WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ANDREA MORRIS; PAM BERTINO, guardian ad litem for ANDREA MORRIS, ***Applicant***

vs.

CITY OF HOPE NATIONAL MEDICAL CENTER, permissibly self-insured, administered by ADMINSURE; SAN ANTONIO REGIONAL MEDICAL CENTER permissibly self-insured, administered by CLAIMQUEST; and POMONA VALLEY HOSPITAL permissibly self-insured, administered by ADMINSURE, ***Defendants***

Adjudication Numbers: ADJ13610807 (MF); ADJ13610806
San Bernardino District Office

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact issued by the workers' compensation administrative law judge (WCJ) on October 24, 2024.[1] On November 7, 2024, the WCJ issued Amended Findings. (Lab. Code, § 5805; Cal. Code Regs., tit. 8, § 10966.) The WCJ found in pertinent part that 1) applicant sustained injury arising out of and in the course of employment (AOE/COE) on May 14, 2020, while working for City of Hope National Medical Center, in case number ADJ13610807; and 2) applicant sustained injury AOE/COE during the period May 14, 2019 to May 14, 2020, while working for City of Hope National Medical Center, San Antonio Regional Hospital, and Pomona Valley Hospital Medical Center, in case number ADJ13610806.

Defendant contends that the WCJ's findings of injury AOE/COE are not supported by substantial medical evidence. Defendant further contends that applicant did not meet her burden of proving injury AOE/COE.

We received an Answer from applicant and from lien claimant Casa Colina Hospital and Centers for Healthcare.

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[1] The Findings of Fact and Opinion on Decision were signed by the WCJ on October 23, 2024, but were served on October 24, 2024, and thus October 24, 2024 is the operative date.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto.

Based on our review of the record, for the reasons stated in the WCJ's Report and Opinion on Decision, which we adopt and incorporate to the extent set forth below, and as discussed herein, we will grant defendant's Petition solely in order to rescind the amended Findings of Fact and substitute new Findings of Fact that find injury to applicant's heart, defer injury to all other body parts, and delete the finding with respect to the Compromise & Release.

DISCUSSION

I.

Former Labor Code section[2] 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on December 5, 2024, and 60 days from the date of transmission is February 3, 2025. This decision is issued by or on February 3, 2025, so that we have timely acted on the petition as required by section 5909(a).

[2] All statutory references are to the Labor Code unless otherwise stated.

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on December 5, 2024, and the case was transmitted to the Appeals Board on December 5, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on December 5, 2024.

II.

To be compensable, an injury must arise out of and occur in the course of employment. (Lab. Code, § 3600.) The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd*. (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].) "That burden manifestly **does not require the applicant to prove causation by scientific certainty**." (*Rosas v. Worker's Comp. Appeals Bd*. (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313], emphasis added.)

As discussed by the WCJ, applicant met her burden of proving injury AOE/COE, based in part on the opinions of panel Qualified Medical Evaluator (QME) in cardiology Stuart Fischer, M.D. (Exhibits 1A - 1G) and panel QME in neurology Pedram Navab, M.D. (Exhibits 2A - 2H). Although the WCJ and both QMEs refer to "cardiac arrest" we note that this is not a body part. Additionally, we note that it is axiomatic that an injury must be to a body part and, as such, any finding of injury AOE/COE must identify at least one body part. (See Lab. Code, §§ 3600(a), 5401(a); *Clark, supra*, at 297-298.) Therefore we will amend Findings of Fact No. 1 and No. 2 to find that applicant sustained injury to her heart.

As for Finding No. 3 in the WCJ's Amended Findings, this was not an issue raised at trial. All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd*. (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing includes, but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd*. (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Accordingly, we grant defendant's Petition, rescind the Amended Findings issued on November 7, 2024, substitute new Findings of Fact that find injury to applicant's heart, defer injury to all other body parts, and delete the finding with respect to the Compromise & Release.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Amended Findings of Fact issued by the WCJ on November 7, 2024 is **RESCINDED** and the following is **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Andrea Morris sustained injury arising out of and in the course of employment to the heart on May 14, 2020, while working for City of Hope National Medical Center in ADJ13610807 (MF).

2. Andrea Morris sustained injury arising out of and in the course of employment to the heart, during the period May 14, 2019 to May 14, 2020, while working for City of Hope National Medical Center, San Antonio Regional Hospital and Pomona Valley Hospital Medical Center in ADJ13610806.

3. The issue of injury to all other body parts is deferred.

4. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 3, 2025

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

ANDREA MORRIS c/o PAM BERTINO
PAM BERTINO, guardian ad litem
BENTLEY MORE
ARMSTRONG LAW
HIRSCHL MULLEN
JODIE FILKINS
TAPPIN ASSOCIATES
WAI CONNER
WHEATLEY FIRM

JB/*pm*

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION
AND NOTICE OF TRANSMITTAL

By timely, verified Petition for Reconsideration, filed 11/15/2024, Petitioner, City of Hope National Medical Center, PSI administered by Adminsure (hereafter defendant), by and through their attorneys of record, Houman Hamidzadeh (Wai Connor & Hamidzadeh) and Jodie P. Filkins (Law Office of Jodie P. Filkins), seeks reconsideration of the Findings of Fact of October 23, 2024, issued herein on 10/24/2024. The Petition for Reconsideration makes no mention of the Amended Findings of Fact (to reflect the correct name of the employer, Pomona Valley Hospital Medical Center, and to reflect the status of the claim against Pomona Valley Hospital Medical Center), dated, filed and served on 11/7/2024.

Respondent, Andrea Morris via her Guardian Ad Litem Pam Bertino (hereafter applicant), by and through their attorneys of record Keith P. More and Dane P. Gilliam (Bentley & More LLP), filed a verified Answer to the Petition for Reconsideration on 11/26/2024.

Respondent, Casa Colina Hospital and Centers for Healthcare (hereafter lien claimant), by and through their attorney of record, William Tappin (Tappin & Associates), filed a verified Answer to the Petition for Reconsideration on 11/26/2024.

Corrections to Opinion on Decision

The following corrections are noted to be needed in the Opinion on Decision:

1. Page 8, next-to-last paragraph, 14th line, the phrase, "…that industrial evidence was reasonably probable," should actually state, "…that industrial causation was reasonably probable..."

2. Page 8, last paragraph, through the first paragraph on Page 9, should actually state: "What is important to note in the instant matter is that applicant was a Registered Nurse, who worked at three separate health care facilities **in the period of the continuous trauma – City of Hope infusion center (administering chemotherapy to patients who are already immunocompromised), San Antonio Regional Medical Center and Pomona Valley Hospital Medical Center – and at two facilities in the early days of the Covid-19 pandemic – City of**

Hope and San Antonio Regional Medical Center – and at one facility on the specific injury date – City of Hope. While her sudden cardiac arrest occurred while she was working at City of Hope at their Upland infusion center, her job as an RN at two medical facilities (one hospital and one infusion center) in the early days of the pandemic meant that she was a "front line" and essential worker, which put her at increased risk for both contracting the corona virus and spreading it. Additionally, Ms. Morris had some serious health issues that predated the pandemic, including hypertension and polycystic kidney disease, that put her at increased risk for a bad outcome were she to contract the corona virus."

3. Page 10, third paragraph, 5th line, the phrase "structural heard disease" should actually be "structural heart disease".

4. Page 13, next-to-last paragraph, 3rd line through the end of that paragraph, should actually state: "Further development of the record is required as to how that industrial compensability is divvied as between the various employers and as to the specific and cumulative trauma injuries. All other issues were deferred."

ISSUES PRESENTED

1.
Was it error to find the medical opinions of Stuart Fischer, M.D. and Pedram Navab, D.O. substantial evidence to support a finding of injury AOE/COE?

2.
Is it error for defense to assert that the City of Hope did not aggravate or increase disability of an underlying work injury as applicant's anoxic brain injury was not proximately caused by her employment?

3.
Was it error to make a finding that sufficient evidence existed to determine that applicant had sustained industrial injury AOE/COE as to both the specific injury and the continuous trauma injury and ordering further development of the record as to how that industrial compensability is divvied as between the various employers and as between the specific and cumulative trauma injuries pled?

INTRODUCTION

The basic facts of the case are as stated in the Opinion on Decision, at Page 7, last paragraph, through Page 8, second paragraph. They are not repeated in this report.

In the decision complained of, pertaining to the issues raised on reconsideration, the undersigned Workers' Compensation Administrative Law Judge found as follows, in short:

1. The final medical opinions of the two QMEs, Pedram Navab, D.O. (neurologist) and Stuart Fischer, M.D. (cardiologist), after multiple reports and multiple depositions, determined there was at least 1% industrial compensability for applicant's sudden cardiac arrest on 5/14/2020 based on work stressors, and their opinions were deemed to constitute substantial medical evidence.
2. The record requires further development to ascertain how applicant's industrial compensability is to be divvied as between the various employers and as between the specific and cumulative trauma injuries pled.

DISCUSSION

In their petition for reconsideration, defendant contends that there was no evidence showing by a preponderance of the evidence that stress actually contributed to causing applicant's sudden cardiac arrest. Defendant also asserts the medical evidence showed, at most, that this was possible and then asserts that is not enough. Defendant further asserts that City of Hope did not aggravate or increase disability of an underlying work injury because applicant's anoxic brain injury was not proximately caused by her employment. Lastly, defendant contends that the undersigned WCALJ failed to determine questions of law and fact separately for each alleged injury and date of injury.

What needs to be stated from the onset is that the undersigned judge was ONLY asked to determine injury AOE/COE in these cases. All other issues were deferred, including parts of body injured and how industrial compensability, if any, was to be divvied as between employers and injuries pled.

The evaluating physicians were only tasked with determining whether or not there is an industrial component to applicant's sudden cardiac arrest (SCA) on 5/14/2020, which is the precipitating event/catalyst for the applicant's current state of impairment and the residual sequelae of the SCA – anoxic brain injury, severe cognitive impairment, permanent mental incapacity and quadriplegia - with all the inherent bodily function issues related to those conditions. The threshold issue of whether or not applicant's sudden cardiac arrest had an industrial component was the most critical issue in these cases and was very hotly contested by the interested parties from the onset. The fact that it has taken approximately four years to get to the point of going forward to trial on the threshold issue of AOE/COE is a testament to how strenuously the claim has been contested.

During the pendency of the AOE/COE dispute, applicant has not been receiving any workers' compensation benefits from any employer and eventually reached a settlement with one of the defendants in the cumulative trauma claim (Pomona Valley Hospital Medical Center) so that there would be some money available to assist in her care needs.

In cases where causation cannot be proven by scientific certainty, it is sufficient to prove industrial causation by "reasonable probability." Scientific certainty is not required. All that is legally required for industrial compensability is that the applicant's work is a contributing cause of the injury – in this instance applicant's sudden cardiac arrest on 5/14/2020 – and that industrial causation is reasonably probable, although not certain. Further, industrial causation of injury does not require any numeric factor or percentage in order to meet the burden of proof by a preponderance of the evidence standard. What is key is the weighing of the evidence, when weighed with opposing evidence, is more convincing and has the greater probability of truth. This standard doesn't rely upon the relative number of witnesses, but the convincing force of the evidence. Further, liberal construction per LC 3202 requires looking at the evidence with the purpose of extending benefits for the protection of persons injured in the course of their employment.

Defendant's assertion that the reporting and testimony of Dr. Navab and Dr. Fischer merely indicate the "possibility" of industrial causation is most disingenuous and fails to accurately reflect

that both doctors were specifically asked in deposition whether their conclusions were based on reasonable medical probability, and they both confirmed same and provided reasons for their opinions. Once both doctors found industrial compensability, defendant was unable to sway either evaluator despite multiple attempts in multiple depositions.

Multiple cases have been cited in the Opinion on Decision and in the responses of both applicant and lien claimant that support the undersigned WCALJ's finding of industrial compensability.

Defendant offered no substantial evidence to contradict the opinions of Drs. Navab and Fischer and the reasonable inferences drawn from the facts, evidence, medical studies and records. As set forth in the South Coast Framing case (cited at Page 8 in the Opinion on Decision), applicant's job stress need only be a contributing cause of her SCA and may constitute only the "crumbs off the crust" as long as industrial injury is reasonably

probable, even without scientific certainty. Dr. Navab's and Fischer's opinions certainly provide evidence of reasonable medical probability.

Defense merely relies upon a short declaration of a physician who authored an article (Philip J. Podrid, M.D. – Exhibit F), but who did not evaluate the applicant, did not review any medical reports or records of the applicant, did not review witness testimony, which declaration cannot meet any standard for a sufficient medical report and which was not subject to cross-examination. Frankly, this article was reluctantly admitted into evidence over strenuous objection only because I knew that I could give it little to no evidentiary weight in this case, as set forth in the first full paragraph of Page 12 of the Opinion on Decision. The affidavit was not shown to have been peer-reviewed and it certainly doesn't cite to any studies performed relative to sudden cardiac arrest or sudden cardiac death during the pandemic, so any opinions expressed relative to Andrea Morris are useless as evidence, lacking in substantiality and were not given evidentiary weight.

What is clear from the entire record is that applicant was extremely stressed during the early days of the pandemic, as shown by medical records pre-dating her SCA, and as confirmed by multiple trial witnesses. She worked in a stressful job as a "front line" and essential worker during the early

days of the pandemic. Both Dr. Navab and Dr. Fischer have opined, based on reasonable medical probability, that this extreme stress was a causative factor in applicant's sudden cardiac arrest on 5/14/[2020]. Both doctors opined that due to the SCA and the failure to receive CPR in the earliest moments of the SCA, applicant sustained myriad further injuries, thus rendering all the sequelae compensable as being directly caused by the SCA and "treatment" (or lack of treatment) thereof.

Defendant's second contention in their Petition for Reconsideration was that City of Hope did not aggravate or increase disability of an underlying work injury as applicant's anoxic brain injury was not proximately caused by her employment. This contention is perplexing insofar as the undersigned WCALJ, in the decision at issue, never specifically addressed whether City of Hope aggravated or increased disability of an underlying work injury. In fact, as stated on Page 8 of the Opinion on Decision, "It is not for me to determine in the instant trial whether any employee or employees at City of Hope acted appropriately or inappropriately in the 7+ minutes before CPR was initiated. However, both medical-legal evaluators in the instant claims determined that the failure to promptly initiate CPR on Ms. Morris caused an anoxic brain injury…" Thus defendant's argument about the proximate cause of the anoxic brain injury sustained by Ms. Morris is misplaced insofar as California workers' compensation is a no-fault system. Once applicant's SCA was determined to be industrially compensable by even the smallest of degrees, the sequelae of that injury are also deemed to be industrially compensable, whether by direct cause or compensable consequence, without any regard to fault.

The evaluating physicians were only asked to address industrial compensability and were not specifically requested to address liability as between the specific and cumulative trauma injuries or as between the employers. Thus, the record obviously requires further development once industrial compensability of the sudden cardiac arrest is finally determined. Defendant's contention that the undersigned WCALJ failed to determine questions of fact and law separately for each alleged injury is inappropriate insofar as that was not specifically raised as an issue at trial and the record is deficient to make any determination in that regard. Further development of the record is required to flesh out issues related to liability as between employers and injuries and as to all the remaining disputes not raised at the instant trial.

There is no prejudice to City of Hope by the finding of injury AOE/COE as to both the specific injury and cumulative trauma injury, insofar as City of Hope is a defendant in both claims. An election was made by applicant to proceed against City of Hope, and since there is much left to be determined in these matters, any party that may be aggrieved once the doctors have allocated liability as between employers and injuries, will have the opportunity to pursue their remedies and due process under the law.

In conclusion:

1. It was not error to find the medical opinions of Stuart Fischer, M.D. and Pedram Navab, D.O. substantial evidence to support a finding of injury AOE/COE.

2. It was error for defense to assert that the City of Hope did not aggravate or increase disability of an underlying work injury and assert that applicant's anoxic brain injury was not proximately caused by her employment, as that issue was not determined in the instant decision.

3. It was not error to make a finding that sufficient evidence existed to determine that applicant had sustained industrial injury AOE/COE as to both the specific injury and the continuous trauma injury and ordering further development of the record as to how that industrial compensability is divvied as between the various employers and as between the specific and cumulative trauma injuries pled.

RECOMMENDATION

I recommend the Petition for Reconsideration, filed by Defendant on 11/15/2024 be ***DENIED*** on the merits.

THE MATTER WAS TRANSMITTED TO RECONSIDERATION UNIT ON 12/5/2024.

Dated at San Bernardino, California
12/5/2024

MYRLE R. PETTY
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

These are the claims of a registered nurse, Occupational Group Number 311, who claims to have sustained two injuries, a specific injury to her brain, circulatory system, respiratory system, upper extremities, lower extremities, nervous system, bladder, bowel, psyche and cardiac arrest, on May 14, 2020, while working for City of Hope National Medical Center at their infusion center in Upland, California (in ADJ13610807), and a cumulative trauma injury to her brain, circulatory system, respiratory system, upper extremities, lower extremities, nervous system, bladder, bowel, psyche and cardiac arrest during the period May 14, 2019 to May 14, 2020, while working for City of Hope National Medical Center, San Antonio Regional Hospital and Pomona Valley Hospital (in ADJ13610806). The parties have agreed to designate the specific injury claim in ADJ13610807 as the Master File.

At the time of the asserted injuries, City of Hope National Medical Center was permissibly self-insured for workers' compensation and their claims are administered by Adminsure; San Antonio Regional Hospital was permissibly self-insured and their claims are administered by Claimquest; and Pomona Valley Hospital was permissibly self-insured and their claims are administered by Adminsure.

Earnings and indemnity rates were deferred in both cases. No compensation has been paid in either case. The employers have furnished no medical treatment in either case. No attorney fees have been paid and no attorney fee arrangements have been made in either case. An election was made against City of Hope for the cumulative trauma claim (ADJ13610806). The parties stipulated that all issues, other than injury aoe/coe were deferred for the purposes of the instant trial.

The following issue was raised in both cases:

1. Injury arising out of and in the course of employment.

Parts of body injured, earnings, temporary disability, permanent and stationary date, permanent disability and apportionment were all deferred.

In regard to attorney fees, insofar as there are no benefits currently in issue from which to make an award of attorney fees, assuming any claim is deemed to be compensable or industrial, and in the event that defendants voluntarily pay any retroactive indemnity in the event compensability is found, defendants shall be ordered to withhold 15% for any potential attorneys fee, which may be released upon filing of a petition, assuming compensability is found and assuming benefits are voluntarily paid.

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Injury AOE/COE

During the early days of the Covid-19 pandemic in the United States, and in particular, California, on May 14, 2020, while working as an RN at the City of Hope infusion center in Upland,

California, Andrea Morris became unwell and went to the office of her supervisor, Karen Serna, stating that she was feeling dizzy, lightheaded and had just had sudden diarrhea. Ms. Serna told her to sit down in a chair and Ms. Morris said, "I just don't feel well." Ms. Morris asked Karen to take her blood pressure, and Ms. Serna agreed and left her office for 20 – 30 seconds to get the machine. Upon her return, she went to place the cuff on Ms. Morris' left arm and as she wrapped the cuff, Ms. Morris stiffened and her back arched, her head turned to the right and she began moaning a very deep moan. (Exhibit 34). Ms. Serna called out to Ms. Morris as she did a sternal rub and then she stepped into the short hallway to get help and she told Serena Tiscareno, a medical assistant, that she needed help. They returned to Ms. Serna's office, where Andrea was still moaning and not responding to her name or touch. Ms. Serna called 911 from her office phone and used her cell phone to video tape Andrea so that she could show it to the paramedics how she presented (but it was never shown to the paramedics). Ms. Serna testified that she thought Andrea was having a seizure.

In actuality, Ms. Morris went into Sudden Cardiac Arrest and began agonal breathing and gasping for air. It is not for me to determine in the instant trial whether any employee or employees at City of Hope acted appropriately or inappropriately in the 7+ minutes before CPR was initiated. However, both medical-legal evaluators in the instant claims determined that the failure to promptly initiate CPR on Ms. Morris caused an anoxic brain injury, where her brain was deprived of oxygen for a significant period of time resulting in loss of brain tissue and neurologic function. The result of the anoxic brain injury has left Ms. Morris with quadriplegia, severe cognitive impairment, permanent mental incapacity, and fully dependent upon others for all her activities of daily living. She requires 24/7 caregiver assistance. She is permanently and totally disabled, according to the medical-legal evaluators.

The issue I have been tasked to determine is whether or not there is an industrial component to applicant's sudden cardiac impairment. The California Supreme Court case of *South Coast Framing v. Workers' Comp. Appeals Bd. (Clark) (2015) 61 Cal.4th 291 (80 CCC 489)* offers assistance in making this determination.

Applicant bears the burden of proving injury AOE/COE by a preponderance of the evidence, which is defined by LC 3202.5 as "evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence." (Labor Code 3202.5.) Per the holding in South Coast Framing (supra), for the purpose of meeting the causation requirement in a workers' compensation injury claim, it is sufficient if the work is a contributing cause of the injury. (Supra, at Pgs. 298-299). Per the holding in *Rosas vs. WCAB (1993) 16 Cal. App.4th 1692 (58 CCC 313)*, "The applicant in a workers' compensation proceeding has the burden of proving industrial causation by a 'reasonable probability.' (citation) That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Supra, at Pgs. 1700-1701*). Further, the holding in *McAllister v. Workmen's Comp. Appeals Bd. (1968) 69 Cal.2d 408 (33 CCC 660)* also holds that medical evidence that industrial evidence was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE.

What is important to note in the instant matter is that applicant was a Registered Nurse, who worked at three separate health care facilities in the early days of the Covid-19 pandemic – City

of Hope infusion center (administering chemotherapy to patients who are already immunocompromised), San Antonio Regional Medical Center and Pomona Valley Hospital. While her sudden cardiac arrest occurred while she was working at City of Hope at their Upland infusion center, her job as an RN at three medical facilities (two hospitals and one infusion center) in the early days of the pandemic meant that she was a "front line" and essential worker, which put her at increased risk for both contracting the corona virus and spreading it. Additionally, Ms. Morris had some serious health issues that predated the pandemic, including hypertension and polycystic kidney disease, that put her at increased risk for a bad outcome, were she to contract the corona virus.

While, in the instant matter, there was no evidence that Ms. Morris contracted Covid prior to her sudden cardiac arrest (SCA) on May 14, 2020, that does not mean that she was unconcerned about the pandemic or that she wasn't significantly or even acutely stressed during all or a part of the time predating her SCA.

The job description for the position Ms. Morris held at City of Hope (Exhibit 21), includes the following language, "Employee will work under stressful conditions and may be required to work past normal business hours." Each co-worker witness who testified at court, Alma Harris, Karen Serna, Rachel Keller and Serena Tiscareno, testified to experiencing increased stress during the early days of the pandemic, although the severity of the additional stress caused by the pandemic varied as to each individual. That Ms. Morris was under stress working as an RN in the early days of the pandemic was not disputed by any evidence provided at trial.

The issue, then, is whether or not the increased stress from working at three medical facilities caused or contributed to Ms. Morris' SCA on 5/14/2020. This requires substantial medical evidence.

Applicant was initially evaluated by Panel QME Pedram Navab, a neurologist, whose initial report of 10/20/2020, prepared after review of medical records only, resulted in an opinion that based on his review of what was transmitted to him, applicant's anoxic brain injury was secondary to her sudden cardiac arrest, and it didn't appear that her injuries arose out of her employment, since she had no symptoms of Covid-19 prior to her SCA. In the discussion section of his initial report (Exhibit 2-B), Dr. Navab opined that applicant has chronic history of coronary artery disease (the hypertension) and polycystic kidney disease which could have precipitated a cardiac arrhythmia and led to a SCA. However, the doctor also stated that if it can be proven that applicant was under considerable stress during her time at City of Hope, prior to her SCA, then a case can be made for a worsening of her cardiovascular disease. He noted that there are numerous studies that have shown correlation between acute and long-term stressors and worsening of cardiovascular disease (Page 75 of 2-B). Although he was provided a copy of Ms. Morris' mother's deposition, wherein she testified that her daughter had indicated to her that she was under stress, he indicated that he would rather see a more objective indication that Ms. Morris was undergoing stress, such as documentation that she had met with a psychologist or psychiatrist.

Dr. Navab clearly stated in his initial report that if such a connection could be established, it could change the outcome of his analysis, but at that time, there was no tenable, industrial causation existing in regard to applicant's SCA. Dr. Navab indicated that applicant was unable to return to

work in any capacity, and had not yet reached MMI. He ultimately stated that the SCA caused applicant's anoxic brain injury and that there was no industrial causation between the SCA and the anoxic brain injury unless more information becomes available regarding stressors that may have contributed to applicant's cardiac dysfunction.

Applicant was then evaluated by Stuart Fischer, M.D., the panel QME in cardiology, who rendered a report dated 7/15/2021 (Exhibit 1-A). He reviewed thousands of pages of records and transcripts of depositions. He noted that all that has happened to Ms. Morris after her SCA is due to the cardiac arrest and that her anoxic encephalopathy and her current state is due to the SCA on 5/14/2020. He also noted that the physicians who performed initial consults and took care of her immediately after the SCA were not able to determine an etiology for applicant's SCA. He notes the family members' depositions documented the stress applicant was under in May of 2020 when she was worried about Covid-19 and the fact she had a history of hypertension and polycystic kidney disease, it was felt she would be at higher risk for having complications if she were to develop or catch Covid-19.

Dr. Fischer referenced what he called an excellent review or overview of SCA and sudden cardiac death in the medical journal "Up to Date" in an edition that he noted was updated on 8/22/2019, authored by Philip Podrid, M.D. He noted that applicant had none of the most significant or common etiologies for SCA (Page 69 of 1-A). He noted she also did not have other disease processes in the absence of structural heard disease that were listed. Other risk factors were discussed, as were psychosocial factors. He noted that Dr. Podrid cited to clinical observations with the possible relation between acutely stressful situations and the risk of SCA, and major disasters such as earthquakes can result in transient increase in the rate of SCA in a population. The article also refers to an article by Jeffrey H. Tofler, also in "Up To Date", dated June of 2021, last updated March 29, 2021, titled "Psychosocial Factors and Sudden Cardiac Arrest." This article notes that acute psychological disturbances can cause life-threatening ventricular arrhythmias and that the role of stress most likely was mediated by sympathetic activation and an increase in circulating catecholamines, ultimately stating that intense stressors such as earthquakes have been associated with increased cardiac mortality.

Dr. Fischer ultimately opined in his initial report that it was his expert medical opinion that there is at least a 1% medical probability to the best of his medical knowledge that Ms. Morris' sudden cardiac arrest did have an industrial component and that of this arrhythmogenic arrest, at least 1% could have arisen out of and been caused by her employment as an oncology nurse during this extremely stressful time of Covid-19.

Once Dr. Fischer's report was obtained, it was forwarded to Dr. Navab for review. After reviewing it, Dr. Navab, in his 11/5/2021 report (Exhibit 2-C) remained of the opinion that unless other evidence was presented, causation was non-industrial.

Dr. Fischer authored an 11/8/2021 report (Exhibit 1B) after review of the 911 call and deposition of Alma Harris. He noted that CPR was not started until after the 7th minute of the call. After reviewing this, Dr. Fischer indicated that a neurologist could better estimate the current extent of applicant's incapacities and that after review of the deposition of Ms. Harris and the 9 minutes and

28 seconds of the 911 call, he would not change any of his opinions expressed in his 7/15/2021 report.

Thereafter, on 11/15/2022, Dr. Navab was sent additional medical records to review and the depositions of multiple of applicant's co-workers. Dr. Navab indicated at Page 32 of his report (Exhibit 2D) that the co-worker depositions suggest applicant was under considerable stress during the Covid-19 pandemic. Dr. Navab indicated that these co- workers worked with applicant for prolonged periods and were able to gauge her more objectively than her family members. At Page 33, Dr. Navab added that these stressors could be a cause for applicant's SCA. He stated that now he had more information from applicant's co-workers and guardian to suggest that there were incipient stressors that may have contributed to applicant's cardiac dysfunction and subsequent SCA. He ultimately opined, at Page 34, that it was his opinion that applicant's anoxic brain injury partially arose out of her employment and was partially caused by her employment. He provided an opinion on apportionment and an opinion as to whole person impairments, which were effectively rebutted during cross-examination (Exhibit 2H).

On 2/15/2022, Dr. Navab authored another supplemental report after review of additional records (Exhibit 2E), which included applicant's psychotherapy notes, wherein concerns about Covid-19 were documented. Dr. Navab noted that after his review of those records, he confirmed that the records were another instance revealing that applicant was anxious about working in the two hospitals in question due to concerns about contracting the novel coronavirus.

Although both Dr. Fischer and Dr. Navab were extensively cross-examined by the various attorneys involved in these cases, neither Dr. Fischer nor Dr. Navab changed their ultimate opinions that applicant's sudden cardiac arrest was industrially-related.

Defendants, after the MSC, obtained an affidavit from Philip J. Podrid, M.D. (Exhibit F), the author of the "UpToDate" article entitled, "Overview of sudden cardiac arrest and sudden cardiac death," (Exhibit E) cited by Dr. Fischer and referenced by Dr. Navab. This affidavit does not constitute a valid medical-legal report or even a medical treatment report insofar as Dr. Podrid did not evaluate the applicant, and did not review her extensive records or the deposition transcripts of applicant's family and co-workers. He also does not appear to have reviewed the medical-legal reports of Drs. Fischer and Dr. Navab. Dr. Podrid also does not exhibit a knowledge of California workers' compensation law or case authority.

Dr. Podrid comments, at Paragraph 4: "The review article does not support the conclusion that concerns and stressors of a general nature relative to health-related problems, fear of developing Covid or concerns about the pandemic represent acutely stressful situations." He comments, at Paragraph 5: "There is a distinct difference between a heart attack and sudden cardiac arrest and to utilize the review article to support the theory that stress in general associated with medical conditions and a fear of developing Covid or the pandemic itself as acutely stressful situations resulting or contributing to sudden cardiac arrest is inappropriate."

Even though Dr. Podrid makes those statements, we do not know what interrogatory was sent to him by the person or persons soliciting the affidavit or what purported "facts" were provided to him. The review article, in which he clearly points to extremely stressful events that have resulted

in increased incidents of SCA and sudden cardiac death, clearly provides a path and creates an inference that intensely stressful events could cause sudden cardiac arrest or sudden cardiac death. His affidavit doesn't state whether studies were conducted on the incidence of SCA or SCD during the pandemic, specifically as it pertains to essential workers, such as medical providers, and definitely not as it pertains to the applicant in this particular situation. Therefore, I could not give much weight to this affidavit. His original article (Exhibit E) was subject to peer review (per the article itself, which states, prior to the introduction, "All topics are updated as new evidence becomes available and our peer review process is complete."). The original article references and cites to studies undertaken. The subsequent affidavit does not appear to have been peer reviewed and it certainly doesn't cite to any studies performed relative to SCA or SCD during the pandemic, thus Dr. Podrid's opinions relative to the instant cases are lacking in substantiality and not given evidentiary weight.

Frankly, it is clear that applicant was extremely stressed during the early days of the pandemic, as evidenced by the medical records predating her SCA, including notes from her psychologist (Exhibit B) and an entry from her nephrologist, Abid Rizvi, M.D. (Exhibit 5), dated 4//8/2020 (Page 6 of Exhibit 5). In this entry of a telemedicine follow- up, the doctor notes, "Patient having severe anxiety attack and patient also complaining of sore throat since last night." The doctor noted that she looked anxious and was in mild to moderate distress and breathing fast. He recommended she take Ativan for the anxiety attack, azithromycin for the sore throat. If applicant was determined to have "severe anxiety" as a result of contracting a sore throat in the early days of the pandemic, and was concerned enough to suspend her psychologist appointments for fear of either sharing or contracting the corona virus, it stands to reason that becoming unwell on 5/14/2024 and experiencing symptoms which could potentially be related to Covid, was an acutely stressful event for the applicant, which could have triggered her SCA.

I find the opinions of Drs. Fischer and Navab, insofar as they attribute applicant's sudden cardiac arrest to be at least 1% industrially-related, to be substantial medical evidence. These evaluators have staunchly defended their opinions through multiple depositions and extensive review of records and depositions. Both physicians have determined that industrial causation is reasonably probable.

It is a long-established principle of workers' compensation that an employer takes the employee as he finds him or her at the time of the employment. Ms. Morris obviously had pre-existing conditions of hypertension and polycystic kidney disease, and had been seeing a psychologist predating the pandemic. However, it is clear from the record and testimony of multiple witnesses that Ms. Morris was in fact significantly or even acutely stressed by the pandemic and her job as an RN during the early days of the pandemic. While neither Dr. Fischer nor Dr. Navab used the creative words "crumbs off the crust," as explained by Dr. Bruff in the *South Coast Framing* case when ascertaining the industrial relationship of applicant Clark's use of Vicodin and his untimely demise in that case, in the instant matter, they have persuasively argued that there is an industrial connection of at least 1%, which makes applicant's sudden cardiac arrest industrially compensable.

I find that applicant has sustained her burden of proof that her sudden cardiac arrest is industrially-related, and thus arose out of and occurred in the course of her employment. Further development

of the record is required as to how that industrial compensability is divvied as between the various employers. All other issues were deferred.

In the event that any defendant voluntarily pays any retroactive indemnity, whether TD or PD to the applicant, they shall withhold 15% for potential attorney fees, which may be released to applicant's attorney upon the filing of a petition requesting their release.

Dated at San Bernardino, California
October 23, 2024

Myrle R. Petty
Workers' Compensation
Administrative Law Judge