Center" and Dr. Calaycay and a copy of a fictitious business-name statement filed with the county clerk indicating that Pomona Surgery Center, Inc. was doing business under the fictitious name of Ambulatory Surgical Center of Pomona.

The panel concluded that it was unable to determine from this record whether the lien claimant was asserting that (1) it was a properly accredited outpatient setting where surgeries are performed as allowed by *Health and Safety Code §1248(c)* and *Business and Professions Code §2285*—for which a fictitious-name permit from the MBC was not required—or (2) it provided medical treatment as a clinic within the definition of *Health and Safety Code §§1200* and *1204(b)(1)*—in which case it needed to possess both a license and a fictitious-name permit from the MBC. Even if lien claimant were an outpatient setting not needing a license from the MBC, the record was unclear on whether the AAAHC accreditation in evidence properly applied to it. To clarify these matters, the record required further development, so the panel ruled that the case had to be returned to the trial level for further proceedings and a new decision by the WCJ, allowing an adequate record to be developed and affording the parties a full opportunity to produce evidence on the issues discussed above and any other issues deemed relevant.

Accordingly, as the Board's decision after reconsideration, the WCJ's June 28, 2006 findings and order was rescinded and the case was returned to the trial level for further proceedings and decision by the WCJ consistent with the panel opinion.

Board Upholds Sanctions Against Insurer Payable to QME

Insurer Offered No Reasonable Excuse for Failing to Pay Enough or Attend Conference and Hearing on Late Payment

[*Jackson v. State Comp. Ins. Fund*, SD 345671, June 22, 2007, Order Denying Reconsideration]

A Board panel has refused to reconsider a trial judge's award of $500 in sanctions, payable to a qualified medical evaluator, whose charges had not been paid for several months and then were paid without the applicable penalty and interest. Imposing sanctions was held to be an appropriate remedy for not making timely payments of an uncontested medical-legal charge. The insurer's tactics required the QME to spend substantial time collecting the fee, and the penalty and interest he was entitled to receive automatically.

Relevant Facts and Proceedings

Applicant Bonnie Jackson injured her back on June 22, 2004, in the course of her employment as a salesperson by Standard Homeopathic. On April 28, 2005, her disability was evaluated by Michael S. Blott, D.C., a QME in chiropractic. He billed the employer's insurer, defendant State Compensation Insurance Fund, $750 for the evaluation. Five months after the bill was submitted to it, defendant paid the QME $750 without interest or penalty. After unsuccessfully attempting to collect a penalty and interest, the QME requested the assistance of the WCAB, which scheduled a status conference for March 5, 2007. Defendant had over six-weeks' notice of the conference, but it did not attend; it sent the QME a check for the penalty and interest only after the conference date. A formal hearing, with the additional issue of sanctions, was set for March 27, 2007, and again defendant did not attend. Workers' Compensation Administrative Law Judge Nikki S. Udkovich served a notice of intention to submit

Defendant's unilateral determination that the issue had been resolved was erroneous.

and a proposed order for sanctions. Defendant objected to the proposed order but did not object to the submission. On May 1, 2007, the WCJ filed and served findings and order directing defendant to pay the QME $500 as a sanction. In her opinion on decision, she wrote:

> This sanction is imposed to encourage the defendant to cease its activity of ignoring hearing notices, ignoring the mandatory language of the Labor Code section 4622, and ignoring correspondence from the lien claimant such that lien claimant was forced to file a Declaration of Readiness to obtain the attention of defendant, to obtain due process, and to ultimately secure payment of interest and penalty.

Defendant sought reconsideration contending that (1) its failure to appear at the conference did not constitute a bad faith action in violation of *Labor Code §5813* because it had timely paid the QME and there was no longer any issue, (2) the sanction order was not justified by the evidence, (3) the order was in excess of the powers of the WCJ, and (4) filing and prosecuting liens is simply a part of the cost of doing business so awarding sanctions to a QME gives the doctor an undeserved windfall.

WCJ Report and Panel Decision

In her report on reconsideration, the WCJ pointed out that defendant had admitted that it was five months late in paying the QME's bill and did not pay the penalty and interest until much later. Moreover, had defendant believed that it had timely paid the QME, it should have raised that contention in response to the March 29, 2007 notice of intention. The only credible evidence in the record was the proof of service by mail that the QME mailed his bill to defendant on May 25, 2005, and that defendant did not pay it until October 26, 2005, and even then did not include the penalty and interest. Further, additional documentary evidence attached to the petition for reconsideration should not be considered. Defendant had ample opportunity to gather and submit such evidence at least a year before the decision under attack, the WCJ

said. She stressed that defendant's unilateral determination that the issue had been resolved was erroneous because the QME was still trying to collect the penalty and interest as late as February 20, 2007. Defendant's assertion that it believed in good faith that the issue had been resolved was not credible.

Responding to defendant's argument that her order was in excess of her powers and not justified by the evidence, the WCJ quoted a portion of *WCAB Rule 10561* defining a bad faith action as one that results from a willful failure to comply with a statutory or regulatory obligation or from a willful intent to disrupt or delay WCAB proceedings. Imposing sanctions was an appropriate remedy for petitioner's bad faith tactic of failing to make timely payments of an uncontested medical-legal charge. The QME was required by defendant's tactics to spend additional time trying to collect the penalty and interest that he was entitled to receive automatically. Finally, the WCJ rejected petitioner's contention that lien claimant was receiving a windfall. The QME was entitled to receive timely payment accompanied by penalty and interest without any action on his part other than serving his bill, unless the charge was contested. He was not required to file and prosecute a lien claim. Defendant's contrary contention contravened the constitutional mandate to accomplish substantial justice without encumbrance of any character. Accordingly, the WCJ recommended that reconsideration be denied.

A Board panel of Commissioners O'Brien, Moresi, and Cuneo adopted the WCJ's reasoning and summarily denied reconsideration.

Editor's Note: The sanctions provisions of §5813 *became effective January 1, 1994, and the Division of Worker's Compensation began auditing claims administrators in 1997. With the exception of a slight dip in 1998, the number of penalties assessed for failure to pay benefits, late payments, and other infractions consistently increased through 2002, after which the audit method was changed. See Commission on Health and Safety and Workers' Compensation,* 2002–2003 Annual Report. *Penalties assessed under the new audit system again increased annually through 2005. See CHSWC,* 2006 Annual Report. *Do these increases mean that the more penalties and sanctions are adopted, the more the quality of claims handling deteriorates? In notes at 31* CWCR *208 and 32* CWCR *223, the* Reporter *observed that a CHSWC study had reported delays being claimed in over 36 percent of the cases studied in southern California in 2001 and concluded that the frequency of penalty claims was "disturbingly high." Applicants' attorneys have asserted that such statistics indicated that penalty provisions have been insufficient to compel claims administrators to act efficiently and reasonably, but the present case and others suggest that even increased penalties do not necessarily result in improved claims administration. In an editor's note at 27* CWCR *225, the* Reporter *suggested that the WCAB was reluctant to impose sanctions. Perhaps the present case and others are signs that any such reluctance is disappearing; see, e.g.,* Kasting v. Allied Distributing Co.*, GRO 24961, July 2, 2007, Decision After Reconsideration ($1,000 in sanctions imposed for repeated delays in paying mileage claims despite previous penalties).*

Board Rescinds Award of TD Beyond Five Years From Date of Injury, Approves Need for Surgery

WCAB Lacks Jurisdiction to Award TD in 2007 for 1997 Injury

[*Shannon v. California Ins. Guar. Ass'n*, SAC 261644, June 8, 2007, Order Granting Reconsideration and Decision After Reconsideration]

A Board panel has rescinded a trial judge's award of temporary disability more than five years after the injury. The WCAB lacks jurisdiction to reopen a case or to award benefits for new and further temporary disability more than five years after the date of injury unless a petition to reopen or a petition for new and further disability was filed within the five-year period.

Facts and Proceedings

Applicant Alan Shannon claimed that he incurred injury to his back and psyche on April 16, 1997, in the course of his employment as a parts manager by Chief Auto Parts. HIH America Compensation & Liability Insurance Company was the employer's insurer on the date of the alleged injury. By findings and award filed June 11, 1998, Workers' Compensation Administrative Law Judge D. Lachlan Taylor found that applicant had sustained the injury as alleged and made a continuing award of TD beginning April 19, 1997. HIH was ordered liquidated on May 8, 2001, and defendant California Insurance Guarantee Association assumed administration of applicant's claim.

Early in 2004, CIGA filed a petition to terminate TD. On August 2, 2004, the petition to terminate was heard by Workers' Compensation Administrative Law Judge Gregory Cleveland, who ordered TD terminated and awarded further medical treatment. On June 2, 2005, applicant requested an expedited hearing on the issues of need for surgery and additional TD. At the expedited hearing, defendant agreed to provide the surgery, but there was no agreement on TD. A year later, applicant petitioned for "penalty and sanctions for delay."

After a second opinion on the need for additional surgery was obtained by agreement, a further hearing was held before WCJ Suzanne F. Dugan on March 15, 2007. The issues were (1) continuing TD, (2) permanent and stationary date, and (3) need for surgery. Applicant's claim for penalties and sanctions was deferred. Numerous medical reports, including those of Mark King, M.D., were received in evidence. Applicant testified that Dr.