precedent decision in
accordance with Labor Code section 115 and Appeals Board Rule 10341, this en banc decision is also being
adopted as a precedent decision in accordance with Government Code section 11425.60(b).

² All further statutory references are to the Labor Code.

1 section 5811; and (2) medical-legal lien claimants who withdrew their liens and filed petitions for costs
2 prior to this decision may pursue recovery through the lien process if they comply with the lien activation
3 fee requirements of section 4903.06 and if their liens have not otherwise been dismissed.

4 Accordingly, although the WCJ should have dismissed New Age’s petition for costs in this case,
5 we will affirm her denial of the petition. However, given the uncertainty in the law when New Age
6 withdrew its lien and given that its lien was never formally dismissed, we will deem its lien reinstated.
7 This reinstatement principle shall be applied to lien claimants in other cases who withdrew their liens and
8 filed petitions for costs on or before the issuance date of this decision, if their liens have not been
9 dismissed.

10 **BACKGROUND**

11 Applicant alleged injury to multiple body parts when he fell off a ladder on July 1, 2009.
12 Defendant denied the claim. On April 18, 2011, applicant resolved his claim by compromise and release
13 (C&R).

14 On August 8, 2011, New Age filed a lien that it titled a “document copy services lien.” The
15 billings submitted with the lien show that the expenses claimed were for subpoenaing and copying
16 various records at the request of applicant’s attorney, namely: (1) the records of applicant’s employer on
17 September 28, 2009, (2) the records of Dr. Zaragaff on October 12, 2009, (3) the records of the U.S.C.
18 Medical Center on September 21, 2009, (4) the records of the Law Office of Lionel Quiroz on
19 September 16, 2009, (5) the records of the WCIRB on July 26, 2010,³ and (6) the records of Specialty

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24 ³ Given that the parties participated in an agreed medical evaluation on July 15, 2010, it appears that the
25 identity of defendant’s insurer was established at the time the subpoena issued. To recover the costs associated
26 with this subpoena, New Age will need to establish the expenses were incurred to prove or disprove a contested
27 claim (Lab. Code, § 4620(a)) and that they were reasonable and necessary at the time incurred (Lab. Code,
§ 4621). In the context of a subpoena for coverage information, a subpoena may be necessary where an insurer
has denied coverage, the employer refuses to identify its insurer, or the applicant’s attorney has reason to believe
there is more than one insurance policy. Coverage information is often publicly available without a subpoena at
the WCIRB’s website: <https://www.caworkcompcoverage.com/>.

1 Risk Services (defendant's claims administrator) on June 16, 2011.⁴

2 On April 30, 2012, New Age filed a Declaration of Readiness to Proceed (DOR) to a lien
3 conference, although no lien conference was set.

4 On January 22, 2013, New Age filed a section 5811 petition for costs for the same expenses it
5 previously sought to recover by its lien. It did not simultaneously withdraw its lien. On January 31,
6 2013, the WCJ denied the petition for costs, stating: "Lien claimant filed their lien prior to January 1,
7 2013. As such, it is a cost filed as a lien and is subject to the fee requirements of Labor Code Section
8 4903.06(a)."

9 On February 4, 2013, New Age filed a letter that stated, among other things: "this Document may
10 serve as a notice of request to withdrawal [sic] our lien"

11 On February 5, 2013, New Age again filed a section 5811 petition for costs requesting the same
12 expenses it previously sought to recover by its lien. On February 6, 2013, the WCJ denied New Age's
13 second petition for costs. The order again stated: "Lien claimant filed their lien prior to January 1, 2013.
14 As such, it is a cost filed as a lien and is subject to the fee requirements of Labor Code Section
15 4903.06(a)." It further stated: "Withdrawal of the lien on 2/4/13 does not abrogate the cost mandate
16 under LC §4903.06(a)"

17 On March 4, 2013, New Age filed a petition for removal contending that there is no legal
18 authority for the order that "Withdrawal of the lien on 2/4/13 does not abrogate the cost mandate under
19 LC § 4903.06(a)" Because the WCJ's February 6, 2013 order dismissed New Age's petition
20 for costs, it is a final order subject to a petition for reconsideration. Accordingly, we deemed New Age's

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23 ⁴ It is unclear what legal basis New Age might have for claiming medical-legal expenses for subpoenaing
24 the claims administrator's records *after* the C&R was approved. As of that time, it would appear that those records
25 were not needed to prove or disprove a contested claim (Lab. Code, § 4620(a)) and that the expenses were not
26 reasonably and necessarily incurred (Lab. Code, § 4621(a)). Moreover, only "the employee, or the dependents of a
27 deceased employee, shall be reimbursed for his or her medical-legal expenses." (Lab. Code, § 4621(a).)
Therefore, medical-legal service providers are not entitled to medical-legal expenses for the purpose of proving
their own lien claims. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Nobriga)* (1977) 42
Cal.Comp.Cases 103 (writ den.); *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Rabin)* (1977) 42
Cal.Comp.Cases 101 (writ den.).)

1 petition for removal to be a petition for reconsideration and, on April 30, 2013, we issued an Opinion and
2 Order Granting Reconsideration.

3 DISCUSSION

4 **I. A CLAIM FOR MEDICAL-LEGAL EXPENSES MAY NOT BE FILED AS A PETITION FOR COSTS UNDER SECTION 5811.**

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6 Section 5811(a) provides: “In all proceedings under this division before the appeals board, costs
7 as between the parties may be allowed by the appeals board.”

8 Historically, the section 5811 “costs” allowed by the WCAB have been litigation costs incurred
9 by one of the parties in the case-in-chief. (See, e.g., *Costa v. Hardy Diagnostic* (2006) 72
10 Cal.Comp.Cases 1492 (Appeals Board en banc) (*Costa II*) [costs of injured employee’s vocational expert
11 opinion in rebuttal to permanent disability rating payable under section 5811, if among other things costs
12 were reasonable and necessary at the time incurred]; *Los Angeles Unified School Dist. v. Workers’ Comp.*
13 *Appeals Bd. (Kilgore)* (1984) 49 Cal.Comp.Cases 631 (writ den.) [injured employee awarded costs of an
14 expert witness, a former disability evaluation specialist, obtained to rebut permanent disability rating].)

15 Section 5811 “costs” do not include costs and expenses that are governed by other specific
16 statutory schemes. (See *Elliott v. Workers’ Comp. Appeals Bd.* (2010) 182 Cal.App.4th 355, 365 [75
17 Cal.Comp.Cases 81] [“as a matter of statutory construction, a specific provision relating to a particular
18 subject will govern that subject as against a general provision”].) As stated in the Appeals Board’s en
19 banc decision in *Costa II*:

20 “There are ... limitations on the costs that may be reimbursed under section
21 5811. [Costs, expenses, or fees] which are awarded under conditions
22 specified in the Labor Code ... are not available as ‘costs’ under section
23 5811.” (72 Cal.Comp.Cases at p. 1497, fn. 3.)

24 Thus, in *Costa II*, the Appeals Board determined that an attorney’s fee cannot be allowed as a
25 “cost” under section 5811. (*Costa II, supra*, 72 Cal.Comp.Cases at p. 1497, fn. 3; see also, e.g., *Reed v.*
26 *Trinity Hospice* (2011) 2011 Cal. Wrk. Comp. P.D. LEXIS 185 (Appeals Board panel decision) (*Reed*);
27 *Carter v. Longs Drugs* (2008) 2008 Cal. Wrk. Comp. P.D. LEXIS 426 (Appeals Board panel decision);
Holzer-Reyes v. Workers’ Comp. Appeals Bd. (1997) 63 Cal.Comp.Cases 84 (writ den.)) The Labor

1 Code provides for very specific instances in which a party may be liable for another party's attorney's
2 fees. (E.g., Lab. Code §§ 4555, 4607, 4903.8(c), 5710, 5813, 5814.5.) These specific statutory
3 provisions would have no meaning if section 5811 gave the WCAB broad authority to award attorney's
4 fees in any instance. (*Reed, supra.*)

5 The Legislature has established an extensive statutory scheme for claimed medical-legal
6 expenses. (See, generally, Lab. Code, §§ 4620 et seq., 4603.3, 4603.6, 4903.05, 4903.06; see also former
7 § 4903(b).) Among other things, to establish entitlement to reimbursement for claimed medical-legal
8 expenses, it must be shown that a contested claim existed at the time the expenses were incurred (Lab.
9 Code, § 4620(b)) and that the expenses were reasonable and necessary at the time incurred (Lab. Code,
10 § 4621(a)). Moreover, for medical-legal expense and other claims of costs liens filed under former
11 section 4903(b) before January 1, 2013, the Legislature has provided that, with certain specified
12 exceptions, such claims "shall be subject to a lien activation fee." (Lab. Code, § 4903.06(a).)⁵

13 In light of the specific statutory framework established by the Legislature for pursuing claims of
14 medical-legal expenses, we conclude that medical-legal expenses cannot be sought through the filing of a
15 petition for costs under section 5811.

16 Furthermore, given that section 5811 provides that "costs as between the parties *may* be allowed"
17 (emphasis added), section 5811(a) costs are discretionary. (Lab. Code, § 15 [" 'may' is permissive"];
18 *Barr v. Workers' Comp. Appeals Bd.* (2008) 164 Cal.App.4th 173, 178 [73 Cal.Comp.Cases 763]
19 ["section 5811 confers on the WCAB the *discretion* to award costs" (emphasis added)].) As a matter of
20 law, we conclude that, in light of the separate procedures that the Legislature has established for the
21 recovery of those expenses, it would be an abuse of discretion to permit medical-legal expenses to be
22 claimed under section 5811. In particular, we find no reason for the WCAB to exercise its discretion
23 where the apparent intention of a petition for costs is to avoid a statutorily-mandated lien activation fee.

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25 ⁵ The exceptions to payment of the lien activation fee are if: (1) the lien claimant proves it had paid the
26 filing fee that was in effect from 2004 through 2006 under former section 4903.05 (Lab. Code, § 4903.06(a)); or
27 (2) the lien claimant is a specified health care service plan, a group disability insurer, a self-insured employee
welfare benefit plan, a Taft-Hartley health and welfare fund, or a publicly funded program providing medical
benefits on a nonindustrial basis (Lab. Code, § 4903.06(b)).

1 Although the case presently before us relates to copy service expenses claimed through a
2 medical-legal lien filed before January 1, 2013 under former section 4903(b), we emphasize that this
3 holding applies to *all* medical-legal expense claims, regardless of: (1) whether a pre-January 1, 2013 lien
4 was filed; (2) when the claimed medical-legal expenses might have been incurred; or (3) the nature of the
5 medical-legal expenses claimed.⁶

6 In affirming the WCJ's denial of New Age's petition for costs, we agree with her implicit
7 conclusion that all of the costs claimed by New Age are medical-legal costs. Pursuant to section 4620(a),
8 "a medical-legal expense means any costs and expenses incurred by or on behalf of any party, ... which
9 expenses may include ... *medical records*, ... for the purpose of proving or disproving a contested
10 claim." (Italics added). Copy service costs incurred to obtain medical records are therefore medical-legal
11 expenses. So too are the other copy service costs claimed by New Age. As such, they may not be
12 pursued under section 5811. We express no opinion on the merits of New Age's medical-legal expense
13 claims.

14 **II. MEDICAL-LEGAL LIEN CLAIMANTS WHO WITHDREW THEIR LIENS AND FILED**
15 **PETITIONS FOR COSTS PRIOR TO THIS DECISION MAY PURSUE RECOVERY**
16 **THROUGH THE LIEN PROCESS IF THEY COMPLY WITH THE LIEN ACTIVATION FEE**
17 **REQUIREMENTS OF SECTION 4903.06 AND IF THEIR LIENS HAVE NOT OTHERWISE**
18 **BEEN DISMISSED.**

19 Beginning January 1, 2013, with certain exceptions (see fn. 5, *supra*), "[a]ny lien filed pursuant to
20 subdivision (b) of Section 4903 prior to January 1, 2013, and any cost that was filed as a lien prior to
21 January 1, 2013, shall be subject to a lien activation fee." (Lab. Code, § 4903.06(a).) The fee is \$100.

22 ⁶ As amended by SB 863, section 5811(b)(2)(C) refers to qualified interpreter services rendered during "[a]
23 medical treatment appointment or medical-legal examination." Under *proposed* Rule 10451, which has *not* been
24 adopted by a vote of four Appeals Board members (see Lab. Code, § 5307(a)(1)), interpreters would have been
25 allowed to file petitions for costs for services rendered at medical treatment appointments and medical-legal
26 examinations. Of course, the issue of whether interpreters may file such petitions for costs is not currently before
27 us. However, we hereby give notice to the workers' compensation community of our present view that, while
certain interpreter services may be claimed through a petition for costs under section 5811 (e.g., interpreter
appearances at depositions and WCAB hearings), claims for interpreter services at medical treatment appointments
and/or medical-legal examinations must be pursued through the specific statutory schemes established by the
Legislature and *not* through a petition for costs.

We observe, however, that even *proposed* Rule 10451 would not have authorized petitions for costs by
copy services for medical-legal expenses.

1 (Lab. Code, § 4903.06(a)(1).) Under section 4903.06, a lien claimant subject to the lien activation fee
2 “shall” pay the fee by the *earliest* of the following: (1) with the DOR, if the DOR is filed by that lien
3 claimant on or after January 1, 2013 (Lab. Code, § 4903.06(a)(2)); (2) prior to the scheduled
4 commencement time of a 2013 lien conference, if the lien claimant did not file the DOR or did file it but
5 did so before January 1, 2013 (Lab. Code, § 4903.06(a)(4)); or (3) January 1, 2014 (Lab. Code,
6 § 4903.06(a)(1) & (a)(5)). (See *Figueroa v. B.C. Doering Co.* (2013) 78 Cal.Comp.Cases __ (Appeals
7 Board en banc); *Mendez v. Le Chef Bakery* (2013) 78 Cal.Comp.Cases __ (Significant Panel Decision).)

8 Section 4903.06 was enacted by SB 863 (Stats. 2012, ch. 363, § 64), which became effective on
9 January 1, 2013. Uncodified section 84 of SB 863 provides that “[t]his act shall apply to all pending
10 matters, regardless of date of injury, unless otherwise specified in this act, but shall not be a basis to
11 rescind, alter, amend, or reopen any final award of workers’ compensation benefits.” Therefore, as of
12 January 1, 2013, the provisions of section 4903.06 became applicable to any case still pending, except
13 cases that were finally concluded and subject only to the WCAB’s continuing jurisdiction under sections
14 5803 and 5804. (Cf., e.g., *E & J Gallo Winery v. Workers’ Comp. Appeals Bd. (Dykes)* (2005) 134
15 Cal.App.4th 1536, 1543 [70 Cal.Comp.Cases 1644]; *Rio Linda Union School Dist. v. Workers’ Comp.*
16 *Appeals Bd. (Scheftner)* (2005) 131 Cal.App.4th 517, 531 [70 Cal.Comp.Cases 999]; *Marsh v. Workers’*
17 *Comp. Appeals Bd.* (2005) 130 Cal.App.4th 906, 916 [70 Cal.Comp.Cases 787]; *Kleemann v. Workers’*
18 *Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 285-289 [70 Cal.Comp.Cases 133].)

19 The fundamental rule of statutory construction is to effectuate the Legislature’s intent. (*DuBois v.*
20 *Workers’ Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 [58 Cal.Comp.Cases 286, 289] (*DuBois*.) The
21 best indicator of legislative intent is the clear, unambiguous, and plain meaning of the statutory language.
22 (*DuBois, supra*, 5 Cal.4th at pp. 387-388.) When the statutory language is clear and unambiguous, there
23 is no room for interpretation and the WCAB must enforce the statute according to its plain terms.
24 (*DuBois, supra*, 5 Cal.4th at p. 387.)

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1 Here, section 4903.06(a) states that “[a]ny lien filed pursuant to subdivision (b) of Section 4903
2 prior to January 1, 2013, and any cost that was filed as a lien prior to January 1, 2013, *shall* be subject to
3 a lien activation fee” unless the lien claimant falls within one of the exceptions. (Italics added.) Also:

- 4 • section 4903.06(a)(2) provides that a lien claimant filing a DOR on or after
5 January 1, 2013 “*shall* include proof of payment of the ... lien activation fee”
6 with the DOR (italics added);
- 7 • section 4903.06(a)(4) provides that any lien claimant not filing the DOR “*shall*
8 submit proof of payment of the activation fee at the lien conference” and “[i]f the
9 fee has not been paid or no proof of payment is available, the lien *shall* be
10 dismissed with prejudice” (italics added); and
- 11 • section 4903.06(a)(1) and (a)(5), respectively, provide that the lien claimant
12 “*shall* pay a lien activation fee of one hundred dollars (\$100) on or before
13 January 1, 2014” and that “[a]ny lien filed pursuant to subdivision (b) of Section
14 4903 prior to January 1, 2013, and any cost that was filed as a lien prior to
15 January 1, 2013, for which the filing fee or lien activation fee has not been paid
16 by January 1, 2014, *is* dismissed by operation of law” (italics added).

17 “Shall” is mandatory language. (Lab. Code, § 15; *Long Beach Police Officers Assn. v. City of*
18 *Long Beach* (1988) 46 Cal.3d 736, 743 [“the ordinary meaning of ‘shall’ or ‘must’ is of mandatory
19 effect” (internal quotation marks omitted)].) Section 4903.06 mandates that a lien claimant who filed a
20 medical-legal expense or claim of costs lien prior to January 1, 2013 must pay a lien activation fee by the
21 earliest statutorily-required time; otherwise, its lien must be dismissed. Therefore, a lien claimant subject
22 to the lien activation fee—or, indeed, the related lien filing fee (see Lab. Code, § 4903.05)—must comply
23 with these statutory requirements and cannot attempt to avoid its payment by seeking recovery through
24 some alternative or collateral method. Moreover, as set forth in the petition for costs discussion above,
25 where the Legislature has established a specific statutory procedure for recovering a particular type of
26 cost or expense, that procedure must be followed if reimbursement or payment is sought.

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1 This interpretation is consistent with the legislative history of section 4903.06. In this regard,
2 legislative committee analyses are subject to judicial notice (*In re J.W.* (2002) 29 Cal.4th 200, 211) and
3 statements in such analyses concerning the statutory objects and purposes which are in accord with a
4 reasonable interpretation of the statute are legitimate aids in determining legislative intent. (*Id.*; e.g., also,
5 *Southern Cal. Gas Co. v. Public Utilities Com.* (1979) 24 Cal.3d 653, 659; *Southern Pac. Co. v.*
6 *Industrial Acc. Com. (Mistretti)* (1942) 19 Cal.2d 271, 275.) According to the August 31, 2012 Senate
7 Floor Analysis, SB 863 “reflects a negotiated compromise between employers and employees to adopt a
8 substantial increase in permanent disability benefits (\$740 million), to ameliorate unexpected reductions
9 that flowed from the 2004 reforms, balanced by substantial changes in the benefit delivery system to
10 eliminate waste, inefficiency, and other loopholes that result in unnecessary employer costs that go to
11 recipients other than injured workers.”⁷ The Senate Floor Analysis further states in part:

12 “Lien Reforms. The current lien system in workers’ compensation is out of control.
13 ... There are presently hundreds of thousands of backlogged liens, possibly in excess
14 of a million, and many of these are related to long-since closed cases.

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15 “[One example of] lien abuse is [that] it has become common for third parties to
16 purchase old receivables from providers, who often billed at (higher) usual and
17 customary rates but were properly paid according to established fee schedules. These
18 third parties then file liens in an effort to leverage settlements. Another example of
19 lien abuse involves a provider filing a lien for excessive amounts after being paid,
20 again with the hope of obtaining a settlement. Nuisance-value settlements are
21 rampant because the workers’ compensation courts simply don’t have time for these
22 minor matters when crucial right to benefits issues are the priority cases. To address
23 this growing volume of problem liens, the bill proposes to re-enact a lien filing fee, so
24 that potential filers of frivolous liens have a disincentive to file. ... The lien filing fee
25 is refundable if the lien-claimant prevails. In addition, for liens that are pending, ...,
26 the bill provides for the payment of an activation fee. Again, the purpose is to
27 provide a disincentive to file [sic] frivolous liens.”

23 Therefore, when it adopted lien filing and activation fees, the Legislature’s purposes were to overhaul a
24 “lien system [that] is out of control,” to diminish the burden on the workers’ compensation system of
25 “hundreds of thousands of backlogged liens,” and to curtail “lien abuse.” These legislative purposes

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27 ⁷ http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0851-0900/sb_863_cfa_20120831_175219_sen_floor.html

1 would be frustrated if individuals and entities who would otherwise have to pay lien filing and activation
2 fees could avoid them by the simple stratagem of filing a petition for costs. If such a maneuver were
3 countenanced, it would not ameliorate the problems the Legislature was attempting to address. Instead, it
4 would merely shift those problems from liens to petitions for costs.

5 A lien claimant has an absolute right to withdraw its lien (see Cal. Code Regs., tit. 8, § 10770(f))
6 and may do so if it wishes to avoid paying the lien activation fee. However, in doing so, it also
7 relinquishes its right to invoke the jurisdiction of the WCAB to recover any expenses claimed by the lien.
8 A lien claimant cannot circumvent the statutory scheme established by the Legislature, including the
9 requirement to pay a lien activation fee, by withdrawing its lien and refileing it as a petition for costs.

10 **CONCLUSION**

11 In workers' compensation cases, it is not uncommon to provide that newly stated judicial rules or
12 newly stated judicial interpretations of statutes shall be applied prospectively only. (*Messele v. Pitco*
13 *Foods, Inc.* (2011) 76 Cal.Comp.Cases 1318, 1320 (Appeals Board en banc); *Farris v. Industrial Wire*
14 *Products* (2000) 65 Cal.Comp.Cases 824, 832 (Appeals Board en banc).)

15 Here, at the time New Age withdrew its medical-legal lien claim and instead filed its second
16 petition for costs, it was uncertain how SB 863 would be interpreted and there was no binding authority
17 declaring whether or not New Age's action was permissible.

18 Given the uncertainty in the law at the time, and given that no order has issued formally
19 dismissing New Age's withdrawn lien claim, we will affirm the denial of its petition for costs, but deem
20 its lien to be reinstated. This reinstatement approach shall be followed in all similar cases in which, on or
21 before the date of this decision, a lien was withdrawn, it was not formally dismissed, and a petition for
22 costs was filed. However, our binding en banc decision will apply prospectively to any lien withdrawals
23 and/or petitions for costs filed after the issuance date of this decision.

24 We emphasize that, although we are reinstating New Age's lien claim, we are not mandating that
25 it must now pay the lien activation fee. None of the triggering events under section 4903.06 for payment
26 of the lien activation fee have yet occurred in this case. If New Age elects to pursue its lien, it must pay
27

1 the lien activation fee as required by section 4903.06. If it elects not to pay the fee, and no triggering
2 event occurs in the interim, its lien will be dismissed by operation of law by January 1, 2014.

3 As to other improper petitions for costs filed at the trial level, each WCJ may exercise his or her
4 discretion to: (1) issue an order dismissing the petition for costs; (2) take action when the case in which
5 the petition was filed comes on calendar; (3) let a petition lay indefinitely dormant if a DOR is never
6 filed; or (4) take any other action the WCJ deems appropriate.

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1 For the foregoing reasons,

2 **IT IS ORDERED**, as the Appeals Board's Decision After Reconsideration (En Banc), that the
3 February 6, 2013 Order is **AFFIRMED**.

4 **WORKERS' COMPENSATION APPEALS BOARD**

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6 /s/ *Ronnie G. Caplane*
RONNIE G. CAPLANE, Chairwoman

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

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11 /s/ *Alfonso J. Moresi*
ALFONSO J. MORESI, Commissioner

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14 /s/ *Deidra E. Lowe*
DEIDRA E. LOWE, Commissioner

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17 /s/ *Marguerite Sweeney*
MARGUERITE SWEENEY, Commissioner

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

21 **5/7/2013**

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

24 **NEW AGE IMAGING, INC.**
25 **STACEY TOKUNAGA**
26 **ROBIN JACOBS**

27 **MH/NPS/abs**