

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **ROGELIO CORNEJO,**

5 *Applicant,*

6 **vs.**

7 **YOUNIQUE CAFE INC.; ZENITH**
8 **INSURANCE COMPANY,**

9 *Defendants,*

10 **WESTERN IMAGING SERVICES, INC.,**

11 *Lien Claimant.*

Case No. ADJ9351964
ADJ9351965
(Los Angeles District Office)

OPINION AND DECISION
AFTER RECONSIDERATION
(Appeals Board en banc)

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13 We previously granted defendant's petition for reconsideration of the en banc December 22, 2015
14 Opinion And Decision After Reconsideration (Decision) of the Appeals Board in order to further study
15 the record and issues.¹ It was held in the Decision that Chapter 20 of Division 8 of the Business and
16 Professions Code (Chapter 20) by its own terms does not apply to a lien claimant seeking to recover copy
17 service fees that are medical-legal expenses under Labor Code section 4620(a) when the lien claimant is
18 an agent and/or independent contractor of a member of the State Bar at the time the documents are
19 photocopied. It was further held in the Decision that when a lien claimant makes an un rebutted prima
20 facie showing that it is an agent and/or independent contractor of a member of the State Bar at the time
21 the documents are photocopied, proof of compliance with the registration and bonding provisions of
22 Business and Professions Code sections 22450 and 22455 is not required.

23 Defendant contends in its Petition For Reconsideration (Petition) that Business and Professions
24 Code section 22451(b) should not be construed to apply to agents and independent contractors of a
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26 ¹ Although reconsideration was granted to further study the record and issues, the December 22, 2015 Decision remains in
27 effect unless or until it is rescinded. Chairwoman Caplane earlier recused herself from further participation in this case.

1 member of the State Bar who are paid for photocopying documents, and should be construed to apply
2 only to photocopiers that are part of an attorney's office staff.

3 An answer was received from lien claimant Western Imaging Services, Inc., (WIS).

4 We have carefully reviewed the record and considered the December 22, 2015 Decision,
5 defendant's Petition, and lien claimant's answer. The December 22, 2015 Decision is affirmed as the
6 Decision After Reconsideration for the reasons stated in the Decision, which is incorporated by this
7 reference, and for the reasons below.

8 DISCUSSION

9 Defendant states in the Petition that it has "nothing to add" to the statement of facts in the
10 Decision and those facts are not repeated herein. (Petition, 2:2.) In essence, the Appeals Board found
11 that WIS was an agent or independent contractor of a member of the State Bar, Jonathan C. Rosen, Esq.,
12 when it photocopied the documents in this case.

13 Defendant contends that the exemption described in Business and Professions Code section
14 22451(b) should not apply to WIS because its "sole business is to photocopy documents in return for
15 payment."² (Petition 2:21.)

16 We find no merit in defendant's contention. As set forth in our Decision, Business and
17 Professions Code section 22451(b) plainly states that Chapter 20 "does not apply" to "[a] member of the
18 State Bar or his or her employees, agents, or independent contractors." Nothing in the statute limits that
19 exemption when the agent or independent contractor receives payment for photocopying the documents.
20 Defendant's argument that the Legislature must have intended something other than what is plainly
21 stated in Business and Professions Code section 22451(b) is not persuasive.

22 Defendant asserts that statutory exemptions are to be narrowly applied, citing *National City v.*
23 *Fritz* (1949) 33 Cal.2d 635 (*National City*), and argues that applying Business and Professions Code
24 section 22451(b) as written will "cause the exemption to swallow the rule by allowing all professional
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26 ² Defendant's assertion of fact concerning lien claimant's "sole business" is not evidenced in the record in contradiction of
27 Appeals Board Rules of Practice and Procedure, Rule 10842(b), which requires that a petition "shall support its evidentiary
statements by specific references to the record." (Cal. Code Regs., tit. 8, § 10842(b).) Nevertheless, that assertion and other
unsupported assertions of fact made by defendant in the Petition are addressed for purposes of argument.

1 photocopiers to avoid...registration...by virtue of performing their work at an attorney's behest."
2 (Petition, 6:7-8.) While it may be that statutory exemptions are to be narrowly applied, the language we
3 construe in this case is not ambiguous, unlike the word "utility" which was construed by the Court in
4 *National City* to not include a sewer system. In this case, the language of Business and Professions Code
5 section 22451(b) evidences an intent by the Legislature to make a broad exemption from Chapter 20 for
6 all "employees, agents, or independent contractors" of a member of the State Bar regardless of whether
7 they are paid for photocopying the documents or are engaged in photocopying as a business. As
8 discussed in the Decision, construing the language as defendant urges would allow objection to the
9 production of documents only because the photocopier intends to seek payment for performing that
10 service. Such an outcome would be contrary to the apparent purpose of the broad statutory exemption,
11 which assures documents are provided to the attorney's agent for photocopying without impediment or
12 objection so that the attorney may properly represent his or her client.

13 Defendant acknowledges in the Petition that there is "no expressed limitation to the nature, scope
14 or duration of the contractual relationship between attorney and contractor/agent" in the statute. (Petition
15 6:1-2.) Nevertheless, it is argued that such a limitation should be implied when an agent or independent
16 contractor is compensated for photocopying documents. While this would allow defendant to avoid
17 paying the reasonable medical-legal cost of photocopying documents, there is nothing in the statute that
18 supports construction of the language in Business and Professions Code section 22451(b) contrary to its
19 plain meaning.

20 It is reasonable to infer that an independent contractor will seek payment for photocopying
21 documents for members of the State Bar. The construction of the statute argued for by defendant would
22 effectively eliminate the Business and Professions Code section 22451(b) exemption for all "independent
23 contractors" of members of the State Bar despite the fact they are expressly identified in the statute as
24 exempt. It is contrary to established rules of statutory construction to give no effect to words in a statute,
25 and we reject defendant's argument that we should do that with Business and Professions Code section
26 22451(b). (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382 [58 Cal.Comp.Cases 286];
27 *Smith v. Workers' Comp. Appeals Bd.* (2009) 46 Cal.4th 272 [74 Cal. Comp. Cases 575].)

1 Defendant argues that Business and Professions Code section 22451(b) should not apply to WIS
2 because when it photocopied the documents it was acting as applicant's agent, and not the agent of
3 applicant's attorney. (Petition, section II, 4:16-6:22.) Defendant's assertion about the relationship of
4 lien claimant to applicant is incorrect. The photocopying was done to benefit applicant, but it was
5 performed at the behest and direction of his attorney, as shown by the evidence and as discussed in the
6 Decision. An attorney acts as an officer of the court while representing a client and has independent
7 authority to take actions necessary or expedient for the advancement of the client's interests and to
8 accomplish the purpose of the representation. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396;
9 *Redsted v. Weiss* (1945) 71 Cal.App.2d 660.) However, the attorney's implicit authority does not include
10 the power to enter into contracts on behalf of the client, even in connection with pending litigation. (*Id.*;
11 *Wilson v. Eddy* (1969) 2 Cal.App.3d 613, 618 ["[A]bsent express authority, it is established that an
12 attorney does not have implied plenary authority to enter into contracts on behalf of his client"]; *Nellis v.*
13 *Massey* (1952) 108 Cal.App.2d 724.) In this case, it was correctly found in the Decision that lien
14 claimant photocopied the documents as an agent or independent contractor of applicant's attorney and
15 the reasonable cost of the photocopying is a medical-legal expense.

16 Defendant's argument that Business and Professions Code section 22451(b) exemption only
17 "makes sense" if the photocopier is "a member of the attorney's office staff" is contradicted by the
18 Legislature's express inclusion of "independent contractors" within the exemption. (Petition 11:12-14.)
19 An "independent contractor" by definition is not a "member of the attorney's office staff." (See e.g. Lab.
20 Code, § 3353; *State ex rel. Dept. of California Highway Patrol v. Superior Court* (2015) 60 Cal.4th
21 1002, 1014 [80 Cal.Comp.Cases 227]; *S.G. Borello & Sons v. Department of Industrial Relations* (1989)
22 48 Cal.3d 341 [54 Cal.Comp.Cases 80], and other cases cited in the Decision.)

23 Defendant asserts that licensure as a professional photocopier helps ensure the confidentiality of
24 documents being photocopied. (Petition, 12:13-16.) While it is not unreasonable to infer that concerns
25 about the confidentiality of documents contributed to the Legislature's decision to adopt the registration
26 provisions in Chapter 20, this does not change the fact that Business and Professions Code sections
27 22450 and 22451 plainly state that Chapter 20 "does not apply" when the "person who for compensation

1 obtains or reproduces documents authorized to be produced...and who, while engaged in performing that
2 activity, has access to the information contained therein” is “[a]member of the State Bar or his or her
3 employees, agents, or independent contractors.” (Bus. & Prof. §§ 22450, 22451(b).) The statutory
4 language must be construed as it is written, not as defendant wishes it were written.

5 In addition, as discussed in the Decision, there is a significant expectation that members of the
6 State Bar will select employees, agents, and independent contractors that adhere to the rules concerning
7 confidentiality. In the absence of any evidence of deviation from those rules of confidentiality by
8 applicant’s attorney or by lien claimant, there is no issue of confidentiality to address in this case.

9 In the Decision it was noted that Evidence Code section 1158 requires that certain medical
10 providers “shall make all of the patient’s records...available for inspection and copying by the [patient’s]
11 *attorney at law or his, or her, representative*, promptly upon the presentation of the written
12 authorization,” and that this provision assures that documents are produced regardless of the identity of
13 the attorney’s representative. (Italics added.)

14 Evidence Code section 1158 further provides in pertinent part as follows:

15 No copying may be performed by any medical provider or employer
16 enumerated above, or by an agent thereof, when the requesting attorney has
17 employed *a professional photocopier or anyone identified in Section 22451*
18 *of the Business and Professions Code* as his or her representative to obtain
or review the records on his or her behalf. The presentation of the
authorization by the agent on behalf of the attorney shall be sufficient proof
that the agent is the attorney’s representative. (Italics added.)

19 Defendant argues that the reference to “a professional photocopier or anyone identified Section
20 22451 of the Business and Professions Code” in Evidence Code section 1158 is evidence of “a legislative
21 intent that professional photocopiers and those persons who are exempt from registration cannot be the
22 one and the same.” (Petition 14:5-9.) Defendant’s argument fails to recognize that the apparent purpose
23 of the disjunctive use of the word “or” in the Evidence Code section 1158 reference to a “professional
24 photocopier or anyone identified in Business and Professions Code section 22451” is to assure that the
25 provider “shall make all of the patient’s records...available for inspection and copying” to the attorney’s
26 representative, regardless of the status of the requester. As discussed in the Decision, the word “or” in
27 Business and Professions Code section 22451(b) accomplishes that same purpose by assuring that

1 documents are produced without objection based upon the status of the photocopier regardless of whether
2 the photocopier is an employee, or an agent, or an independent contractor, or both an agent and
3 independent contractor of the member of the State Bar.

4 Of more relevance in considering the breadth of the exemption provided in Business and
5 Professions Code section 22451(b) is the fact that the phrase “member of the State Bar or his or her
6 employees, agents, or independent contractors” is used only in that single statutory provision and in no
7 other. Indeed, the phrase “employee, agent, or independent contractor” is only found in two statutory
8 provisions in addition to Business and Professions Code section 22451(b), and in both those instances it
9 is used in a way that assures broad application of the statutory provisions. (Bus. & Prof., §§ 17537.1
10 [addressing representations made to the public by “any person, or an employee, agent or independent
11 contractor employed or authorized by that person”] and 17537.4 [regarding any “person making an offer
12 subject to Section 17537 or to subdivision (a) of Section 17537.1, or any employee, agent, or
13 independent contractor employed or authorized by that person”].)

14 Moreover, the Legislature provides much narrower exemptions for attorneys in several other
15 Business and Professions Code sections. These include Business and Professions Code section 7522(e),
16 which exempts “[a]n attorney at law in performing his or her duties as an attorney at law” from private
17 investigator licensure; Business and Professions Code section 10133(a)(3), which exempts “[a]n attorney
18 at law in rendering legal services to a client” from the need for a real estate license; Business and
19 Professions Code section 10133.1(a)(5), which exempts “[a]ny person licensed to practice law in this
20 state, not actively and principally engaged in the business of negotiating loans secured by real property,
21 when that person renders services in the course of his or her practice as an attorney at law” from certain
22 Civil Code provisions; and Business and Professions Code section 10151(d)(1), which waives certain
23 requirements for taking a real estate license test for “[a]n applicant who is a member of the State Bar of
24 California.” (See also Bus. & Prof., §§ 10151(b) [real estate broker “[t]he commissioner shall waive the
25 requirements of this section for an applicant who is a member of the State Bar of California and shall
26 waive the requirements for which an applicant has successfully completed an equivalent course of study
27 as determined under Section 10153.5]; 22449(a) [“[i]mmigration consultants, attorneys, notaries public,

1 and organizations accredited by the United States Board of Immigration Appeals shall be the only
2 individuals authorized to charge clients or prospective clients fees for providing consultations, legal
3 advice, or notary public services...]; 22258(a)(2) [exemption for tax preparers “[a] person who is an
4 active member of the State Bar of California”].)

5 The narrow exceptions provided for members of the State Bar in these numerous other Business
6 and Professions Code provisions is in sharp contrast to the broad exemption included in Business and
7 Professions Code section 22451(d), and shows that the Legislature could have crafted a narrow exception
8 in Business and Professions Code section 22451(d) if that was its intention. However, that is not what it
9 did. Instead, the Legislature utilized broad language that encompasses all “employees, agents or
10 independent contractors” who photocopy documents for a member of the State Bar.

11 Defendant argues in the alternative that if Business and Professions Code section 22451(b)
12 applies to WIS it cannot also apply to its employees who photocopied the documents because there is an
13 exemption in Business and Professions Code section 22451(d) for “[a]n employee or agent of a person
14 who is registered under this chapter” and WIS was not registered under Chapter 20. Defendant’s view of
15 the status of WIS employees that may have been involved in photocopying the documents in this case is
16 incorrect, and Business and Professions Code section 22451(d) does not apply. To the contrary, Business
17 and Professions Code section 22451(b) applies to anyone who acts as an agent of a member of the State
18 Bar when photocopying documents and that exemption extends to any employees of WIS who may have
19 been involved in the photocopying.

20 Lastly, defendant argues about what it believes the law would require if the photocopying was
21 performed after July 1, 2015. However, those arguments are irrelevant and are not further addressed
22 because all of the photocopying in this case occurred before July 1, 2015.

23 The December 22, 2015 Decision is affirmed.

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1 For the foregoing reasons,

2 **IT IS ORDERED** as the en banc Decision After Reconsideration of the Workers' Compensation
3 Appeals Board that the December 22, 2015 Opinion And Decision After Reconsideration of the Workers'
4 Compensation Appeals Board (en banc) is **AFFIRMED**.

5 **WORKERS' COMPENSATION APPEALS BOARD (EN BANC)**

6
7 /s/ Frank M. Brass

8 **FRANK M. BRASS, Commissioner**

9
10 /s/ Deidra E. Lowe

11 **DEIDRA E. LOWE, Commissioner**

12 /s/ Marguerite Sweeney

13 **MARGUERITE SWEENEY, Commissioner**

14 /s/ Katherine A. Zalewski

15 **KATHERINE A. ZALEWSKI, Commissioner**

16
17 /s/ Jose H. Razo

18 **JOSÉ H. RAZO, Commissioner**

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

21 **4/13/2016**

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

24 **WESTERN IMAGING SERVICES, INC., ATTN: CHRISTOPHER FRAGOZA**
25 **JONATHAN C. ROSEN**
26 **CHERNOW LIEB**

27 **JFS/abs**