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8 **STATE OF CALIFORNIA**
9 **WORKERS' COMPENSATION APPEALS BOARD**

10	Applicant,)	Case No.:
11)	WCAB:
12	vs.)	Judge:
13)	Hearing Date:
14	;)	
15	.)	PETITION FOR STATUTORY INCREASE
16)	AND INTEREST PURSUANT TO
17	Defendant)	LABOR CODE §4603.2(b); AND,
18)	REPAYMENT OF LABOR CODE
19)	§4903.05 FILING FEE
20)	
21)	
22)	
23)	
24)	
25)	

26 Gibraltar Electro Medical Services, lien claimant herein, humbly submits its brief
27 petitioning this Honorable Court to award the amount due as stated in the lien on file
28 with the Workers' Compensation Appeals Board, as well as the statutory increase and
29 interest pursuant to Labor Code §4603.2(b), and if applicable, the repayment of the
30 filing fee.

31 **STATEMENT OF THE FACTS**

32 Applicant, , while employed by defendant, claims to have sustained injury
33 arising out of and in the course of employment. At the time applicant claims to have
34 suffered the industrial injury, the defendant's workers' compensation insurance carrier
35 was .

1 The defendant did not timely provide, and/or timely pay for, medical treatment
2 necessary to cure or relieve the applicant from the effects of the industrial injury.

3 Lien claimant, Gibraltar Electro Medical Services (hereafter GEMS), at the
4 request of the treating physician, , provided treatment to the above-indicated
5 applicant on .

6 The defendant failed to reimburse lien claimant in a timely fashion. Thus, the
7 defendant is liable for the statutory increase and interest pursuant to Labor Code
8 (hereafter LC) §4603.2(b).

9 POINTS AND AUTHORITIES

10 DEFENDANT FAILED TO REIMBURSE LIEN CLAIMANT TIMELY

11 LC §4603.2(b) is crystal clear in regards to the duty to pay a lien claimant within
12 the mandated time frame, or risk liability for the statutory increase and interest. For
13 treatment services billed ***subsequent to January 1, 2000 and prior to January 1,***
14 ***2004***, the time frame in which to object is thirty (30) working days and the time frame in
15 which to issue payment is 60 calendar days.

16 **“§4603.2. Notice to employer of selected physician;
17 reports to employer; payment by employer;
18 penalties and liabilities for late payment.**

19 (a) Upon selecting a physician pursuant to
20 Section 4600, the employee or physician shall
21 forthwith notify the employer of the name
22 and address of the physician. The physician
23 shall submit a report to the employer within
24 five working days from the date of the
25 initial examination and shall submit periodic
reports at intervals that may be prescribed
by rules and regulations adopted by the
administrative director.

(b) **Payment for medical treatment provided
or authorized by the treating physician
selected by the employee or designated by the
employer shall be made by the employer within
60 days after receipt of each separate,
itemized billing, together with any required**

1 **reports.** If the billing or a portion thereof
2 is contested, denied, or considered
3 incomplete, the physician shall be notified,
4 in writing, that the billing is contested,
5 denied, or considered incomplete, within 30
6 working days after receipt of the billing by
7 the employer. A notice that a billing is
8 incomplete shall state all additional
9 information required to make a decision.

10 **Any properly documented amount not paid**
11 **within the 60-day period shall be increased**
12 **by 10 percent, together with interest at the**
13 **same rate as judgments in civil actions**
14 **retroactive to the date of receipt of the**
15 **bill, unless the employer does both of the**
16 **following:**

17 (1) Pays the uncontested amount within the
18 60-day period.

19 (2) Advises, in the manner prescribed by the
20 administrative director, the physician, or
21 another provider of the items being
22 contested, the reasons for contesting these
23 items, and the remedies available to the
24 physician or the other provider if he or she
25 disagrees. In the case of a bill which
includes charges from a hospital, outpatient
surgery center, or independent diagnostic
facility, advice that a request has been made
for an audit of the bill shall satisfy the
requirements of this paragraph.

If an employer contests all or part of a
billing, any amount determined payable by the
appeals board shall carry interest from the
date the amount was due until it is paid.

An employer's liability to a physician or
another provider under this section for
delayed payments shall not affect its
liability to an employee under Section 5814
or any other provision of this division.

(c) Any interest or increase in compensation
paid by an insurer pursuant to this section
shall be treated in the same manner as an
increase in compensation under subdivision
(d) of Section 4650 for the purposes of any
classification of risks and premium rates,
and any system of merit rating approved or

1 issued pursuant to Article 2[Deering's]
2 (commencing with Section 11730) of Chapter
3 3[Deering's] of Part 3 of Division
4 2[Deering's] of the Insurance Code. Leg.H.
5 1999 ch. 124, 2000 ch. 1069 (no changes were
6 made to statute)." (**Bolding** and underline
7 emphasis added.)

8 For treatment services billed **subsequent to January 1, 2004**, the time frame in
9 which to object is thirty (30) working days and the time frame to issue payment is 45
10 working days, unless the employer is a governmental entity, in which case the time
11 frame to object remains the same, but the time frame to issue payment is extended to
12 sixty (60) working days.

13 **"4603.2. Notice to employer of selected
14 physician; reports to employer; payment by
15 employer; penalties and liabilities for late
16 payment; review of billing.**

17 (a) Upon selecting a physician pursuant to
18 Section 4600, the employee or physician shall
19 forthwith notify the employer of the name and
20 address of the physician. The physician shall
21 submit a report to the employer within five
22 working days from the date of the initial
23 examination and shall submit periodic reports
24 at intervals that may be prescribed by rules
25 and regulations adopted by the administrative
director.

(b) (1) Except as provided in subdivision (d)
of Section 4603.4, payment for medical
treatment provided or authorized by the
treating physician selected by the employee
or designated by the employer **shall be made
by the employer within 45 working days** after
receipt of each separate, itemized billing,
together with any required reports and any
written authorization for services that may
have been received by the physician. If the
billing or a portion thereof is contested,
denied, or considered incomplete, the
physician shall be notified, in writing, that

1 the billing is contested, denied, or
2 considered incomplete, within 30 working days
3 after receipt of the billing by the employer.
4 A notice that a billing is incomplete shall
5 state all additional information required to
6 make a decision. Any properly documented
7 amount not paid within the **45-working-day
8 period shall be increased by 15 percent,
9 together with interest at the same rate as
10 judgments in civil actions retroactive to the
11 date of receipt of the bill, unless the
12 employer does both of the following:**

8 (A) Pays the uncontested amount within the
9 45-working-day period.

10 (B) Advises, in the manner prescribed by the
11 administrative director, the physician, or
12 another provider of the items being
13 contested, the reasons for contesting these
14 items, and the remedies available to the
15 physician or the other provider if he or she
16 disagrees. In the case of a bill which
17 includes charges from a hospital, outpatient
18 surgery center, or independent diagnostic
19 facility, advice that a request has been made
20 for an audit of the bill shall satisfy the
21 requirements of this paragraph.

17 If an employer contests all or part of a
18 billing, any amount determined payable by the
19 appeals board shall carry interest from the
20 date the amount was due until it is paid. **If
21 any contested amount is determined payable by
22 the appeals board, the defendant shall be
23 ordered to reimburse the provider for any
24 filing fees paid pursuant to Section 4903.05.**

22 An employer's liability to a physician or
23 another provider under this section for
24 delayed payments shall not affect its
25 liability to an employee under Section 5814
or any other provision of this division.

(2) Notwithstanding paragraph (1), **if the
employer is a governmental entity, payment**

1 for medical treatment provided or authorized
2 by the treating physician selected by the
3 employee or designated by the employer shall
4 be made within 60 working days after receipt
5 of each separate, itemized billing, together
6 with any required reports and any written
7 authorization for services that may have been
8 received by the physician.

9 According to the definitions found in LC §15, the word “shall” is mandatory, and
10 the word “may” is permissive.

11 LC §4603.2(b) is clear on its face. If an employer contests the entire bill for
12 services furnished an industrially injured worker, the employer is required to issue an
13 objection within thirty (30) working days of receipt of the bill, along with any required
14 reports.

15 Not only must the objection be timely issued, within thirty working days, the
16 objection must inform the provider of the specific basis for the objection, and
17 additionally, the objection must inform the provider of the remedies available to the
18 provider (litigation before the WCAB), if the provider disagrees.

19 For treatment service bills received **prior** to January 1, 2004, if the employer
20 refuses to pay any portion of the bill, which the WCAB later finds to be reasonable and
21 necessary, the employer is required to pay a statutory increase in the amount of ten per
22 cent (10%), as well as interest, at the same rate as judgments in civil actions (10%),
23 retroactive to the date payment of the bill was due.

24 For treatment service bills received **subsequent** to January 1, 2004, if the
25 employer refuses to pay any portion of the bill, which the WCAB later finds to be
26 reasonable and necessary, the employer is required to pay a statutory increase in the
27 amount of fifteen per cent (15%), as well as interest, at the same rate as judgments in
28 civil actions (10%), retroactive to the date payment of the bill was due.

1 In the event the employer timely pays a portion of the bill, and the WCAB later
2 determines that the payment issued was less than the amount due, the employer will be
3 liable for the interest, but not the statutory increase.

4 In the case of a denied injury claim, which is later found to be compensable, bills
5 received by the payor prior to January 1, 2004 for treatment reasonably required to cure
6 or relieve shall be increased, statutorily, by ten per cent (10%), and the interest, also ten
7 percent (10%), begins to accrue from the date the bill is due, sixty (60) days after
8 receipt. For bills received by the payor subsequent to January 1, 2004, the statutory
9 increase is fifteen percent (15%), but the interest remains at ten percent (10%). See
10 Boehm & Associates vs. WCAB, (1999) 64 CCC 1350.

11 In addition, regardless of the date the treatment or medical-legal bill was received
12 by the payor, if the lien claimant first filed a lien subsequent to January 1, 2004, the lien
13 claimant is required to pay a filing fee of \$100.00 pursuant to LC 4903.05. Pursuant to
14 LC 4603.2(b), "If any contested amount is determined payable by the appeals board,
15 the defendant shall be ordered to reimburse the provider for any filing fees paid
16 pursuant to Section 4903.05."

17 ISSUES

- 18 (1) The defendant failed to timely object, within thirty (30) working days, or
19 reimburse lien claimant any amount within the mandated time frame outlined
20 in LC 4603.2 in effect at the time the bill was received, for services furnished
21 on .
- 22 (2) The defendant failed to object timely and properly, but timely reimbursed lien
23 claimant partially. Lien claimant seeks the remainder of the reasonable
24 amount due, plus interest in the amount of ten per cent (10%).

1 (3) If the lien claimant has had to pay the \$100.00 filing fee required by LC
2 4903.05, the lien claimant seeks reimbursement of the filing fee if this Court
3 finds any contested amount payable.

4 **RELIEF SOUGHT**

5 Regarding the failure to object timely and/or reimburse any amount due lien
6 claimant, for services furnished the applicant on _____, lien claimant seeks the amount
7 due, (\$ _____) and the statutory increase (\$ _____), plus interest (\$ _____), for a total of
8 \$ _____.

9 Regarding the partial payment for services furnished the applicant _____, this
10 lien claimant seeks the remainder of the balance due (\$ _____), plus interest (\$ _____),
11 for a total of \$ _____.

12 If lien claimant has had to pay the \$100.00 filing fee pursuant to LC 4903.05, lien
13 claimant seeks repayment of the filing fee from the defendant.

14 **CONCLUSION**

15 The defendant has failed to object timely and/or properly pursuant to LC §4603.2(b),
16 and additionally, failed to issue full payment timely. Lien claimant should be reimbursed
17 the full amount due, plus the statutory increase and interest, and if applicable,
18 repayment of the lien filing fee. The total amount due is \$ _____.

19 Dated April 28, 2008

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22 _____
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