LIU, J.

COPY

S204387

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

AUG 3 1 2012

Frank A. McGuire Clerk

Deputy

CRC 8.25(b)

ELAYNE VALDEZ,

Petitioner,

v.

WORKERS' COMPENSATION APPEALS BOARD; WAREHOUSE DEMO SERVICES; ZURICH NORTH AMERICA

Respondents.

REPLY TO ANSWER TO PETITION FOR REVIEW

Of a Published Decision by the Court of Appeal
Second Appellate District, Case No. B237147
(W.C.A.B. en banc decision, Case No. ADJ7048296)

GRANCELL, LEBOVITZ, STANDER, REUBENS and THOMAS
Timothy E. Kinsey (Bar No. 155415)
Stewart R. Reubens (Bar No. 145672)
7250 Redwood Boulevard, Suite 370
Novato, California 94945
Telephone: (415) 892-7676
Facsimile: (415) 892-7436

SEDGWICK LLP
Christina J. Imre (Bar No. 96496)
Michael M. Walsh (Bar No. 150865)
801 S. Figueroa Street, 18th Floor
Los Angeles, CA 90017
Telephone: (213) 426-6900
Facsimile: (213) 426-6921

Attorneys for Respondents
WAREHOUSE DEMO SERVICES; ZURICH NORTH AMERICA, ADMINISTERED BY ESIS

TABLE OF CONTENTS

Page

INTRODUCTION 1

LEGAL DISCUSSION 4

I. IN HER ZEAL TO DEFEND THE OPINION'S REWRITING OF THE RELEVANT STATUTES, VALDEZ MISCHARACTERIZES MPNS. 4

A. Valdez Offers Policy Arguments Properly Addressed To The Legislature. 4

B. The Attempt By the Court of Appeal and Valdez to Effectively Gut Section 4616.6 And Disregard The Legislative Intent That MPNs Be The Exclusive Means Of Diagnosis and Treatment Are Misguided. 7

C. The Argument That Employers Benefit By Having Employees Pay For Part Of Their Treatment Is Misleading And Contributes To The Current Crises Of A Crushing Number Of Lien Claims 10

II. VALDEZ'S MISLEADING RELIANCE ON SECTION 4605 REVEALS A CONFLICT BETWEEN PUBLISHED CASES, FURTHER DEMONSTRATING THE NEED FOR REVIEW. 12

A. The Cases Cited By Valdez Confirm Section 4605 Does Not Provide A Basis For Amending the MPN System And Reveals A Conflict Between Published Opinions. 12

B. In Any Case, Valdez And Her Doctors Confirmed That Section 4605 Has No Application In This Case. 14

CONCLUSION 15

CERTIFICATION OF WORD COUNT CALIFORNIA RULES OF COURT, RULE 8.486(A)(6) 16

TABLE OF AUTHORITIES

Page(s)

Cases

Bell v. Samaritan Medical Clinic, Inc. (1976)
60 Cal. App. 3d 486 ..... 13, 14

Charter Oak Unified Sch. Dist. v. Workers' Comp. App. Bd. (2011)
76 Cal. Comp. Cases 1083 12

Knight v. United Parcel Service (2006)
71 Cal. Comp. Cases 1423 11

Perillo v. Picco & Presley (2007)
157 Cal.App.4th 914 ..... 13, 14

Tenet/Centinela Hosp. Medical Ctr. v. Workers' Comp. Appeals Bd. (2000)
80 Cal.App.4th 1041 9

Tomlinson v. Superior Court (1944)
66 Cal.App.2d 640 11

Valdez v. Warehouse Demo Services (2011)
76 Cal.Comp.Cases 970 ("*Valdez II*") 8, 9

Statutes and Rules

Cal. Code Regs., tit. 8, § 9767.1 4

Cal. Code Regs., tit. 8, § 9767.14 4

Evidence Code § 1151 9

Evidence Code § 352 9

Evidence Code § 954 9

Labor Code § 4061 9

Labor Code § 4062 9

Labor Code § 4600(d) 10

Labor Code § 4605 ..... passim

Labor Code § 4616 9

Labor Code § 4616.4 8

Labor Code § 4616.6 ..... passim

Labor Code § 5304 11

Labor Code § 5703 9

TABLE OF AUTHORITIES
(Continued)

Page(s)

Labor Code § 5703(a) 9

SB 899 3

Other Authorities

California Commission on Health and Safety and Workers' Compensation (CHSWC) 2011 Annual Report 4, 5, 10

CHSWC Liens Report 11

RAND, Medical Care Provided Under California's Workers' Compensation Program, Effects of the Reforms and Additional Opportunities to Improve the Quality and Efficiency of Care (2011) 6

INTRODUCTION

As of the filing of this Reply, no less than thirteen letters have been filed in support of the Petition for Review, with more likely on the way. This number includes five groups representing public entities, as well as employer and insurer groups. These amici represent an enormous number of organizations, both public and private, all of whom protest the horrendous implications of the Court of Appeal's opinion, an opinion which stands the Legislature's intent in creating Medical Provider Networks (MPN) on its head. Amicus CSAC, for example, represents 1,500 public entities, including 54 of California's 68 counties and 60% of California cities. (See CSAC amicus letter, filed 8/14/12, at 1-2.) Amicus PIPS (Protected Insurance Program for Schools and Community Colleges) represents 423 self-insured school districts. (See PIPS amicus letter, filed 8/23/12, at 1.) Many other public entities have also weighed in to express their deep concern over the ramifications of this published opinion. *The WCAB itself*, sitting en banc, has announced its fundamental disagreement with the opinion's conclusions and its implications. The opinion has attracted such a level of attention because it undermines the concept of MPNs – now a *core* part of the economical provision of workers' compensation benefits – at its very foundation. It threatens the continued ability of public and private entities to provide quality medical care at a *reasonable* cost, especially in these dark days of budget and service cuts.

Applicant Valdez's answer confirms that the court below ignored the Legislature's express intent to create MPNs as the exclusive means of diagnosing and treating occupational injuries. Indeed, Valdez's arguments confirm that the Court of Appeal effectively voided Labor Code section 4616.6, rendering this statute – which prohibits admission of medical reports by non-MPN physicians – a virtual nullity. As a result, the Court of

Appeal, and Valdez, reject both the majority opinion of the en banc WCAB and the statutory language that any medical reports obtained outside of a properly noticed MPN are inadmissible in workers' compensation proceedings, undermining this important statutory scheme at its foundation.

The effect of this erroneous published decision is significant. According to the Administrative Director of the Division of Worker's Compensation, MPNs provide *75-85%* of all treatment for occupational injuries. (WCAB Answer, at 2, filed 8/20/12.) California employers and insurers have depended for years on the MPN statutory provisions to provide reasonable medical care to their employees at a reasonable cost. The opinion has turned this process upside down, rendering the use of MPNs *optional* at the discretion of each employee or their counsel. As a result, employers will remain burdened with all of the restrictions inherent in operating an MPN, while employees will be free to abandon the statutory requirements whenever they can obtain a collateral litigation advantage.

Valdez freely admits that the opinion accomplished this result. She even advocates an MPN system in which employees only participate when they *choose*, free to abandon MPNs whenever they conclude an outside report will maximize their potential recovery. This directly undermines the express legislative goal of minimizing workers' compensation litigation and confirms Valdez's goal of thwarting the purpose of the statutory MPN provisions.

Valdez offers several policy arguments as to why the existing statutory and regulatory scheme is inadequate, ignoring the fact that the *Legislature* is the ultimate maker of policy, and enjoys plenary power over workers' compensation. Valdez relies on misleading statements about MPNs and a century old statute – Labor Code 4605 – which merely affirms an employee's right to consult a doctor at his or her own expense *outside of the workers' compensation system*, as a basis to overturn the MPN statutory

provisions enacted in 2003 and undermine the operation of MPNs. Setting aside that section 4605 has no application in this case, the authorities cited by Valdez demonstrate that section 4605 provides no exception to the MPN provisions or the exclusion provisions of section 4616.6. More importantly, the cases cited by Valdez conflict with the Court of Appeal here regarding the scope and meaning of section 4605, creating an additional reason for this Court to intervene.

The Legislature, exercising its plenary power to determine the requirements for workers' compensation benefits, established MPNs as the exclusive means of diagnosis and treatment. MPNs are described as one of the key reforms of SB 899 and they are now widely relied upon by California employers, both public and private. The opinion thwarts this beneficial reform, instead mandating a return to the failed and expensive practice of "dueling doctors."

Not only the WCAB itself, but literally thousands of public and private entities have chronicled not only the errors, but the serious ramifications of this wrongheaded opinion. Absent this Court's intervention, it will become the law of this state.

According to the CHSWC 2011 Annual Report, the Division of Workers' Compensation had only received *a total* of 246 complaints related to MPNs since January 2006, of which 242 were resolved and closed. (*Id.*, at 126.) This indicates a high level of success for the MPN program, particularly considering the 2008 surveys showing 80% of employees received treatment for occupational injuries through an MPN, and the WCAB's current report that this figure remains between 75% and 85%. (Administrative Director's Declaration at ¶ 5, at 3 [attached to WCAB Answer]; and Petition at 21.) If the issues offered by Valdez were valid or widespread, there would be far more complaints over five years.

Valdez also implausibly asserts that employers "hand pick" all MPN doctors, presumably implying that MPN doctors are biased, and then argues that employees should therefore be free to hire their own partisan experts to perpetuate the "dueling doctors" model that spawned so much costly and wasteful litigation. (Valdez Answer at 11; and see Petition at 21-22.) However, her underlying premise is demonstrably wrong. Valdez herself has a selection of over 90 different MPN facilities with the appropriate specialties within 30 miles of her house. (WCAB Record at 124-128.) To suggest that each individual doctor was "handpicked" for his or her philosophical bent is both absurd and impractical.[2] A RAND study found that "most MPNs are broad panels selected primarily to meet access requirements and provide fee-discounting opportunities."[3] It was Valdez, not Defendant, who used a handpicked partisan medical advocate.

---

[2] Similarly, the Joint Powers Authority for the San Diego and Imperial County Schools reports an MPN "with over 6,000 qualified doctors..." Also, the CHSWC 2011 Annual Report lists over 125 self-insured employers with at least 5,000 employees each, all covered by MPNs. (*Id.*, at 127-130.)

[3] RAND, Medical Care Provided Under California's Workers' Compensation Program, Effects of the Reforms and Additional

LEGAL DISCUSSION

I. IN HER ZEAL TO DEFEND THE OPINION'S REWRITING OF THE RELEVANT STATUTES, VALDEZ MISCHARACTERIZES MPNS.

A. Valdez Offers Policy Arguments Properly Addressed To The Legislature.

Apparently forgetting this Court's duty to enforce statutes as enacted, Valdez offers a series of policy criticisms of the MPN statutes, and how they are implemented, apparently in an effort to justify the Court of Appeal's action, which effectively amended, if not outright rewrote, the statutes at issue here. (Valdez Answer at 9-12.) These arguments should all be addressed to the Legislature, or the Administrative Director, so that they, and not the courts, can weigh the benefits of amending the statutory and/or regulatory scheme. In the meantime, this Court's intervention is needed to enforce the existing, and widely relied upon, MPN statutes.

In her argument, Valdez paints a misleading picture of the MPN system. First, Valdez disregards the Administrative Director's initial approval process, which involves a thorough review of the MPN application and the qualities of the proposed MPN, as described in the California Commission on Health and Safety and Workers' Compensation (CHSWC) 2011 Annual Report at pages 119-120.[1] (And see, Cal. Code Regs., tit. 8, § 9767.1 et. seq.) The 60-day limit to complete this review is simply a deadline. In any case, the Administrative Director has the continuing power to revoke or suspend an MPN if it fails to comply with statutory and regulatory requirements or the representations made in its application. (Cal. Code Regs., tit. 8, §9767.14.)

---

[1] This report is published at http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_AnnualReport2011.pdf.

Valdez also argues that the MPNs gives employers "the exclusive right to collect medical evidence," which must by countered by the employee's ability to hire partisan medical advocates. (Valdez Answer at 16.) This premise, too, is false. MPNs are required to have a sufficient number of doctors to provide each employee with a meaningful choice, and the employee can choose any suitable MPN doctor for treatment. Employ*ees* also have the exclusive right to obtain second and third opinions and seek an independent medical review to ensure their diagnosis and treatment are appropriate. (Petition at 17-18.) That Valdez complains about collecting "medical evidence" shows that she categorically rejects the express MPN goal of providing appropriate medical care while minimizing litigation.

Once the Legislature selected MPNs as the desired approach, it was simply practical to authorize employers to engage and contract with a proposed MPN, as they are obligated to pay for treatment. To counter this, the Legislature mandated a series of protections of employees' interests in the MPN statutes, ranging from controlling how doctors can be compensated, ensuring easy access to a meaningful selection of appropriate doctors, and a review process which only employees can invoke to ensure they receive proper diagnosis and treatment in the MPN. (Petition at 17-18.) The Legislature has carefully balanced the interests of employees, employers and the public good, and it is the duty of the courts to enforce this statutory scheme as enacted. This published opinion runs squarely counter to that salutary goal.

Opportunities to Improve the Quality and Efficiency of Care (2011) located at http://www.rand.org/content/dam/rand/pubs/monographs/2011/RAND_MG1144.pdf, at p. xvii.

B. The Attempt By the Court of Appeal and Valdez to Effectively Gut Section 4616.6 And Disregard The Legislative Intent That MPNs Be The Exclusive Means Of Diagnosis and Treatment Is Misguided.

Labor Code Section 4616.6 states in full:

> "No additional examinations shall be ordered by the appeals board and *no other reports shall be admissible [sic] to resolve any controversy arising out of this article*." (Emphasis added.)[4]

Since MPNs are meant to provide the exclusive means of diagnosis and treatment, and employees are required to treat within the MPN, any dispute over diagnosis and treatment is necessarily a "controversy arising out of this article." (Petition at 18-20.) Having apparently forgotten her own self-serving testimony, Valdez now argues that this section does not apply because "there was no dispute regarding diagnosis or treatment." (Valdez Answer at 19.) But she testified before the WCJ that the reason she changed doctors was because the treatment she was receiving was ineffective, or was even making her worse – thus, a dispute over the treatment she received in the MPN. (See, ex. 1 at 3:20-25, 4:4-5.) Instead of going to the MPN website to find another doctor, or talking to her existing doctor, Valdez followed counsel's direction to use a non-MPN doctor he handpicked. (Petition at 5-6.) Having done so, she submitted the outside doctor's report to support her temporary disability claim as if he were the primary treating physician. (E.g., WCAB Record at 57.)

As discussed in the Petition, the Court of Appeal addressed this issue by redefining the general term "report" in section 4616.6 as meaning only one specific report, among several, as described in a different MPN section. (Opinion at 7-8; Petition at 9 and 23-25.) In doing so, the Court of Appeal

[4] Unless noted, all statutory citations are to the Labor Code.

disregarded the express legislative intent regarding MPNs, and held that section 4616.6 only applies to that report which results from a completed independent medical review under section 4616.4. As discussed in the Petition, this strained interpretation ignores the plain statutory language and effectively nullifies section 4616.6. (Petition at 18-20 and 23-25.) No doubt in large part because employees are emboldened to abandon MPNs to pursue a litigious course, in more than seven years *not one independent medical review report has ever been issued*, and only twenty have even been applied for, despite the widespread use of MPNs. (Administrative Director's Declaration, ¶ 2, p. 2; and see *ante* at 5.) As a result, the Court of Appeal has effectively rendered section 4616.6 meaningless, while leaving employees free to choose a litigious course specifically rejected by the Legislature.

Valdez also argues that the outside reports are relevant, and are therefore admissible, citing cases predating the existence of MPNs and some individual administrative hearings which predate the WCAB's en banc *Valdez* opinions. (Valdez Answer at 14.) The former are irrelevant to the MPN statutes and the latter failed to fully adopt the new statutory scheme and were reversed by the en banc WCAB.[5] (See Petition at 7-9.) In any case, this simplistic argument ignores the Legislature's policy goals for MPNs, including cost controls and minimizing litigation, goals which require the *exclusive* use of the MPN process for the diagnosis and treatment of occupational injuries. (See, Petition at 13-20.) The exclusive use of MPNs is enforced by barring the admissibility of any reports obtained in violation of the MPN provisions. (*Valdez II*, 76 Cal.Comp.Cases 970, 971; § 4616.6.)

---

[5] Many of these same commissioners were later on the *Valdez* en banc panel, having reconsidered their position following a more detailed analysis.

Using the exclusion of potentially relevant documents to protect an important policy goal is accepted practice; indeed, much of the Evidence Code addresses the exclusion of relevant documents to support various policy goals. (E.g., attorney-client privilege [Evid. Code §954], subsequent remedial conduct [Evid. Code §1151], efficient use of court time [Evid. Code §352], etc.) The Legislature exercised its plenary powers in creating and enforcing MPNs by enacting the exclusion of outside reports to reach its policy goals.

Valdez, citing a WCAB dissent, incorrectly argues that the WCAB decisions below created the first exception to the general rule of section 5703, subdivision (a), which provides generally that the WCJ may consider medical reports. (Valdez Answer at 8.)[6] In fact, *Tenet/Centinela Hosp. Medical Ctr. v. Workers' Comp. Appeals Bd.* (2000) 80 Cal.App.4th 1041, 1048-1049, specifically excluded the medical reports of an examining physician because the applicant failed to follow the mandatory procedures of sections 4061 and 4062, as discussed in every opinion below. In any case, as noted above, excluding specific relevant documents to support an important policy goal is not uncommon, and section 4616.6 creates an exception to section 5703 whether or not any previous provision had done so. (Petition at 18-20.)

Finally, as explained in detail by the WCAB, section 4616.6 should not be read in isolation, but as part of a larger statutory scheme which includes not only the entire MPN program (§§ 4616, et seq.,), but also mandatory procedures for resolving medical-legal disputes, such as temporary disability (e.g., §§ 4061 and 4062). It was only after reviewing the entire statutory scheme that the WCAB concluded that the outside reports had to be excluded. (*Valdez II*, 76 Cal.Comp.Cases 970 at 973-974.)

---

[6] The Answer mistakenly refers to "5703(b)". (See, ex. 15 at 150:19-24.)

C. The Argument That Employers Benefit By Having Employees Pay For Part Of Their Treatment Is Misleading And Contributes To The Current Crises Of A Crushing Number Of Lien Claims.

Recognizing the legislative intent regarding MPNs, Valdez attempts to sidestep this fact by arguing that employers should be happy that employees are footing the bill for some of their medical treatment. (Valdez Answer at 2.) Valdez supports this with the novel argument that MPNs were only intended to control the employer's medical expenditures, but not limit the related medical treatment obtained at the employee's expense. This theory is novel because it is only mentioned in the briefs in this case, and it is contrary to both the statutory scheme and the legislative intent. Moreover, it is not consistent with the actual experience of employees treating outside of an MPN. Perhaps this is why the possibility of employees paying for treatment is not suggested in any way in the detailed discussion on MPNs in the CHSWC 2011 Annual Report (See pages 119-130.)

In any case, Valdez conveniently forgets that an employee would only seek outside treatment if doing so would give the employee a tactical advantage in litigating the workers' compensation claim.[7] This is directly contrary to the express goal of minimizing costly litigation and directly increases employer costs by returning to the failed litigation model of "dueling doctors" whenever employees (or their counsel) feel it is in their interest to do so. (Petition at 21-22.) Ultimately, the premise is merely a ruse, as employees generally have no intent to actually pay the outside

---

[7] There is no issue here about a preexisting relationship with a family doctor. There are already provisions for an employee to predesignate such a physician for treatment, in which case the employer would still cover that expense. (See, §§ 4600, subd. (d); Petition at 14 and 17.)

doctor. Instead, this maneuver generates a medical lien, resulting in further litigation.

As a result, Valdez's argument raises an additional adverse consequence of the opinion which further compels the need for review: increased litigation over outstanding liens. The "Liens Report" issued by the CHSWC on January 5, 2011[8] reports that this crises is causing "serious distress" in the workers' compensation system, consuming "about 35% of the court's calendar" at an administrative expense to "California employers and insurers" of "roughly $200 million per year." (*Id.*, at 1.) At the time of the report, the lien backlog of unprocessed liens at the Los Angeles office alone *was growing* at about 3,700 to 4,000 lien claims per month. (*Id.*, at 8.)[9] As a result, the WCAB is forced to globally coerce settlements, resulting in the widespread reduction of valid claims and the payment of invalid ones, thus universally undermining the system while significantly increasing costs. (*Id.*, at 10-11.) Importantly, the report notes that MPNs "largely avoid lien disputes arising from in-network providers. Where MPNs exist, the largest share of medical liens arises from out-of network providers." (*Id.*, at 2; and see § 5304; *Tomlinson v. Superior Court* (1944) 66 Cal.App.2d 640, 643-644 [WCAB has no jurisdiction if the employer and medical provider have an existing fee agreement].)

Once the notice requirements for an MPN are confirmed, the employer has no obligation to pay for treatment out of compliance with the MPN process. (*Knight v. United Parcel Service* (2006) 71 Cal. Comp. Cases 1423, 1434-1435, Appeals Board en banc; and see *Charter Oak Unified Sch. Dist. v. Workers' Comp. App. Bd.* (2011) 76 Cal. Comp. Cases

---

[8] The report is published at http://www.dir.ca.gov/chswc/Reports/2011/CHSWC_LienReport.pdf.

[9] At that time, it was estimated that the Los Angeles office had about 800,000 pending lien claims. (*Id.*, at 9.)

1083, 1086-1087.) However, the outside doctor still wants payment, and the employer is generally the only possibility of this, despite the misleading arguments of Valdez. Thus, the outside doctor has little choice but to challenge the MPN's validity in the hopes of forcing a settlement and receiving some compensation. This scenario is reportedly not uncommon, as applicants repeatedly purchase reports from non-MPN doctors accustomed to being paid on a lien basis and who have no convenient means of determining whether a valid MPN applies until it's too late.

This problem was largely resolved by the en banc WCAB decisions below, since there is little motivation to obtain an outside report that is inadmissible. However, by effectively amending section 4616.6 to allow admission of outside reports, the Court of Appeal has created an incentive to obtain outside reports whenever applicants perceive a litigation advantage in doing so. As here, this creates additional liens which providers will pursue regardless of the MPN in the hopes of making some recovery. This will only further exacerbate the burden of lien litigation despite the statutory plan to alleviate this problem.

II. VALDEZ'S MISLEADING RELIANCE ON SECTION 4605 REVEALS A CONFLICT BETWEEN PUBLISHED CASES, FURTHER DEMONSTRATING THE NEED FOR REVIEW.

A. The Cases Cited By Valdez Confirm Section 4605 Does Not Provide A Basis For Amending the MPN System And Reveals A Conflict Between Published Opinions.

As discussed in the Petition, and the briefs below, section 4605 does nothing more than confirm that an employee can obtain medical treatment *outside of the workers' compensation system* at the employee's own expense. (Petition at 25-27.) Section 4605 makes no mention of admissibility, or of using any resulting reports in any way to determine

workers' compensation benefits. Nor does section 4605 limit the Legislature's plenary power to require treatment within the MPN in order to received workers' compensation benefits. In any case, insofar as sections 4605 and 4616.6 conflict, as the newer and more specific statute – section 4616.6 – prevails. (*Id.*, and at 10-13.)

Indeed, the cases cited by Valdez confirm that any medical treatment sought under section 4605 is separate and distinct from any workers' compensation benefits. For example, *Bell v. Samaritan Medical Clinic, Inc.* (1976) 60 Cal. App. 3d 486, states that treatment legitimately sought under section 4605 is "in addition to, or independent of, that for which his employer is responsible...," noting that the expenses for such treatment are therefore "not within the jurisdiction of the Board." (*Id.*, at 490.) Since the WCAB has exclusive jurisdiction over industrial injuries and their resulting costs, this confirms that treatment sought under section 4605 is wholly outside of the workers' compensation system. On a related issue, *Perillo v. Picco & Presley* (2007) 157 Cal.App.4th 914 held that section 4605 only provides for self-procured medical treatment, and not for medical-legal reports such as the one Valdez offered here. (*Id.*, at 936.)

While *Bell* and *Perillo* each address a rejected attempt by treating doctors to collect fees from the employee, they each address the scope of section 4605. Insofar as the Court of Appeal here assumes that applicants are free to seek their own treatment and obtain medical-legal reports for acknowledged industrial injuries under 4605, this assumption conflicts with the holdings in *Bell* and *Perillo*. This creates a conflict between these published opinions and provides further grounds for review by this Court.

Importantly, employees have no inherent or constitutional right to workers' compensation benefits, but have only those rights which the Legislature has enacted by statute, subject to the conditions provided. (Petition, at 10-13.) When an approved MPN is properly noticed, one such

condition on receiving benefits is that all diagnosis and treatment for the claimed injury must comply with the MPN provisions, and any additional reports are excluded under section 4616.6. (*Id.*, at 13-18.) While Valdez believes she can design a superior system, that is not her prerogative.

B. In Any Case, Valdez And Her Doctors Confirmed That Section 4605 Has No Application In This Case.

In a surprising demonstration of misleading opportunism, Valdez continues to argue that section 4605 justifies the admissibility of a medical report purchased from her counsel-designated doctor. However, even if the Court accepted all of her misplaced arguments regarding section 4605, and it shouldn't, section 4605 has no application here because Valdez did not retain any doctors outside of the workers' compensation system at her own expense, as required by section 4605.

Instead, from her first attempted designation of an outside doctor, Valdez demanded that Defendant pay all medical expenses, and made no suggestion that she intended to contribute in any way to this cost. (Ex. 2, at 7 [note: § 4605 is not mentioned in counsel's letter].) Consistent with this, her outside doctors submitted reports purporting to be the primary treating physician for purposes of workers' compensation benefits, and filed liens with the WCAB for payment as the designated treating doctor, effectively confirming that Valdez had made no arrangements to pay these doctors "at [her] own expense." (E.g., WCAB Record at 57, 63, and 85; § 4605.) Contrary to the pronouncements in *Bell* and *Perillo*, the reports offered by Valdez are not separate from her employer's obligations, nor are they limited to medical treatment. As such, the premise of section 4605 has not been met – making the statute inapplicable here. Moreover, insofar as the Court of Appeal here relied on section 4605, this was based on the false conclusion that the section applied to this case at all.

CONCLUSION

In order to provide reasonable medical care for occupational injuries, while not overly oppressing California employers, particularly public entities, the Legislature created MPNs to balance the interests of all parties and to provide the exclusive means of medical diagnosis and treatment within the workers' compensation system. For this balancing process to work, the Legislature made the MPN process mandatory once approved, as described by the thorough analysis of the en banc WCAB. While the Court of Appeal and Valdez may disagree with these policy decisions, its decision to amend the MPN statutes by means of a strained statutory reinterpretation is inappropriate, threatens to undermine the MPN process and can only serve to increase related litigation, as the several amicus letters attest. The intervention of this Court is needed to provide badly needed guidance and to protect the statutory scheme as enacted.

DATED: August 30, 2012

Respectfully submitted,

GRANCELL, LEBOVITZ, STANDER, REUBENS and THOMAS

SEDGWICK LLP

By: _____

Christina J. Imre
Michael M. Walsh
Attorneys for Respondent
WAREHOUSE DEMO SERVICES; ZURICH NORTH AMERICA, ADMINISTERED BY ESIS

CERTIFICATION OF WORD COUNT
CALIFORNIA RULES OF COURT, RULE 8.486(a)(6)

The Petition for Review was produced on a computer, using the word processing program WordXP, and the Font is 13-point Times New Roman.

According to the word count feature of the program, this document contains 4,199 words, including footnotes, but not including the table of contents, table of authorities, and this certification

DATED: August 30, 2012

Michael M. Walsh

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Sedgwick LLP, 801 South Figueroa Street, 19th Floor, Los Angeles, CA 90017-5556. On August 30, 2012, I served the within document(s):

REPLY TO ANSWER TO PETITION FOR REVIEW

☐ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.

☑ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 30, 2012, at Los Angeles, California.

Barbara Fergerson

SERVICE LIST

Ellen R. Serbin John Mendoza Perona, Langer, Beck, Serbin & Mendoza 300 East San Antonio Drive Long Beach, California 90807-0948	Stuart I. Barth Goldflam & Barth 1644 Wilshire Blvd., Suite 200 Los Angeles, CA 90017
Workers' Compensation Appeals Board Respondent P.O. Box 429459 San Francisco, CA 94142-9459 Contact Name: Attn.: Writs	Michael A. Marks Law Offices of Saul Allweiss 18321 Ventura Blvd., Suite 500 Tarzana, CA 91356
Timothy E. Kinsey Sam L. Lebovitz Stewart Ralph Reubens Grancell, Lebovitz, Stander, Reubens and Thomas 7250 Redwood Blvd., Suite 370 Novato, CA 94945	Timothy Kinsey Sam L. Lebovitz Stewart Ralph Reubens Grancell, Lebovitz, Stander, Reubens and Thomas 600 South Main Street, 10th Floor Orange, CA 92868
Charles Edward Clark 301 E. Colorado Blvd., Suite 807 Pasadena, CA 91101	Charles R. Rondeau The Rondeau Law Firm 2677 North Main Street, Suite 225 Santa Ana, CA 92705
Clerk of Court Court of Appeal State of California, Second Appellate District, Division Seven Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013	