

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

MELVIN GARCIA GALDAMES, *Applicant*

vs.

**VINYL TECHNOLOGY, INC.;
SEDGWICK 14442 ORANGE, *Defendants***

Real Parties in Interest:

**Mesa Pharmacy, Mesa Pharmacy, Inc.,
and Mesa Pharmacy Irvine, *Lien Claimants***

**Adjudication Number: SAU9997873
Pomona District Office**

**OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Lien claimants Mesa Pharmacy, Mesa Pharmacy, Inc., and Mesa Pharmacy Irvine (collectively referred to herein as Mesa)¹ seek reconsideration of Findings of Fact (Findings) issued by a workers' compensation administrative law judge (WCJ) on June 27, 2003. The WCJ found that John Garbino exercised de facto control of Mesa under Labor Code² section 139.21, subdivision (a)(3) (section 139.21(a)(3)).

Mesa contends that Mr. Garbino did not control Mesa under section 139.21(a)(3) because there is no evidence that he was "a current officer or a director of the entity, or a 'shareholder with a 10 percent or greater interest in the entity.'" In addition, Mesa contends that the Significant Panel Decision in *Villanueva v. Teva Foods*, 84 Cal. Comp. Cases 198 (2019) 84 Cal.Comp.Cases 198 [2019 Cal.Wrk.Comp. LEXIS 13], was incorrectly decided and therefore cannot be used to establish that Mr. Garbino controlled Mesa under section 139.21(a)(3); and, that even if *Villanueva* were correctly decided, this case is distinguishable from the type of fraudulent concealment of

¹ Mesa admits that Mesa Pharmacy, Mesa Pharmacy, Inc. and Mesa Pharmacy Irvine are the same entity. (Petition for Reconsideration, p. 1, fn. 1.)

² All further references are to the Labor Code unless otherwise noted.

ownership found in *Villanueva*. Finally, Mesa contends that there were no grounds for the WCJ to apply an adverse evidentiary inference against Mesa for its failure to produce its Board of Directors meeting minutes (BOD minutes), because the WCJ did not establish that the failure to produce the BOD minutes was “willful” under WCAB Rule 10670, subdivision (c) (WCAB Rule 10670(c)).

Carriers filed an Answer to Petition for Reconsideration (Answer), contending that the WCJ correctly found that the witness testimony in this matter lacked credibility and that the witnesses contradicted each other; and, considering the totality of the record, the evidence indicates that the information regarding ownership and control in Mesa’s publicly filed documents was false; that there was sufficient evidence to apply an adverse inference against Mesa as to corporate formalities because they admitted documents existed in support, but refused to produce them; that Mr. Garbino had de facto control over Mesa pursuant to *Villanueva*; that *Villanueva* was correctly decided given that the legislative history and purpose of sections 4615 and 139.21 is to eliminate fraud in the California workers’ compensation system; and, that to adopt Mesa’s position would be to allow providers convicted of criminal, fraudulent, or abusive behavior to use sham corporate documents to disguise their actual control and ownership of entities.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), wherein it was recommended that petition be granted for the sole purpose of admitting the Arizona Board of Pharmacy records into evidence as Exhibit O, but otherwise denied.

We³ have reviewed the entire record in this matter, the allegations of the Petition for Reconsideration and the Answer, and the contents of the Report. For the reasons set forth in the Report, which we adopt and incorporate herein,⁴ we affirm the Findings, but grant reconsideration to take judicial notice of Exhibit O, the Arizona Board of Pharmacy records identified during the September 29 and October 1, 2020 trials.

It is our decision after reconsideration to amend the WCJ’s Findings to add findings of fact that John Garbino was an “officer or a director” of Praxsyn Corporation and that he controlled Mesa under section 139.21(a)(3) as an “officer or director” of Praxsyn. The Findings are amended pursuant to the substantial evidence in this record as set forth in the Report that Mesa was the alter

³ Prior decisions of the Appeals Board have issued in this matter from the same panel except that another commissioner has been substituted in for Marguerite Sweeney as she is no longer a Commissioner of the Appeals Board.

⁴ See Report attached at the end of our decision. Please note that the Report was left substantially complete, and all mistakes therein are from the original.

ego of Praxsyn and thus, these two corporations are treated as one (see *De La Rosa v. County of L.A. Dep't of Children & Family Servs.* (2018) 83 Cal.Comp.Cases 1721, 1728 and fn. 5 [2018 Cal.Wrk.Comp. P.D. LEXIS 327] quoting *Santa Clarita Organization for Planning & Environment v. Castaic Lake Water Agency* (2016) 1 Cal.App.5th 1084, 1104–1105 [2016 Cal. App. LEXIS 623].))

For the foregoing reasons,

IT IS ORDERED that lien claimants' Petition for Reconsideration of the Findings of Fact issued by a workers' compensation administrative law judge on June 27, 2003 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the request for judicial notice made on September 29, 2020 of Exhibit O, consisting of records from the Arizona Pharmacy Board identified during trial on October 1, 2020, is hereby **GRANTED** pursuant to Evidence Code section 452, subdivision (c).

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued by a workers' compensation administrative law judge on June 27, 2003 is **AFFIRMED** except it is **AMENDED** as follows (amendment in bold):

FINDINGS OF FACT

Mesa Pharmacy did not maintain itself in such manner as to be a legal entity as a corporation. The putative officers, owners and directors of the business offered differing and oftentimes conflicting accounts of what positions they held, what their duties consisted of and what their ownership interest were.

Mesa was unable or unwilling to produce the minutes of the Board of Directors. As such the court asserts an adverse **inference** that they indicate either that Mesa was being run as a shell with no corporate formalities observed allowing for Garbino to assert control, or that Garbino was in fact in de facto control of Mesa (**see Cal. Code Regs., tit. 8, § 10670(d), Evid. Code, § 413**).

Various conflicting legal documents, filed in different jurisdictions, list different people in the exact same position during concurrent time periods.

Garbino, who plead guilty to Medicare fraud, was the only significant revenue stream for Mesa. But for him, the company would never have grown beyond its inception as a corner pharmacy. He drove the expansion and because of this the company did what he told it to.

The court therefore finds that Garbino was in de facto control of Mesa Pharmacy under Labor Code §139.21(a)(3).

The court also finds substantial evidence in the record that Praxsyn Corporation was not merely a separate parent corporation to Mesa Pharmacy, but rather, that Mesa Pharmacy was the alter ego of Praxsyn Corporation, i.e., that they were one and the same. (See *De La Rosa v. County of L.A. Dep't of Children & Family Servs.* (2018) 83 Cal.Comp.Cases 1721, 1728 and fn. 5 [2018 Cal.Wrk.Comp. P.D. LEXIS 327] quoting *Santa Clarita Organization for Planning & Environment v. Castaic Lake Water Agency* (2016) 1 Cal.App.5th 1084, 1104–1105 [2016 Cal. App. LEXIS 623].)

The court therefore finds that as a director of Praxsyn Corporation, Garbino “controlled” Mesa Pharmacy under Labor Code section 139.21, subdivision (a)(3) as an “officer or director.”

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 22, 2023

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

**MESA PHARMACY
OD LEGAL, DIR ANTI-FRAUD UNIT, LOS ANGELES
THE RONDEAU LAW FIRM
MOKRI, VANIS & JONES, LLP
PEATMAN LAW GROUP**

AJF/abs

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

**Division of Workers' Compensation
Workers' Compensation Appeals Board**

CASE NUMBER: SAU9997873

**MELVIN GARCIA
GALDAMES,**

-vs.-

**VINYL TECHNOLOGY,
INC.; DIR AFU;**

In the matter of MESA PHARMACY

**WORKERS' COMPENSATION JUDGE: Amy Britt
DATE: August 2, 2023**

**REPORT AND RECOMMENDATION ON PETITION
FOR RECONSIDERATION**

Identity of Petitioner: Mesa Pharmacy, Mesa Pharmacy, Inc.; Mesa Pharmacy Irvine
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Date of Issuance of Decision: June 27, 2023

MESA PHARMACY has filed a timely Petition for Reconsideration, objecting to said decision(s) in the following particular(s):

Petitioner(s) contend(s) that the undersigned erred as:

1. That in issuing the Findings of Fact, the Trial Judge acted without or in excess of her powers;
2. That the evidence submitted in the above-captioned matter does not justify the Findings of Fact; and,
3. That the Findings of Fact do not support the ultimate decision in the above-captioned matter by the Trial Judge.

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