

## AB 1422 to Clarify Worker's Compensation Lien Stay Provisions for Providers Charged With Healthcare Fraud

Assembly Bill 1422 ("AB 1422"), recently signed into law by Governor Jerry Brown, amends Labor Code section 4615's automatic stay provisions for medical providers that have been charged with fraud due to confusion regarding the interpretation and application of the new workers' compensation [anti-fraud bills](#) that were passed in 2016. Prior to AB 1422, there was significant debate over the workers' compensation appeals board's ("WCAB") jurisdiction over disputes regarding the applicability of the automatic stay provisions to certain liens.

The amendments to Section 4615 adopted in AB 1422 confirm the WCAB's jurisdiction over disputes regarding the automatic stay of providers' liens. Among other provisions, the bill added the following new subdivision (e) to Section 4615:

(e) The automatic stay required by this section shall not preclude the appeals board from inquiring into and determining within a workers' compensation proceeding whether a lien is stayed pursuant to subdivision (a) or whether a lien claimant is controlled by a physician, practitioner, or provider.

Labor Code § 4615, subd. (e).

The statute now expressly confirms that judges within the workers' compensation system may determine within any particular case whether the provisions of Section 4615 apply such that a lien is stayed.

Furthermore, Governor Brown issued a Signing Message for AB 1422, which specifically addressed this issue. The Signing Message characterized AB 1422 as "clean-up legislation" for the [2016 bills combatting worker's compensation fraud](#) (SB 1160 and AB 1244) that enacted Labor Code section 139.21 and 4615, and contained the following paragraph:

AB 1422 confirms that the Workers' Compensation Appeals Board retains jurisdiction to resolve disputes about the applicability of the automatic stay provision to specific liens. This bill is declaratory of existing law which provides for the resolution of these disputes through the Board's current practices and procedures. Nothing in last year's legislation creating the stay was intended, or operated, to divest the Board of jurisdiction over these issues.

AB 1422, Governor's Signing Message, September 26, 2017.

Section 4612 provides that any lien filed by or on behalf of a physician or other provider shall be automatically stayed upon the filing of specified criminal charges against the provider. Generally, if a lien is filed "by or on behalf of" a provider who has been charged with a specified crime, the stay is automatic and an entry of an order is not required to effectuate the stay. In practical effect, this means that entry of an order imposing a stay is not a procedural requirement in order for a stay to be effectuated. It also means that Labor Code section 4615 does not allow for arguments about the extent to which a particular lien is "tainted" by the criminal activity with which the provider is charged; rather, it requires that all liens "filed by or on behalf of" a criminally-charged provider be stayed pending resolution of the criminal charges.

Although the stay mandated under Section 4615 is automatic, however, that does not mean that workers' compensation administrative law judges ("WCJ's") lack the jurisdiction or authority to determine whether the provisions of Section 4615 apply. If a dispute is presented, a WCJ has the authority to adjudicate whether the statute applies to any particular lien.

Any party to a workers' compensation case who disputes whether a particular lien should be automatically stayed (

*i.e.*, that any particular lien is not filed by or on behalf of an indicted provider), has the right to raise the issue and to request an adjudication in that case. Thus, while the provisions of Section 4615, mandate an automatic stay if the provisions of the statute apply, this does not preclude judges in workers' compensation cases from determining whether the conditions mandating a stay with respect to a particular lien and in a particular case are present. Provisions of existing statutes and regulations confer jurisdiction on workers' compensation administrative law judges and the WCAB to adjudicate all issues of fact and law in a workers' compensation case. (See, *e.g.*, Labor Code §§ 5300, et seq., 5310, 5900, 5950; Cal. Code Regs., tit. 8 §§ 10348, 10414, 10450, 10770.1., 10770.6.)

In addition to the AB 1422's amendment clarifying the jurisdiction of these disputes, AB 1422 also clarified confusion over *entities* filing liens on or behalf of a provider charged with a crime. Under the original language of Section 4615, any lien "filed by or on behalf of" a medical treatment provider charged with specified criminal offenses was subject to the stay. There was no specific reference to liens filed by entities "on behalf of" charged providers. The amendments of AB 1422 added a new paragraph (3) to subdivision (a) of Section 139.21, reading as follows:

(3) For purposes of this section [Section 139.21] and Section 4615, an entity is controlled by an individual if the individual is an officer or a director of the entity, or a shareholder with a 10 percent or greater interest in the entity.

Labor Code § 139.21, subd. (a)(3).

AB 1422 has clarified the jurisdictional authority of the WCAB to resolve disputes over the automatic stay of providers' lien and how liens filed by entities on or behalf of charged providers will be interpreted. However, the amendments do not provide guidance on how providers can raise the issue of whether a particular lien should be automatically stayed or how to request adjudication in a case involving a disputed lien. For more information about the automatic stay provisions governing workers' compensation liens or for help contesting an automatic stay, please [contact](#) Nelson Hardiman LLP.

For more information, you may also visit the following:

[LABOR CODE SECTION 4615](#)

[ASSEMBLY BILL 1422](#)

[DEPARTMENT OF INDUSTRIAL RELATIONS FRAUD PREVENTION](#)

[DEPARTMENT OF INDUSTRIAL RELATIONS LIST OF CRIMINALLY CHARGED PROVIDERS WHOSE LIENS ARE STAYED](#)