

1 LEGAL SERVICE BUREAU  
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4 REPRESENTATIVE FOR LIEN CLAIMANT DAVID SILVER, M.D.

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

10  
11 HERNANDEZ, MARIA G.

12 *Applicant,*

13 vs.

14 DATA PRODUCTS CORP.; AIG  
15 CLAIMS,

16 *Defendants,*

17  
18  
19 DAVID SILVER, M.D.

20 *Lien Claimant.*

) Case No. ADJ2931811

) **PETITION FOR \$775.00 IN**  
) **COSTS/FEEES AND \$2,500.00 IN**  
) **SANCTIONS AGAINST**  
) **DEFENDANT'S ATTORNEY**  
) **ZAREH ZATIKYAN AND HIS LAW**  
) **FIRM TOBIN LUCKS LLP**

21  
22 Lien Claimant, DAVID SILVER, M.D., through his representative Legal  
23 Service Bureau, by this petition, seeks costs/fees in the amount of \$775.00 and  
24 sanctions in the amount of \$2,500.00 against Defendant's attorney ZAREH  
25 ZATIKYAN and his law firm Tobin Lucks LLP, for bad faith actions or tactics by  
26 ZATIKYAN on June 28, 2017. This petition is brought under *Labor Code* § 5813  
27 and Title 8, *Code of Regulations*, Rule 10561 (b)(9).

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1 **STATEMENT OF FACTS**

2 At the Lien Conference on June 28, 2017, Hearing Representative Zoila  
3 Webster appeared for Legal Service Bureau and on behalf of Lien Claimant David  
4 Silver, M.D.

5 The parties were ordered to set a trial date and while at the Board’s calendar  
6 window, Defendant’s attorney ZAREH ZATIKYAN of Tobin Lucks, used his  
7 cellular phone to take video of Miss Webster without her consent and in an effort  
8 to annoy and harass Ms. Webster.

9 Petitioner is informed and believes that Ms. Webster found ZATIKYAN’S  
10 conduct in videotaping her without her consent, to be patently insulting, offensive,  
11 insolent, intemperate, foul, vulgar, obscene, abusive, or disrespectful.

12 **I.**  
13 **THE BOARD MAY ISSUE AN ORDER OF COSTS, FEES AND**  
14 **SANCTIONS UNDER LABOR CODE SECTION 5813 FOR ZATIKYAN’S**  
15 **BAD FAITH ACTIONS OR TACTICS COMMITTED ON JUNE 28, 2017**

16 Section 5813 permits the award of sanctions, attorney’s fees and costs  
17 against a party who engages in “bad faith actions or tactics that are frivolous or  
18 solely intended to cause delay.”<sup>1</sup>

19 WCAB Rule 10561(b) provides that “bad faith actions or tactics that are  
20 frivolous” include:

- 21 (9) Using any language or gesture at or in connection with any  
22 hearing, or using any language in any pleading or other document:  
23 where the language or gesture (i) is directed to the Workers'  
24 Compensation Appeals Board, to any of its officials or staff, or to any  
25 party or lien claimant (or the attorney or other representative for a  
26 party or lien claimant) and (ii) is patently insulting, offensive,  
27 insolent, intemperate, foul, vulgar, obscene, abusive, or  
28 disrespectful...

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28 1 WCAB Rule 10561(e)(1) provides that, for purposes of section 5813, a “party” includes a lien claimant and an “attorney” includes a lay representative of a party or lien claimant. (Cal. Code Regs., tit. 8, § 10561(e)(1).)

1 ZATIKYAN, a member of the bar since December, 2011, and an employee  
2 at Tobin Lucks since July, 2014, has exhibited abusive and offensive conduct  
3 during his discourse with Ms. Webster on June 28, 2017 and treated this lien  
4 representative disrespectfully.

5 The act of videotaping Ms. Webster at the calendar window was a  
6 culmination of the unprofessional conduct exhibited by ZATIKYAN throughout  
7 the course of these proceedings.

8 In a telephone conversation between Ms. Webster and her supervising  
9 hearing representative at the time of the ZATIKYAN'S videotaping, Ms. Webster  
10 expressed anger, frustration, and general emotional distress at the fact that  
11 ZATIKYAN was in the act of videotaping her without her consent and solely to  
12 harass Ms. Webster. There was no reasonable justification for the videotaping.

13 The conduct by ZATIKYAN in videotaping opposing counsel for the  
14 purpose of harassment falls below the standard of professionalism which ought to  
15 be exercised by a member of the Bar and by representatives appearing before the  
16 Workers' Compensation Appeals Board. Such conduct is also a potential violation  
17 of Penal Code §632(a)<sup>2</sup> which carries a \$5,000.00 civil penalty under Penal Code  
18 §637.2 subsection (a).<sup>3</sup>

19 \_\_\_\_\_  
20 2 Penal Code section 632(a) provides: "Every person who, intentionally and without the consent  
21 of all parties to a confidential communication, by means of any electronic amplifying or  
22 recording device, eavesdrops upon or records the confidential communication, whether the  
23 communication is carried on among the parties in the presence of one another or by means of a  
24 telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding  
25 two thousand five hundred dollars (\$2,500), or imprisonment in the county jail not exceeding  
26 one year, or in the state prison, or by both that fine and imprisonment. If the person has  
27 previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or  
28 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by  
imprisonment in the county jail not exceeding one year, or in the state prison, or by both that  
fine and imprisonment."

3 Any person who has been injured by a violation of this chapter may bring an action against  
the person who committed the violation for the greater of the following amounts:

- (1) Five thousand dollars (\$5,000).
- (2) Three times the amount of actual damages, if any, sustained by the plaintiff.

1 Two and one-half (2.5) hours have been spent reviewing the facts of this  
2 case, researching the laws and regulations involved in this matter and preparing  
3 this petition. The normal hourly rate of lien claimant's representative is \$310.00  
4 based on his education and experience in the area of workers' compensation lien  
5 claims.<sup>4</sup> Fees in the amount of \$775.00 plus any additional fees incurred by any  
6 proceedings relating to this issue are being sought against Defendant's attorney  
7 and law firm, in addition to sanctions in the amount of \$2,500.00.

8 **CONCLUSION**

9 The unconsented videotaping by Defendant's attorney constitutes bad faith  
10 actions or tactics and the facts demonstrate that this was an effort by ZATIKYAN  
11 clearly calculated to offend, abuse and disrespect this hearing representative and  
12 could have easily have evolved into a serious physical altercation.

13 To discourage similar conduct in the future, these bad faith actions or tactics  
14 by ZATIKYAN should be properly addressed by the Board's issuance of a cost  
15 and sanction award against ZATIKYAN and his law firm.

16 Respectfully submitted.

17 Date: July 28, 2017

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19 Dan Escamilla  
20 LEGAL SERVICE BUREAU  
21 Representative for Lien Claimant

22 \_\_\_\_\_  
23 4 Petitioner's hearing representative, Dan Escamilla, is an ABA approved law school graduate  
24 who passed the California State Bar Exam in 2001 and, thereafter, obtained additional formal  
25 legal training. Mr. Escamilla has over twenty-six (26) years of experience specifically  
26 representing lien claimants and has appeared before all WCAB District Offices throughout  
27 California and before the WCAB Commissioners in a Commissioners Conference. Mr.  
28 Escamilla has also written over 70 petitions for writ of review in his career. Mr. Escamilla's  
experience and qualifications exceeds that of almost all licensed attorneys appearing before the  
WCAB. As such, sufficient justification demonstrates that Escamilla's hourly billing rate of  
\$310.00 is justified as being comparable to experienced attorneys appearing before the WCAB.  
See 99 Cents Only Stores v. WCAB (Arriaga) (2000) 80 Cal.App.4th 644, 65 Cal.Comp.Cases  
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**VERIFICATION**

STATE OF CALIFORNIA     )  
  ) ss.  
COUNTY OF ORANGE     )

I am the administrative representative for DAVID SILVER, M.D., Lien Claimant and petitioner in this action and I am authorized to make this verification for and on his behalf, and I make this verification for that reason.

I have read the foregoing **PETITION FOR \$775.00 IN COSTS/FEES AND \$2,500.00 IN SANCTIONS AGAINST DEFENDANT’S ATTORNEY ZAREH ZATIKYAN AND HIS LAW FIRM TOBIN LUCKS LLP** and know that contents thereof. The matters stated in the petition are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on July 28, 2017 in the City of Santa Ana, State of California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Dan Escamilla

1 LEGAL SERVICE BUREAU SANTA ANA  
ED PARKER  
2 (714) 210-3500  
3 EDPARKERLSB@GMAIL.COM  
4

5 **PROOF OF SERVICE BY MAIL**  
6 **RE: MARIA G. HERNANDEZ**

7 STATE OF CALIFORNIA )  
8 ) ss.  
9 COUNTY OF ORANGE )

10 I am a citizen of the United States and a resident of and employed in the  
11 County of Orange, State of California. I am over the age of 18 and not a party to  
12 the within action or proceeding. My business address is 888 W. Santa Ana Blvd,  
Suite 100, Santa Ana, CA 92701.

13 On July 28, 2017, I served the within:

14 **PETITION FOR \$775.00 IN COSTS/FEE'S AND \$2,500.00 IN**  
15 **SANCTIONS AGAINST DEFENDANT'S ATTORNEY ZAREH**  
16 **ZATIKYAN AND HIS LAW FIRM TOBIN LUCKS LLP**

17 on the person(s) indicated below, by placing a true copy thereof enclosed in a  
18 sealed envelope with postage thereon fully prepaid in the United States mail at  
19 Santa Ana, California, addressed as follows:

20 SEE ATTACHED MAILING LIST

21 Executed on July 28, 2017 in the City of Santa Ana, State of California.

22 I declare under penalty of perjury under the laws of the State of California  
23 that the above is true and correct.  
24

25   
26 Ed Parker  
27  
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**MAILING LIST**

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WORKERS' COMPENSATION APPEALS BOARD (EAMS FILED ONLY)

ZAREH ZATIKYAN  
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