

February 24, 2014

The Institute supports the concept of a flat fee schedule wherein copy services and all related fees are bundled. At the request of the Department of Industrial Relations, the Berkeley Research Group (BRG) issued a report on copy service fees titled "Formulating a Copy Service Fee Schedule for the California Division of Workers' Compensation" and dated October 2, 2013. BRG recommended, based on its review and analysis of copy service payment data and other information, that the most cost effective and fair method for paying for copy costs is "a single price for copy sets, regardless of the number of pages involved (up to 1,000 pages) or the difficulty in retrieval of documents." It concluded that "the cost of each initial copy set should be \$103.55 and that additional copy sets should be made available at \$.10 per page if paper and for a nominal lump sum fee of \$5.00 if electronic."

Based on the data considered by BRG, we believe that a flat rate in the range recommended by BRG is appropriate for up to 1,000 pages, rather than 500 pages. The Institute believes that a flat fee should pay no more than is allowed as reasonable under California Evidence Code sections 1560-1567 for 1,000 pages, and any per-page fee should not exceed \$.10 per page for copies in excess of 1,000 pages, and \$.20 per page for microfilm copies. According to California Evidence Code sections 1560-1567, reasonable cost is:

- not more than \$.10 per page for 8.5x14 inches or less
- \$.20 per page for microfilm copies
- actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to a subpoena
- reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of twenty-four dollars (\$24) per hour per person, computed on the basis of six dollars (\$6) per quarter hour or fraction thereof
- actual postage charges.

We support the description of allowable services in section 9982, and recommend clarifying that the bundled services include, but are not limited to these services.

The Institute recommends that the Administrative Director adopt billing codes at the time it adopts copy services. According to Labor Code section 4603.2(b), copy services are among those services that are provided pursuant to Labor Code Section 4600, and billing codes will be necessary to properly bill, pay, and report the copy services.

INTRODUCTION -- I appreciate the opportunity to comment on the proposed fee schedule and Regulations for “copy and related services”. While I am currently unaffiliated with any particular copy company or group, I met several times with the Department of Industrial Relations (DIR) staff and other interested parties during the past two years on the subject of copy and related services, produced several papers on the subject publicly and to the Administration, and met with the Berkeley Research Group both by phone and in person during the development of their study.

My main concern in what follows is with reducing the ambiguities and opportunities that cause unnecessary DISPUTE costs to be passed on to employers. These proposed Regulations provide an excellent opportunity to extinguish as many of these dispute---drivers as possible. Fewer opportunities for dispute means a significantly lower “adjustment expense” per invoice for employers, and a significant reduction in the DWC District office resources necessary to resolve copy service disputes. If we FAIL to provide clear answers to stakeholders in these regulations, or worse, create even more ambiguities, confusion, or obvious unfairness, the situation will deteriorate further. If that happens, the overall cost to employers will INCREASE over the next three to five years, no matter what value is put on the services. It’s my opinion that the real savings in this “fee schedule” is not so much in the value of the services it establishes, but in the reduction of the unnecessary dispute costs, and elimination of unnecessary (and sometimes illegitimate) copy orders to begin with. So, rather than argue about \$180 versus \$250, or bundled versus unbundled, I believe a fee schedule and set of regulations that stays true to the empirical data, and spirit of the legislation (not to mention current state of the law) will provide exactly what the employers and applicants need out of this effort.

Thank you for the opportunity to participate in this public forum, and for the many hours of hard work and diligence the Administration has put into this project to date.

§9980(f) – Records should not be produced under this Article using Evidence Code §1158 and an Authorization. Evidence Code §1158 states in the first sentence that it may only be used PRIOR to the filing of any action. Many of the provisions of these proposed regulations require jurisdiction of the Appeals Board, which under Regulation §10403 commences upon the filing of the Application (or other case opening document). Therefore, it seems likely (and this should be clarified in this Article) that the services of a non---contract copy service may not be incurred until the “action” has been filed. This basically rules out the use of Evidence Code §1158 by non-contract (applicant) copy services as medical-legal expense.¹

¹ The only exception being when a custodian of records requires a specialty authorization, which would not fall under E.C. §1158 anyway.

It should be noted that there is no requirement to serve a “Notice To Parties”, as described and used several times in this Article, when an Authorization is used to compel production of records. This is a big reason why producing records under a deposition subpoena or notice of deposition is preferred over an Authorization. I suggest the Administrative Director remove the reference to Authorizations and Evidence Code §1158, and focus the non---contract copy services on use of the deposition for discovery.²

§9980(f) – The term “relevant” needs to be further defined in this subsection. Does this include medical and other records that were copied by the employer’s copy service and are in the employer/carrier/administrator’s possession? Or does this include only the employer’s/carrier’s/administrator’s OWN business records? Many copy services and applicant attorneys are under the impression that ONLY the employer/carrier/administrator’s OWN business records should be subject to voluntary service under Labor Code §5307.9 – and NOT medical records that might have been obtained through a contract copy service, and are in the employer’s possession at the time a request is made.

It further needs to be clarified if the applicant/representative is REQUIRED to make a request for records, and if a request must be made to EACH OF the employer, carrier, claims administrator... or just ANY one of them. This is a critical distinction that could make a huge difference in the volume of dispute in the coming years.

MISSING §9980(g) – There is no subsection (g) currently, but missing from the regulation is a definition of “Notice to Parties”, which is mentioned several times throughout the Article. If “Notice to Parties” is a notice of copying (as opposed to service of the invoice), it should be noted that use of an Authorization does not include a “Notice to Parties”... only a Subpoena or Deposition Notice would include a Notice to Parties.

§9981 – If there is to be a “statement” on the invoice, it should be signed under penalty of perjury, as in Regulation 10404. If the statement is not signed then it seems of little effect or use. If the requirement has no use or value it should be removed from this Article to avoid misinterpretation or confusion. I suggest the Department of Workers Compensation expand this subsection to require a signed declaration under penalty of perjury. However, exactly how Labor Code §139.32 applies to copy services should also be further clarified for the stakeholders, as there is much confusion on this issue. I believe there is a significant opportunity for savings to the employers if this is fully resolved in these regulations.

² Labor Code §5307.9 specifically excludes the Fee Schedule and related regulations from being applied to “contract” copy services, so eliminating the use of an Authorization does not limit a party’s ability to do pre---Application discovery... it just limits the copy and related costs from being medical.

§9982(a) – The Department of Workers Compensation should make it clear in §9982(a) whether or not a contested claim, limited to only what is currently defined in Labor Code 4620(b), is required before records may be obtained through an applicant copy service, or some other standard.

A “contested claim” as it relates to incurring the cost of DISCOVERY is not defined currently in the Labor Code or Regulations. Labor Code 4620(b) defines a contested claim for the purposes of medical--legal “evaluations, diagnostic tests, and interpreters **incidental to a medical report**”, but that same set of standards would not apply to DISCOVERY. Regulation §10403 defines when jurisdiction is established and discovery commences in a workers compensation case, which is upon the filing of an Application for Adjudication of Claim, or other case opening document. Proposed Regulation §9982(b) and (c) indicate that when an Applicant or their representative makes a request for relevant records, and that request is not fulfilled within 30 days, that the applicant copy service HAS AUTHORITY to commence discovery and incur a valid medical--legal expense for the necessary copying. **This authority should be explicitly defined in these regulations.**

Taken in context with the rather simple and straightforward 30--day informal request and waiting period established in Labor Code §5307.9, I believe this discrepancy will be a major source of dispute. Especially in light of the recent Martinez decision from the WCAB regarding copy services as medical--legal only. Defense attorneys, copy service bill review companies, and other stakeholders responsible for reducing copy and related expenses for their employer/carrier/TPA clients will leverage the ambiguity in Labor Code 4620 and the issue of a “contested claim” to their full advantage, leading to excessive and unnecessary dispute. I urge the Department of Workers Compensation and the Administrative Director to resolve this clearly and fairly to both the employer and the applicant in these regulations.

§9982(b) – It appears from the wording of this draft that service of “records” made under §9980(f) and as contemplated in §9982(c)(1) must be done in full compliance with Regulation §10608. Labor Code §5307.9 and §9982(c)(1) denies payment for any copying and related services “provided” within 30 days of a request made for service of the same records from the employer/carrier/administrator. Delivery of the records to the requesting party appears to be when the services are actually “provided”.

Regulation 10608(b) requires the service of records subject to a request to be performed within **10 calendar days**. Therefore, it appears this Article requires a specific request from the applicant or his/her representative to the employer/carrier/administrator, and that the applicant/representative must then wait 10 calendar days for a response (possibly add 5 days for mailing). At that point, the applicant/representative may REQUEST copying and related services, but may not be PROVIDED with said records from the copy service for an additional 20 days (not including mailing days).

As this may become a major source of dispute, this timeline should be more clearly defined in the Regulation.

§9982(c)(1) – The wording of this draft doesn’t make it clear that the applicant or his/her representative is **REQUIRED** to make a request upon the employer/carrier/administrator for relevant records in their possession. It simply states that services of an applicant copy service may not be “provided” for 30--days whenever such a request is made. The Department of Workers Compensation should make it more clear in this Article if such a request is required... or not.

§9982(c)(2) – This subsection needs to address new records at the same location that were not previously copied by the same provider, such as updated records, or records that were previously **EXCLUDED** in the request made to the records custodian. This could become a major source of copy service invoice disputes if not clarified.

§9982(c)(3) – Most records can be obtained informally by the applicant personally, should the applicant drive to each record location, fill out the authorization, wait for records to be copied, etc. However, it should not be the injured worker’s responsibility to do his or her **OWN** discovery and copying in a workers compensation matter. As written, this subsection will be an enormous source of dispute when it comes to collecting invoices for copy and related services. It is suggested that “or other records that can be obtained without a subpoena at lower cost” should be removed. The law already provides a workers’ compensation judge authority to deny payment for services that were not necessary. Labor Code §4621(a)

§9982(c)(4) – The wording of this subsection – particularly the word “obtainable” -- makes it appear that **ALL** of the business records accrued by the employer/carrier/administrator is **EXEMPTED** from copying as a medical--legal expense under this fee schedule. Surely, that is not what the Department of Workers Compensation intended.

What causes even more confusion is the Notice To Produce under CCP 2031.010 is **NOT** available for use in a workers compensation proceeding. Records and discovery must be obtained by deposition under LC 5710 and CCP 2025.010. Lubin, Moran, Hardesty supra

Nowhere in the Rules of Practice and Procedure does it incorporate the use of a Notice To Produce under CCP 2031.010. Moran vs. Bradford Building, Inc. (1992) [57 Cal. Comp. Cases 273](#) (WCAB en banc decision): The discovery statutes in the CCP apply only if the Labor Code or WCAB Rules of Practice and Procedure specifically allow them.

It is suggested that §9982(c)(4) **be removed entirely from the proposed regulations.**

§9982(c)(5) – As currently proposed, this subsection could be interpreted (for purposes of dispute) to require every field representative for every copy service to become certified as a Professional Photocopier – or the services will not be payable under the fee schedule. Business and Professions Code §22451(d) specifically EXCLUDES persons who work FOR a Professional Photocopier from having to register. This subsection should state, "who is not a registered photocopier OR EXCLUDED UNDER BUSINESS AND PROFESSIONS CODE §22451.

§9982(d)(1) – This subsection needs more clarification to avoid becoming a major source of unnecessary dispute. If the employer/carrier/administrator previously obtained the same records through their own copy service but failed to serve those records according to this Article and/or Regulation §10608, the employer could simply ignore the applicant's request for the records in their possession and simply not pay the applicant copy service under this provision.

§9982(e) – Labor Code §4620 clearly establishes the Injured Worker's right to obtain and receive copies of X-ray films at the Employer's expense, as a medical- legal cost. X-rays are usually produced by Subpoena during discovery by a Professional Photocopier:

Labor Code §4620(a): For purposes of this article, a medical-legal expense means any costs and expenses incurred by or on behalf of any party, the administrative director, or the board, which expenses may include **X-rays**, laboratory fees, other diagnostic tests, medical reports, **medical records**, medical testimony, and, as needed, interpreter's fees by a certified interpreter. . .

Labor Code 5307.9 requires the Administrative Director to include FILMS (x-rays) in the copy and related services fee schedule. X-rays are a medical record recorded on a "film" or scan. Labor Code §5307.9 states:

The Administrative Director...shall adopt, after public hearings, a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, **records** or documents that have been reproduced or **recorded** in paper, electronic, **film, digital**, or other format.

It is suggested that x-rays and other scans be included in the fee schedule as part of this Article, and not EXCLUDED as described in §9982(e).

§9983(a)(1) – Labor Code §5307.9 provides authority for the DWC to adopt, after consultation with CHSWC, a “schedule of reasonable **MAXIMUM** fees payable for copy and related services...” The legislature did not authorize the DWC to adopt a schedule of **AVERAGE** fees to be used as the **MAXIMUM**, which is what this draft appears to provide.

The DWC’s study conducted and published by the Berkeley Research Group, and in consultation with (and adoption by) CHSWC, accurately identified the **MAXIMUM** reasonable fees for copy and related services based on the average of a sample of over 500,000 **non---**contract copy service invoices, and that is **\$251**.

The BRG study went on to describe a forecast of national Release of Information (ROI) fees, and a small sample (1600 invoices) of **contract** copy service fees that averaged approximately \$108. The currently proposed flat fee of \$180 appears to be the **AVERAGE** of contract and **non---**contract copy service fees that were identified in the BRG study. It is the **AVERAGE** of \$108 for “contract copy services” and the \$251 for “non---contract copy services” (\$179.5... or rounded, \$180).

Again, there is no authority in Labor Code §5307.9 to adopt a Schedule of “**AVERAGE** contract and non---contract copy and related fees.” The authority is specific in providing for the “reasonable **MAXIMUM**” for **non---**contract copy services³, which by the DWC’s own study, in consultation with CHSWC, is **CLEARLY \$251**.

The flat fee of \$180 – as proposed in this draft – is an arbitrary number that is not supported anywhere in the CHSWC approved BRG study, and is not authorized by the legislature in their clear working of Labor Code §5307.9.

There is another element to the \$180 versus \$251 argument that is important for the Administrative Director to consider, and that is having a **CONSISTENT** value for copy and related services that can be relied upon for invoices accrued both before and after the date the fee schedule is established.

Labor Code §5307.9 establishes that the Fee Schedule is to be applied only on invoices accrued **AFTER** the Fee Schedule has been implemented (prospective in nature). That leaves a tremendous **BACKLOG** of copy service invoices for the system to process over the next five

³ The last sentence of Labor Code §5307.9 very clearly **EXCLUDES** copy services working under a **CONTRACT** – which means outside of the concept of a medical---legal expense to be borne by the employer. There can be no other conclusion from the plain wording of the legislation but that this fee schedule and related regulations do **NOT** apply to any copy service that is **NOT** working for the applicant or their representative.

years that will lack an authoritative “reasonable value”. Employers and their representatives will dispute any invoice over a flat \$180 regardless of the date it was issued, and applicant copy services will argue that a minimum of \$251 per invoice is reasonable, as evidenced by the CHSWC---adopted BRG report. This will be a huge driver of DISPUTE, the cost of which will be borne by everybody involved (including the DWC itself). This will likely be the biggest source of the thousands – if not hundreds of thousands – of hearings and trials necessary over the next five years on backlogged copy service issues if not resolved.

Without following the true “fair market value” for the NON---contract copy services as established by the Berkeley Research Group study (\$251) and adopted by CHSWC, Judges and Payers will have no clear authority for “reasonable cost” of all those backlogged invoices. I suggest a bundled flat rate of \$251 for this fee schedule that can be used, formerly or informally, for ALL copy and related services, regardless of the issue date.

There is tremendous savings to the employers and the system in the BRG’s \$251 figure, as so much of the cost of the copy and related services is in the cost of DISPUTE. Simply having a Fee Schedule and related ground rules (regulations) for copy services is going to be a major savings all around. Beyond that argument, there is strong evidence that many applicant copy services were charging far in excess of the \$251 established by BRG, making this figure a substantial savings over the current rates being charged to employers. Rather than set an arbitrary and poorly supported value for the services just to appear to create EXTRA savings, it is suggested that the most accurate value (\$251) be used, and then clarify all the ground rules in these regulations. If that is followed, significant and deep savings will ensue. There will also be far less “gamesmanship” by copy services and their clients to get around what they may perceive as a draconian and arbitrary fee schedule.

§9983(a)(2)(B) and (C) – A “Notice to Parties” needs to be defined. It should be noted that there is no “Notice to Parties” when an Authorization is used to compel production of the records, like there is for a Subpoena or Notice of Deposition.

§9983(a)(3) – It should be clarified that only the ordering party has authority to “cancel” the services with a provider. This subsection could be interpreted to allow an employer to send a notice to cancel a copy order, and then pay only \$100 for the services, rather than the \$180. Again, the “Notice to Parties” needs to be defined. There is no “Notice to Parties” when an Authorization is used to compel production of the records.

§9984(a) – This section should not be limited only to records produced by authorization. All records produced or served by the parties and lien claimants, regardless if under Regulation §10608, by subpoena, by notice of deposition, or authorization should be accompanied by a Declaration under penalty of perjury attesting to what records were produced and withheld, and in compliance with Evidence Code §1561.

§9984(b) – Subsection (b) seems to be a direct conflict with subsection (a). This subsection is completely nebulous and should be removed. A person producing or serving records cannot have an IMPLIED declaration.

MISSING: Missing from this fee schedule are fees for personal service on witnesses to appear, and personal service of Special Notice of Lawsuit, and other documents. These are often performed by copy services, and should be part of “copy and related services”.

Kenneth M. Sheppard
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February 24, 2014

The Workers’ Compensation Section Executive Committee of the State Bar of California finds the following code sections to impact on the Practice of workers’ compensation from the position of a balanced Workers’ Compensation Section Executive Committee (WCEC) consisting of attorneys for Applicants and Defendants and Workers’ Compensation Judges.

§ 9980 Definitions

As used in this article:

- (a) “Copy and related services” means all services and expenses that are necessary for the retrieval and copying of documents and are responsive to a duly issued subpoena or authorization to release documents for a workers’ compensation claim.
- (b) “Claims administrator” means the person or entity responsible for the payment of compensation for any of the following: a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, the administrator of the Uninsured Employers Benefits Trust Fund (UEBTF), the administrator of the Subsequent Injuries Benefits Trust Fund (SIBTF), a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, joint powers authority, the Self-Insurers’ Security Fund, or the California Insurance Guarantee Association (CIGA) .
- (c) “Custodian of records” means the person who has physical custody and control of the books, records, documents or physical evidence and maintains them in the ordinary course of business.
- (d) “Set of records” means a reproduction, either in paper form or in electronic form, of all records copied from one custodian of records under one subpoena or authorization.
- (e) “Professional Photocopier” is defined by section 22450 of the Business and Professions Code and includes any person or entity seeking reimbursement through the WCAB for copy and related services.

[COMMENT: some professional photocopiers attempt to avoid licensing requirements by claiming that they are merely independent contractors of the requesting attorney in an attempt to misapply the “professional photocopier” exception to their business activities. This would preclude that tactic and place all photocopiers on a level and legal playing field.]

- (f) “Records in the employer’s, claim administrator’s or workers’ compensation insurer’s possession,” means all records and documents requested by an injured worker or his or her representative or a medical provider, that were in the possession of the employer, claims administrator or workers’ compensation insurer on the date the request was made.

Authority: Section 5307.9 Labor Code.

Reference: Section 5307.9 Labor Code, Section 22450 Business and Professions Code.

§ 9982 Allowable Services

- ~~(a) This fee schedule covers copy and related services which are obtained for the purpose of proving or disproving a contested claim, except services under a contract between the employer and the copy service provider.~~
- ~~(a) (a) This fee schedule applies to obtaining records which were not timely served pursuant to section 10608 reasonably and necessarily obtained in connection with a matter pending before the WCAB, except services under a contract between the employer and the copy service provider.~~

[COMMENT: the fee schedule should apply to all records obtained in any WCAB proceeding whether or not they are medical-legal in nature and irrespective of service timelines, subject to below.]

- ~~(b)~~ (b) There shall be no payment for copy and related services that are:
 - (1) Provided within 30 days of a separate request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim,

[COMMENT: in order for this section to have any beneficial effect, the request should be set apart from a standard, multipage boilerplate letter to the employer/insurer, similar to what is required for requests for authorization in the medical treatment context.]

- (2) Multiple billings arising from a single retrieval of records from one custodian of records.
- (3) For records obtainable from WCIRB, EDEX, EDD or other records that can be obtained without a subpoena at lower cost,
- (4) For records obtainable by a Notice to Appear and Produce.

(5) For records subpoenaed in violation of section 10608(c).

[COMMENT: non-physician lien claimants are barred from subpoenaing records absent WCAB order.]

~~(5)~~(6) Provided by any person or entity who is not a properly licensed/registered photocopier.

~~(d)~~(c) There will be no additional payment for copy and related services that are:

(1) Duplicative records previously obtained from the same source.

(2) Summaries, tabulations, or for indexing of documents.

~~(e)~~(d) The expense of obtaining prints of microfilm, X-ray films, and scans are borne by the party requiring them. If the party requiring them is the injured worker, said expenses may be reimbursed upon a successful petition for costs and shall not be subject to claims of penalty or interest.

[COMMENT: an injured worker should not have to bear costs necessary to properly presenting his/her claim, equally, such costs should not be seen as an incentive to increase profits.]

Authority: Section 5307.9 Labor Code.

Reference: Section 2019.030 Code of Civil Procedure, Section 5307.9 Labor Code.

§ 9983 Fees for Copy and Related Services

(a) The reasonable maximum fees payable for copy and related services are as follows:

(1) A \$180 flat fee for a set of records, from a single custodian of records, which includes mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness fees, check fees, release of information services, and subpoena preparation.

(2) In addition to the flat fee, the following fees are also reimbursable:

(A) twenty cents (\$.20) per page for copies above 500 pages, up to a maximum of \$425 per invoice (and includes the flat fee),

(B) \$50.00 for each additional set of records in paper form ordered within 30 days of the Notice of Parties, payable by the party ordering the additional set. Any fees charged to the injured worker may be reimbursed by the employer upon a successful petition for costs and shall not be subject to claims of penalty or interest.

[COMMENT: an injured worker should not have to bear costs necessary to properly presenting his/her claim, equally, such costs should not be seen as an incentive to increase profits.]

(C) \$5.00 for each additional set of records in electronic form ordered within 30 days of the Notice of Parties, payable by the party ordering the additional set, or \$30 if ordered after 30 days and the copy is retained by the registered photocopier. Any fees

charged to the injured worker may be reimbursed by the employer upon a successful petition for costs and shall not be subject to claims of penalty or interest.

[COMMENT: an injured worker should not have to bear costs necessary to properly presenting his/her claim, equally, such costs should not be seen as an incentive to increase profits.]

- (3) in lieu of the flat fee, \$100 in the event of cancellation after a Notice to Parties has been issued but before records are produced or for a certificate of no records.

Authority: Section 5307.9 Labor Code.

Reference: Section 5307.9 Labor Code.

§9990. Division Fees for Transcripts; Copies of Documents; Certifications; Case File Inspection; Electronic Transactions

The Division will charge and collect fees for copies of records or documents made available to non-EAMS participants outside of EAMS. For the purposes of this section, “records” includes any writing containing information relating to the conduct of the public's business which is prepared, owned, or used by the Division, regardless of the physical form or characteristics. “Writing” means handwriting, typewriting, printing, photostating, photographing and every other means of recording any form of communication thereof, and all papers, maps, magnetic tapes, photographic films and prints, electronic facsimiles, any form of stored computer data, magnetic cards or disks, drums, and other documents.

[COMMENT: there should be some assurance that EAMS case participants and e-form filers will not be charged fees to use the EAMS and e-file systems to view and print items stored within the system.]

Fees will be charged and collected by the Division as follows:

- (a) For copies of papers, records or documents, not certified or otherwise authenticated, one dollar (\$1.00) for the first copy and twenty cents (\$0.20) for each additional copy of the same page, except to the injured worker to whom the fee will be ten cents (\$.10) per page, and one dollar (\$1.00) for scanning to CD and for the CD, postage or shipping costs and sales tax. Any fees charged to the injured worker may be reimbursed by the employer upon a successful petition for costs and shall not be subject to claims of penalty or interest.

[COMMENT: an injured worker should not have to bear costs necessary to properly presenting his/her claim, equally, such costs should not be seen as an incentive to increase profits.]

- (1) State sales tax and postage will be added to this fee.

(b) For certification of copies of official records or documents and orders of evidence taken or proceedings had, ten dollars (\$10.00) for each certification.

(1) Where the Division is requested to both copy and certify a document, the fee is the sum of the fees prescribed in (a) and (b) above.

(c) For paper transcripts of any testimony, three dollars (\$3.00) for each page of the first copy of transcripts; thereafter, one dollar and fifty cents (\$1.50) for each page of additional copies of the transcript. Any fees charged to the injured worker may be reimbursed by the employer upon a successful petition for costs and shall not be subject to claims of penalty or interest.

[COMMENT: an injured worker should not have to bear costs necessary to properly presenting his/her claim, equally, such costs should not be seen as an incentive to increase profits.]

Authority: Sections 127, 133, and 5307.3, Labor Code.

Reference: Sections 127 Labor Code.

Tausha Callan

February 24, 2014

As a business owner of a copy service, the new fee schedule is very concerning for many reasons: 1) the fee schedule is set to include ROI fees, 2) I see no mention to payments not made within 60 days and 3) If the WCAB is going to charge \$1.00 per page + \$80 an hour, a 500 page file is going to cost more than \$500 (\$1 per page plus \$80 per hour) yet we will only be able to charge \$180 ?

I don't understand the rationale behind this bill, how is it fair to cap copy services to \$180 including the ROI (clerical) fees that we pay to companies that are entitled by law through code 1563 to charge \$24 per hour \$0.10 per page absent a cap, which can/does easily add up. It may cost more than \$180 just for clerical fees. If the Custodian of Record is entitled by law to charge a clerical fee, that fee must be reimbursed by the party responsible of cost.

I saw no reference to penalties of late payment. What is the incentive for Insurance Companies to pay their \$180 copy service bill? Berkley Research Group recommended that invoices should be increased by more than double the initial price. Some Insurance Companies, push off payment and a small \$180 bill is not at the top of their priorities. If they continue to object and push back payment we will continue to have to spend our time and efforts pleading for payment which takes time, more resources/staff and costs more money.

Lastly \$180 is below industry average of both applicant and defense copy services. Please listen to the industry when we say this will hurt our small businesses, employees and families. If WCAB believes it fair to charge \$1.00 per page and \$80 per hour for their records, how can they justify paying copy services \$180 for the work that we do. Not only do we print the records in

our system, we research, travel to and contact each facility served for each set of records, then we scan, save and provide them to the requesting party. And what happens as the cost of living continues to rise? Will our set price of \$180 remain?

Please work together with us to find a reasonable solution. Our employees, families and livelihood will be affected by this decision.

Cindy Lomax, Controller
Associated Reproduction Services, Inc.

February 24, 2014

To start off Defense Firms and Applicant Firms are different. Defense attorneys and Applicant attorneys are even paid differently. Defense firms are paid by the hour, and Applicant attorneys are paid a percentage of the settlement.

§9982 Allowable Services

The true concern of the WCAB should be the injured worker and protecting the injured workers rights.

It is important to keep in mind that a fundamental part of the legal system within the United States is the fact that each party to the case has the right to perform their own due diligence and does not have to rely on the opposing party to provide them with information.

Copy services have no way of knowing if the records have been obtained previously by another party.

This now prohibits applicant attorneys from having the same access to things like summaries, tabulations, or for indexing of documents. These are things the defense gets paid for as part of their hourly rate. To create this uneven playing field is unfair to both the Applicant and the Applicant Attorney.

§9983 Fees for Copy and Related Services

To make a \$180 flat fee, up to 500 pages, is really just a restatement of the BRG report, which was \$103, plus \$5 for CD plus advance fee, sdt fee and sales tax. To pretend that the copy services have gained any ground in this new proposal is ridiculous.

To state that \$180 covers mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering witness fees, check fees, release of information services, and subpoena preparation is not reasonable.

Employees at all business deserve to be paid a reasonable wage and have access to the same benefit programs the government and insurance companies have access to. The government and the insurance companies could not produce at these rates.

In fact in § 9990 (B) (4) Division Fees for Transcripts; Copies of Documents; Certification; Case File Inspection; Electronic Transactions they will be paid \$85.00 per hour, and they will be paid in advance.

BRG and all others have had ample opportunity to visit an applicant copy service to give them a better understanding of the business and what is required. They have not only not done so, but have refused to do so. It appears they do not want to be confused facts.

The DWC itself charges \$1.00 per page, and all you have to do is walk to the copier and make a copy.

There is nothing in this that addresses late payments (BRG did better than this).

The injured worker will be harmed by this if put into place. Due diligence should be done, and an applicant copy service should be visited. To implement anything without having done so is unfair and not what the justice system is about.

Matt Malley, Operations Manager
CD Photocopy Service, Inc.

February 24, 2014

While I truly appreciate the DIR's efforts to continue to work towards a reasonable Copy Service Fee Schedule, and I truly hope and pray we all continue to work well passed this latest round, I personally feel that the focus has been on Price, when the one of the main causes seems to be the Process.

One of the main reasons for this imposed fee schedule I thought was to alleviate the high-priced Applicant Copy Service Fees and costly lien hearings. Rather than drastically cut prices, one way to reduce applicant attorney copy service fees and general liens, would be to make the Applicant Attorney responsible for the charges from the copy service they retained and then submit for reimbursement to the payer, just like in regular civil suits. You could even do this in conjunction with "reasonable" pricing.

And even with the focus on Price, the pricing solutions being proposed are still way too simplistic in nature. The proposed rates still heavily favor the Insurance Carriers and illustrate that the DIR and most insurance carriers still have no true understanding of how arduous and expensive it is to secure discovery on a daily basis for THEIR cases.

The first set of numbers that were developed came from the flawed BRG Report. But I am left wondering where these latest numbers were derived from? Because I know that the DIR and the Stakeholders were not in contact with the Defense Copy Services for very long. They entertained our joint coalition of Defense and Applicant copy services, but soon cut off contact after we put in countless hours of hard work to analyze data and invoices in order to come up with a fair average we found reasonable as requested by the DIR.

I know the DIR and Stakeholders chose not to accept any of the offers to tour copy service facilities, view invoices and/or follow copy service employees to see what work is actually involved in trying to support attorneys and adjusters in the Workers Comp arena in order to collect records for their claims.

The DIR seems to have ignored an agreed upon joint solution of reasonable pricing derived by leading experts from applicant and defense copy services.

What the DIR seemingly did do was ask the insurance carriers what they were willing to pay and made it happen. The reason I say this is because I do not see any reflection of what the Copy Services have been proposing anywhere in these first two posted fee schedules, which is:

A reasonable per page rate for the actual copy job, and a reasonable flat rate that includes most all other procedures that are in association with obtaining the record...ROI Fees excluded.

Instead, just prior to this latest proposal, the DIR met with 1 Applicant Copy Service Lobbyist and 2 lobbyists for the Insurance Companies. That does not seem like a fair representation of our industry at all.

I am also wondering if any of the stakeholders or DIR members really read any of the initial comments from back in October 2013? I just re-read them and almost none of the issues have been addressed?!

Posted Last October, I feel this comment still applies, "keeping this low flat rate it is still apparent that the DIR and the insurance carriers are under the impression that that all people working in the industry should be minimum wage workers who are not allowed to make a living wage, accrue benefits and be compensated for any work or experience above those of entry level, unskilled, minimum wage earners.

When you completely understand the industry, price guides, economic forces and eventualities that arise in the completion of a subpoena/photocopy order, you develop a fee schedule that addresses all those factors with flexibility."

So in conjunction with the above statement, below are the current issues that stand out the most from the recent proposed Fee Schedule...they clearly illustrate that we are not quite there yet.

COPY SERVICE RATE vs. DIR and ROI RATES:

How/why is the DIR able to impose regulations on/and flat rate copy services at bottom barrel prices (\$0.20 / page)...but in the very next section of their regulations...they list that they can charge \$1.00 per page and are actually increasing their processing fees by more than double from \$40.00 up to \$85.00 per hour?!?! Why impose this flat rate model on copy services with cheap low end pricing, but the DIR can charge \$1.00/per page and increase their rates – I don't understand. I thought the objective was to cut costs in the Workers Comp industry? Same with ROI's...where is the regulation on their pricing? How is it ok to cut copy services pricing but let all other copy related services in the industry thrive and go unchecked?!?! Where is the consistency? That is a certain hypocrisy.

Even further... to obtain a 500 page record from the DIR, Copy Services would be charged \$500.00 by the DIR, but then under these current provisions, copy services would only be able to charge \$180.00 for that record?! What in the world!? Copy Services would lose \$320.00 on the job. How on earth does that make any sense at all? Surely all the Stakeholders and the DIR can see this doesn't make sense.

ROI's

Under the current proposal payers pay for Films/Xrays...but not the ROI's...it's the same thing. The copy service makes no money on either transaction. We are simply advancing the fees on behalf of the Attorneys or insurance carriers in order to obtain the record or film from the ROI location.

CAPPED @ \$425.00

When you try to put a cap on a copy job, there is no incentive to scan a voluminous record. Once you get to \$425.00 worth of work the copy company is working for free/losing money. Is this even legal to tell copy companies that you cannot make any more than X amount of dollars on any given job?

Additional Sets:

Under this current schedules guidelines, it makes no sense to order original sets of records. Companies will just wait to order cheaper sets at a later date...why pay \$180.00 when you can wait and order for way less.

STORAGE:

This current Fee Schedule limits the need for proper security and data storage. Why pay for storage and proper security of PHI when additional electronic sets of records are just \$5.00 or \$50.00 for paper.

With these low proposed rates...there is no incentive to keep records stored. A) it is simply too costly and B) It would be more beneficial financially to just go out and recopy it for \$180.00 vs. \$5.00 electronic file resend or \$50.00 paper.

Again, I am thankful we are in negotiations for a better fee schedule, but I am sensing that the

State is becoming impatient and wants to get these copy service guys off their plate and may pass this schedule through despite this latest round of criticism. I pray this is not the case. I am dreading another hearing though, where all stakeholders are provided a cheat sheet of all the comments minutes before the hearing begins (obviously they haven't read one comment prior to) and then the man with the stopwatch counts down everyone's 3 minutes, while the stakeholders are falling asleep.

Please read these comments in full and try to understand where the copy services are coming from. Listen to our representatives' commentary and think of ways that the process can be fixed without cutting costs entirely. We are searching for reasonable costs. Reasonable for all parties involved...not just a few.

Vartan Pilavjyan, Supreme Copy Service, INC.

February 24, 2014

To whom this may concern this letter is from *Supreme Copy Service*. We have been in business since 2007. We copy and provide records to Workers Comp Attorneys. The reason for my email is to express my thoughts, feelings, and ideas regarding the fee schedule. I will greatly appreciate if you take the time to read my letter to understand the point of view for most of us copy services. Our goal is not to get paid above our services but also not to be underpaid and pushed around. With this email I will point out some issues that probably have not been taken into consideration when deciding the flat fee schedule.

I just want to clarify that I like the fee schedule idea but it all depends on what the flat fee will be. For example \$180 cannot include the ROI fees. Right now I have a few invoices in front of me from POST SURGICAL REHAB SPECIALISTS, LLC for a \$150 each invoice and that is their flat fee, the invoice doesn't even indicate the number of pages the \$150 covers. It might be 5 pages it might be 200pages. The sad truth is that we can't even provide our attorneys with the records unless these fees have been paid on time, and if we can't provide records than the case will not have a fair trial. We are faced with these ROI invoices on a daily bases ranging from \$50 - \$300. The ROI fees should be outside of the flat fee. Also the sad part is that we have been paying these ROI invoices for years but when we send out an invoice to the insurance companies we don't even hear back from them till the case is ready to settle which can take years.

If our invoices must not exceed \$180 then we cannot stay in business for long. The \$180 will not be covering our employee fees, our materials, our drivers, gas, postage, CD and paper costs. Sometimes we make 2-3 even 4 trips out to the facilities before we are provided with the records. We first go out to the location to serve which can be 10 miles away or even 500 miles away. Than we receive an Invoice from the ROI which must be paid before an appointment is set to go out to copy. Then when we go out to copy the records sometimes the records will be with the doctor, or misplaced or they refuse to release the records because it hasn't been reviewed by the doctor. There has even been a time where they found more records and they called us back to go

copy the rest of the chart. When that happens we have no choice but to schedule another appointment and make another trip the following week.

The \$180 dollar fee schedule can only have us include 200 pages of records to barely cover our costs. If the \$180 flat fee is ever finalized than we should be paid in a timely manner or we should have the right to add late fees on a follow up invoice. I understand the economy is changing and the cost of doing business should change as well. I just hope the change is reasonable and fair for all. Thank you for taking the time to read my letter, I appreciate your patience.

Bo Katzakian

February 24, 2014

This proposed change to the fee schedule will adversely impact applicant attorney's ability to get records in order to defend their client by forcing us to rely upon the insurance company defendants for our records, which is such a conflict of interest on its face that it is remarkable how this could be considered.

Please do not approve the change in the fee schedules. Do not give the insurance companies even more power still to control people's lives and livelihoods.

Kathryn Greve, WCAB Advocate

February 24, 2014

What began as a copy-service fee schedule for services being provided on behalf of both, applicant and defendant in workers compensation cases appears to have morphed into an unprecedented denial of discovery requested by applicant, which is hardly constitutionally compliant.

Up until these proposed 'fee-schedule rules' Applicant copy-services have assisted applicant, in the same manner as defendant copy services do, by obtaining requested discovery by providing the same subpoena services in defending a workers comp claim and that defendants have-until now. These rules will limit the applicant's copy services available -but not the defendant's copy-services.

In anticipation of this schedule defendants have ceased in worrying about what a reasonable amount for applicant's services should be and it is already having a chilling effect on applicant copy-services. Currently, defendant should be paying for those costs- as 'medical-legal' charges (and filing a Petition for any reimbursement (under SB 863) which defendants attorneys admit is not being done at all.

Now, the proposed rules indirectly pose limits on what applicant can obtain which will be directly proportionate to what defendant wants to pay for and see on applicant's exhibit list at trial. These limits on applicant ability to issue subpoenas will affect the outcome of the proceedings before the court by unfairly prejudicing applicant in preparing his/her claim for trial and will likely result in an injustice regarding treatment issues needing to be addressed early on in the claim.

On February 7, 2014, the WCAB issued a 'significant panel decision' (Kim v BCD Tofu House) holding that an employer has the right to an expedited hearing on the issue of whether the applicant must treat within the employer's MPN during the time a claim is on delay. This decision confirms that employers can use the power of the judicial process to enforce their rights even in the very early stages of a case. Although the facts were in dispute, the defendant's version was that on receipt of the claim, it notified applicant that the claim was on delay. The Board held that an expedited hearing is appropriate to address the issue of medical treatment within the MPN during the delay period even on a contested claim.

Applicant will need to prepare to defend current medical treatment and continuity of care during the acute stages of injury as well as when applicant is permanent and stationary. When applicant becomes P&S, there may be a need to go to trial with up-to-date records subpoenaed from the same location as reasonably obtained two years prior by subpoena for medical reporting and continuity of care. There is no provision for payment for these records for applicant.

Conflicting legal authority on an unsettled discovery issue will provide substantial justification for defendant's to issue any objection it may have to applicant obtaining discovery by utilizing a non-interested, non-party "applicant"-copy service to serve a subpoena when applicant attorney could issue a notice to appear and produce.

What is relevant? Even if defendant position regarding "relevance" is found by the court to be incorrect; the court will likely recognize the conflict in views on the law and will likely hold that defendant had substantial justification in its attempt to oppose an applicant's requested discovery thereby negating the basis for any sanction order requested by applicant. It is noteworthy that, most orders "quashing subpoena" which the Board issues are well beyond the "depo" date on the issued subpoena and are therefore moot.

Even if we assume that the discovery requested by applicant is "relevant", a case-by-case approach to defendant's failure to PAY for production of items requested by applicant because defendant claims there is "no contested claim" and a plethora of other non-fee-schedule issues for which the provider has virtually no remedy from and no due process until the end of the case.

(The copy-service can pay \$150.00 to file a lien and wait for all threshold issues to be litigated- and if a bill amount is in dispute after all threshold issues are resolved; we can then go to IBR.)

Applicant copy-service is likely to go out of existence putting the cost on to the Applicant's attorney. Defendant's attorney still has a copy-service- still paid by defendant.

This is not justice. This is not equal and is not balanced. Before us stands a stinking carcass of applicant's pre-SB 863 due process rights. The applicant is incapable of crushing defendant with records applicant is entitled to obtain. Insurance company defendants have access to many things that applicant does not have access to and they are worthy opponents. I do not hold for equality in all things, only equality before the law.

Jeremy Merz, California Chamber of Commerce
Jason Schmelzer, California Coalition on Workers' Compensation

February 24, 2014

While there have been several estimates of the savings associated with SB 863 (De Leon, 2012), it is clear that the ultimate impact on employers (large and small, insured and self-insured) will depend largely on the implementation work that takes place at the Department of Industrial Relations, the Division of Workers' Compensation ("DWC"), the Office of Self Insurance Plans and the Workers' Compensation Appeals Board. The above-listed organizations are dedicated to working collaboratively with regulators throughout the implementation process to ensure that employers across California receive the relief anticipated during the passage of SB 863.

Fee Schedule Structure

Prior to SB 863, the copy service industry was largely unregulated within California's workers' compensation system and was an area rife with dispute, gamesmanship and inefficiency. Specifically, system data revealed some providers were driving costs by, amongst other things, billing for services unrelated to document production, providing duplicative services and filing liens that lacked merit.

To address these issues, the legislature – through the passage of SB 863 - directed the DWC to create and adopt a schedule that would add to a more efficient, less litigious workers' compensation system. We commend the DWC for meeting this goal by designing a fair and straightforward schedule that provides certainty to both employers and providers. This schedule:

1. Reduces dispute points by utilizing a single flat fee model for all copy services which will result in decreased litigation costs for employers and ensure providers are paid in a timely manner;
2. Bars payment for concierge and unrelated services – ensuring that employers will only be required to pay for legitimate copy service needs;
3. Limits duplicative production and cost by providing employers 30 days to produce requested documents.

High Base Fee

While our coalition strongly supports the model proposed by the DWC, we believe the recommended pricing is too high and exceeds the market rate for copy services. The Berkeley Research Group (BRG) study commissioned by the California Commission on Health Safety and Workers' Compensation found that the market rate for low dispute copy services was \$103.55 – nearly 43% lower than the proposed rate of \$180. The DWC's proposed flat fee model should have little dispute and, as such, the pricing for services should veer much closer to the \$103.55 proposed by BRG. Our coalition acknowledges that price proposed in the BRG report did not include "pass through" costs, such as release of information fees, which are included in the DWC's proposed flat fee. However, even allowing for some augmentation for these costs, the proposed rate should be lower much than the \$180.

Overall Cap Should Be Inclusive of Base Fee

Finally, the proposed regulations cap total fees for a single copy service order at \$605. The regulations allow for a base fee of \$180, but also allows for additional per-page charges at .20 per page up to \$425. Our coalition strongly believes that the overall charges should be capped at \$425, and should include the base fee of \$180. This would allow for 1725 pages which, according to the BRG report, would capture well over 90% of copy jobs. Indeed, according to the applicant copy service data provided in the BRG report, the median number of pages per job is 43 and the mean is 94 – significantly under the number of pages in our coalition's proposed \$425 inclusive cap.

Additionally, the base fee, even if lowered slightly as we've requested, is still substantially higher than the fee anticipated by the BRG report. Because of this, we do not believe that the overall fee needs to reach \$605 for a single order.

Zina Fierro, Customer Service Representative
ARS Legal, Inc.

February 24, 2014

This new fee schedule will impact our ability to protect our injured worker. Are you trying to eliminate the applicant copy services by saddling them with these restrictions and at the same time reducing what they can charge to service us? When we give the applicant copy services an order for records, we don't want to put them in the position of having to make economic decisions as to what they will do for us, but that is the position you are putting them in. You should reduce the number of pages that are included in this flat fee to 100 pages and put some penalties in the system for late or refused payment of their invoices.

In addition, if you are going to force us to take records from the defense for claim files and employment files, at least require the defense to respond timely to the subpoena request for those files and if they do not object or produce the files timely, they are not entitled to provide the

files.

Michael J. Richter, Esq.

February 24, 2014

1. The law allows Applicants to obtain discovery - Copy Services are invaluable tools in obtaining that discovery.
2. Circumstances in obtaining that discovery vary
 - Sometimes more than one visit is required
 - Distances to the locations vary
 - Availability of the individual responsible for the records varies - to the extent that sometimes The person says they will be somewhere and is not.
 - I have found copy services invaluable for obtaining insurance company claims notes.
 - These notes are often on computers.
 - The insurance company often says that they are not available or can not be found.
 - I basically need a copy service company to go in and get the records because unfortunately, I have found that insurance companies will often not provide the records without a subpoena.
3. Workers' compensation deals with injuries.
4. X-rays, MRI's, fMRI's and CT's need to be reviewed by the IMR doctor. If these are not obtainable by subpoena, or only available at the cost of the applicant, then these vital bits of information will not be available, will not be reviewed and the Injured Workers will suffer the consequences (Or defendants will suffer the consequences if the films are normal. To not allow these to be obtained by subpoena is counter productive and expensive in the long run.
5. The proposed regs seem to presume that the copy services are thieves, crooks, parasites, fattening themselves on the blood of the workers compensation system.

I might point out that whenever a new round of regulations are promulgated, workers' compensation costs seem to go up.

Rather than painting the entire industry with the broad brush of "Thief! Crook! Parasite!", by issuing what can only be considered punitive regulations, why not spend the money used to draft and consider these regulations on actually pursuing those few, if any thieves, crooks and parasites which are not doing work vital to the orderly functioning of the California Workers' Compensation system.

These regulations will inhibit all parties' ability to obtain the records they need to either prove or disprove their cases. Defense will not be able to obtain past medical records or records from insurance companies which previous cases of claims of injuries by the same Applicant.

If regulations, for whatever political reasons, must be generated, it would be less costly and cause less disruption if those regulations assumed that the persons regulated by them were honest business persons attempting to do a good job for a fair amount of pay.

These regs, as published, do not provide an adequate amount of pay to copy services to do an excellent job on a consistent basis.

John Antonelli, President – ARS Legal

February 24, 2014

I have been in the applicant copy service business for over thirty (30) years. For years we have attempted to do separate agreements with insurance companies and offered to bill at a much lower rate IF we did not have to: file liens; get paid within 60 days; and carriers would not object to us copying any medical or NON carrier records. When we did settlement of large outstanding bills we offered to continue billing at the settled price, but the carriers refused our offers. NOT ONE carrier would agree to this and I can assure you that the proposed code is going to cost applicant copy services dearly.

First and foremost the proposed Copy Service Fee Schedule is completely inadequate, over board, inaccurate, nebulous, unclear and will without a doubt lead to MORE litigation and costs than the lien system ever had.

FEE SCHEDULE

The schedule that is proposed is clearly one sided for the insurance industry. My company will have to lay off over **60 employees** because of this schedule. Many people will lose their jobs in order to make the insurance companies wealthier. This schedule does not provide for a **LIVING WAGE or BENEFITS**. Yet the insurance industry has fantastic pay and benefits and work out of beautiful offices. Copy services are expected to work out of garages and have **NOTHING** for their employees.

For your information the simple task of doing a serve and later copying the records is much more costly than BRG or the DWC has considered. Example: the drive from UC Davis Medical Center to Sutter Hospital in Sacramento to do a serve and later copy the records; listed is the actual time it takes to do the serve of subpoena and then copy records.

Walk out of UC Davis Med. Center	5 min.
Drive to Sutter Hospital, Sacramento	25 min. (19 miles without traffic)
Park and walk into Sutter	10 min
Make serve	5 min
Repeat process to copy records	40 min (Driving, parking time only)
Setup Scanner	5 min
Copy records	20 min

Wait time for getting records	5 min
Process all paperwork	<u>5 min</u>
Total time to serve and copy a hospital file	120 minute (TWO HOURS)

With a living wage of \$17 per hour plus medical insurance, workers' comp. insurance, liability insurance, errors and omissions insurance that two hour cost is **\$50.00**. If you allow us to markup the labor for alleged profit of 30% then the charge would be \$65.00.

This does NOT include any office work of paralegals to enter the order, prepare and mail notice to parties, verify the locations is correct, schedule the copy job; that takes an hour. This does not consider the electronic handling of records and the computer systems necessary to perform the storage of documents; that requires another 30 minutes per job. Nor is there ANY allowance for office overhead such as rent, utilities, office staff, management, phone systems; NOTHING. I would beg someone to please come and see all that goes into dealing with copying records on the applicant side it is much different than the defense and much more costly.

You are asking that we do this work for \$165.00 and adding in the witness fee of \$15.00 for a total of \$180. It does not consider that many times we pay as much as a \$35 fee simply because that is what the facility wants to charge. As well, do you have any idea how long it takes to copy a 500 page chart? Another words the DWC has not allowed for full costs of doing the work let alone a profit.

We asked BRG to come to our offices and see all that goes into copying records, they refused the offer. Instead they went online and took information from copy service who does work "IN" hospitals and who are located OUT of state. If we did not have to travel, if we got paid before we copied the records, if we did not have to prep subpoena's or call locations and verify the information THEN we could charge what an "in-house" copy service charges. How wrong can a report be?

A fair and reasonable fee is the \$250. We do NOT have contracts with the carriers as the defense copy services do. Defense copy services get paid for all their work and bill for incorrect addresses, rushes, doing research and getting a volume of business. The applicant copy service will not be allowed any of this and will NOT get paid timely if at all.

CONSIDERATION

1. **Insurance companies will still object**: There are going to be many objections simply because there will be times when carriers say they provided records and attorneys say they do not have them. Or, records will be sent after we give notice, but before we copy and we are not notified. It is guaranteed that the copy service is going to be the aggrieved party and will not be able to afford to defend itself because of the cost to do so.
2. **Contested Claim**: Many times when there is an admitted injury and the claim is not contested there are contested issues such as apportionment. Attorneys need records and the carriers will NOT pay us because the claim is accepted and admitted.

3. **Waiting to Copy:** There needs to be extremely clear information on when a copy service can copy. The proposed rules are very clear and we will be arguing that we did all properly.

Please allow a little more time to consider this and please visit our office for ONE day and experience what we have to do to copy a chart, it cannot be done for the price you are offering.

Nohemi Monsivais, Scandoc Imaging

February 24, 2014

I am an employee at Scandoc Imaging, Inc. this fee schedule affects me as an employee because my job here is to obtain any and all additional records. The DIR should take into consideration that when we secure the records from a facility and the patient returns to that facility/doctor there are updated records that need to be reviewed causing a request for additional records from one custodian of records. It seems as though the DWC still does not understand what circles an applicant copy service must go through in order to obtain records and the expenses that come with it. Why does the DWC get to charge \$500.00 for 500 records and the applicant copy service is stuck to a flat rate of \$180.00 when the DWC does not share the same obstacles? This seems imbalanced and unjust to not only the applicant copy service but the injured workers rights. Hope you can take this in consideration as many of us might sadly loose or jobs.

Rusty Levin, Esq./Partner
Employees' Legal Advocates, LLP

February 24, 2014

With the new copy service fee schedule, it is our opinion that our injured applicant will suffer. You are charging the copy services with absorbing fees that vastly exceed the \$15 witness fees that used to be charged. This will cause the copy services to not want to take on the copy job and our clients will suffer as a result.

In addition our copy service vendors tell us that when we ask them to copy claim files and employment files that the defense wants to provide them and we are never aware of whether or not they have included all the pages. It is important that the defense include a declaration that the records are complete and that nothing has been removed. It would be better if those records came from the defense copy service **IF THEY HAD THEM AT THE TIME OUR SUBPOENA WAS SERVED**. Otherwise, we want them to be provided by our copy service.

Finally, you are expecting the copy service to provide up to 500 pages for this reduced flat fee. This process of reducing what the copy service gets paid and expecting them to copy 500 pages is ridiculous. The number of pages included needs to be reduced to 100 pages if any at all.

Tommy Smith, DMS, Inc.
ROI Support Services Company

February 24, 2014

Thank you for all the work in putting the proposed fee schedule together, but the injured worker should not be possibly harmed by the new regulations and pricing put in place. To include the ROI fees together with proposed \$180.00 fee is not fair to the injured workers and the company's that will be caught in the middle trying to obtain records. The fees we legally charge copy services as a ROI company is usually around a \$100.00 and can go up to \$1000,00 depending on page count. How would a copy service obtain these records with a fee of \$180.00. So a copy service would serve us with a request and when they found out how much bill was to obtain records they possibly cancel and bill out for work performed. The defense copy service will get the same request and they would get reimbursed for the ROI fee and check fee and bill for all other work done.

That seems like Applicant copy services would be getting discriminated against as a violation of their rights because defense copy services would get reimbursed but not applicant.

Also not stating that the law does not apply to previous AR would be problematic in many ways.

To include 1 to 500 pages is not fair as all company's and hospitals all over the USA charge per page. This will harm the injured workers as company's will possibly stop copying after they reach their maximum payment value.

I would think most copy service company's would accept if the ROI were reimbursed along the \$180.00 with a page count of 250 pages 20.00 cents after

The administration must consider that another law suit may happen if any company's rights are violated if any way.

Jim Butler, President
California Applicants' Attorneys' Association

February 24, 2014

Before we offer specific comments on the draft regulations, we would like to offer some general comments.

The legislative reforms of 2004 (SB 899) and 2012 (SB 863) have fundamentally changed how discovery, such as obtaining subpoenaed records and medical reports, are used as evidence in

workers' compensation proceedings. Litigation has become exceedingly complex with cases such as *Alvarez/Guzman*, and *Benson* (requiring a more extensive medical record for apportionment findings on multiple body parts and injuries). Additionally, with the introduction of Utilization Review, and now Independent Medical Review into the workers' compensation system, the burden on injured workers and their physicians to support, in a very short time frame, the need for a medical treatment request with records is essential.

In this context, the burden on both injured workers and their employers to produce substantial evidence to support their opposing positions has significantly increased. Copy service firms identify, retrieve, and reproduce admissible evidence, for all parties in the case to prove or defend their case. Unfortunately, there are dueling interests between the injured worker and the employer or insurance carrier in this complex system which has created some acrimony and distrust between the providers and payers for applicant's copy services. In trying to address these problems by formulating a Copy Services Fee Schedule, the DWC must give careful attention to the due process requirements to be afforded all parties in the case and the California Constitution's guarantee of substantial justice for injured workers. It is imperative that any copy service fee schedule that is adopted ensures injured workers full access to complete discovery.

Unfortunately, we believe the draft regulations currently posted on the DWC forum improperly restrict the ability of injured workers to obtain independent discovery to prove their case. The draft regulations are clearly designed to reduce costs. However, in doing so they put the costs not paid for by the insurance company on the backs of injured workers and their attorneys. As a result, these regulations severely restrict the independent discovery rights of all injured workers. Any final regulatory proposal needs to be fair to injured workers, and not simply look at reducing the costs of insurance companies. We believe these regulations must be redrafted to take into consideration all parties discovery rights. A balance must be reached between these discovery rights, promoting predictability in billing, reducing frictional costs, and adopting fees which are adequate for copy service providers to remain in business.

The California Constitution mandates that the workers' compensation system shall accomplish substantial justice in all cases by providing service to injured workers which is "expeditious, inexpensive, and without encumbrance of any character." (Article XIV, section 4) "Without encumbrance" has been interpreted to mean an injured worker can not be required to pay for the costs of processing a claim.

CAAA thanks the DWC for convening this forum to discuss the draft regulations which issued on February 14. Section by Section comments follow.

§ 9980 (c): As discussed at the stakeholder meeting, on occasion a custodian of records may maintain physical custody of an injured worker's records at multiple locations. For example, a medical facility may maintain billing and treatment records in separate locations, or an employer may keep personnel records at an out of state corporate location, while other records are at the

local job site. As a result, we recommend that the definition of custodian of records be amended to state:

“Custodian of records” means the person at a specific location who has physical custody and control of the books, records, documents or physical evidence and maintains them in the ordinary course of business.

§9980 (f): As Labor Code section 5307.9 provides that the employer, claims administrator, or workers’ compensation insurer has 30 days to provide records in response to an employee’s request to avoid payment under this fee schedule , we recommend that the definition in this section be amended to state:

“Records in the employer’s, claim administrator’s or workers’ compensation insurer’s possession,” means all records and documents requested by an injured worker or his or her representative or a medical provider, that were in the possession of the employer, claims administrator or workers’ compensation insurer on the date the production of documents in response to the request was made.

This will avoid any dispute whether records received after the date of the request, but within the 30 days, need to be produced.

§ 9981 : There is no provision anywhere in the draft regulations with regard to time limits for the claims administrator to pay bills for copy and related services. Additionally there is no provision for penalties if bills are not paid timely. We recommend that this section be amended to state:

Bills for copy services must specify services provided and must be presented to the claims administrator for payment. Each bill for services shall include a statement that there was no violation of Section 139.32 of the Labor Code with respect to the services described. Bills must be paid within thirty days of receipt by the claims administrator. If bills are not paid within this period, then that portion of the billed sum which remains unpaid shall be increased by 25 percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of receipt of the bill by the claims administrator.

§9982(a): We recommend that this section be amended to delete the word “contested” as follows:

This fee schedule covers copy and related services which are obtained for the purpose of proving or disproving a ~~contested~~-claim, except services under a contract between the employer and the copy service provider.

This language is derived from Labor Code section 4620 and section 9793(g) with regard to the definition of a medical legal expense. A “contested” claim is defined in Labor Code section 4620 (b) and section 9793(b) as one where liability has been rejected, liability has not been accepted within 90 days and the claim has become presumptively compensable, the claims administrator has failed to respond to a demand for payment of benefits within the statutory time period ,

commence payment of temporary disability or issue a notice of delay as required by statute , or where the claim is accepted and a disputed medical fact exists.

As the burden of proof is on injured workers to produce substantial evidence to prove their claim, it is often necessary to obtain evidence to develop the record outside the limited definition of a “contested” claim. An injured worker may need their personnel file and wage records to make sure their benefits are being paid at the correct rate. An injured worker may need records on an accepted claim on issues other than disputed medical facts, such as apportionment and Labor Code section 132 (a) issues. An injured worker may need copies of their benefit notices because they were not properly served but otherwise the claim is not contested.

Additionally, this section creates an unequal playing field by allowing services under a contract between the employer and the copy service provider to be excluded from the fee schedule. This exclusion makes it questionable whether this schedule is truly intended to be applied evenly to both defense and applicant’s copy service firms. Under this proposed fee schedule the injured worker’s rights to pursue discovery are severely limited by what services will get paid under the fee schedule. By contrast, the defendant can enter into contracts with copy service vendors where they can obtain services outside of the regulations at a lower cost. The injured worker cannot do this. A different fee schedule is being applied to defendants by these regulations which is unacceptable.

§9982 (c) (1) : This section will only work in those cases where the employer, claims administrator , or workers compensation insurer fail to provide any records within 30 days from the employee’s request. In that case a subpoena may issue and the copy services should be paid. But what happens if only partial records are produced. The injured worker or their attorney believe there are additional records but are unable to prove who is in possession of the “missing” records. If a subpoena issues for the additional records, and “duplicative” records are sent, then the injured worker and their attorney must pay for them under this schedule. Depositions of “custodian of records” will need to be taken to get testimony under penalty of perjury as to where records are kept, what they have in their possession, and when it was received, and the costs will be greater then what would have occurred with a subpoena. CAAA recognizes that Labor Code section 5307.9 provides that the copy service fee schedule will not allow for payment for records that are produced within 30 days from an employee’s request to an employer, claims administrator, or workers’ compensation insurer, but the regulations must address the situation where partial records are sent. The injured worker and their attorney should not bear the cost.

§9982 (c) (2): This section is poorly drafted and should be deleted in its’ entirety. If a copy service company has to bill more than once because their initial bill was not paid, this provision would allow for non-payment. If a bill has to be sent to more than one address or carrier because there is a question who is responsible, or it is a multiple defendant case, this section would allow for non-payment.

As discussed at the stakeholder meeting, on occasion a custodian of records may maintain physical custody of an injured workers records at multiple locations. For example, a medical facility may maintain billing and treatment records in separate locations, or an employer may keep personnel records at an out of state corporate location, while other records are at the local job site. Separate billings may issue under these circumstances. If our recommended changes to § 9980 (c) are made with regard to the definition of “custodian of records”, then those changes should be included in any further regulation to be drafted with regard to multiple billings.

§9982 (c) (3): This section is poorly drafted and should be deleted in its’ entirety. First there is a cost for records from the WCIRB for injured workers’ attorneys. There is also a charge for EDD records after the first 100 pages, at 10 cents per page. The injured worker should not be expected to bear this cost. Further the language prohibiting “payment for records that can be obtained without a subpoena at lower cost” is extremely ambiguous and would allow defendants to raise this objection to virtually every subpoena, if they so wish. Delays and frictional costs in the system would explode, which is exactly what the Legislature wanted to avoid with the creation of a fee schedule.

§9982 (c) (4): This section is poorly drafted and should be deleted in its’ entirety. If records obtainable by a Notice to Appear and Produce are excluded from the fee schedule, then records from parties to the case, including the employer, claims administrator, and insurance company could never be obtained by a subpoena. In a perfect world, where records are easily obtainable from employers and claims departments this section might work, but this is not the workers’ compensation world that we all participate in. Defense attorneys often have the same obstacles in getting records from their own employers and claims departments, so it is only going to be much more difficult for injured workers and their attorneys. Further, if the employer or claims administrator had medical reports and records in their possession which the injured worker did not know about , and they issued a subpoena for them from the medical facility, the defendant could deny payment on the copy service bill based on this section. The problem is that the injured worker and their attorney will never know all of the records that are in the possession of the other side when they issue a subpoena, so they will be trapped by this section.

Further, this section will increase costs in the system as a Notice to Appear and Produce will require an appearance by the custodian of records, usually with an attorney. The subpoena process is considerably less expensive for the employer.

§9982 (d)(1): This section must be deleted in its' entirety. This regulation exceeds the authority of the enabling statute. Labor Code section 5307.9 provides that the Director has the authority to adopt, after consultation with CHSWC, and public hearings, a copy fee service fee schedule which specifies the services allowed. To not pay for the records of one side because they are duplicative, would essentially block a party from conducting the discovery necessary to prove or defend their case. Most likely, this will be the injured worker as the insurance company is going to make sure their own company gets paid. Copy services don't have the case file or legal authority to know what other records have been copied in a case. They copy what is given to them by the facility. Even when a subpoena specifies a date range to update records previously obtained, the larger medical facilities will only make their entire medical file available. The copy service companies can't be expected to perform paralegal tasks, or attorney level review to make the decision on what should be copied. What if a new Subpoena of records from a location produces 20% new and 80% old records? Is the claims administrator only going to pay for the 20% new? Also, frequently the applicant and defendant will subpoena records from the same source, without knowing it, and this regulation would prevent payment for one of the set of records (most likely to the applicant's copy service). Both sides should be allowed to obtain their own records. If a duplication occurs, the fee schedule should not bar payment, because this can easily happen through no fault of any party, or the copy service company. Historically, the California Workers' Compensation system has not required injured workers and their attorneys to bear the costs of discovery and litigation. The benefits paid and attorney fees allowed only when a case settles would make the costs of conducting discovery prohibitive. This draft regulation sets a dangerous precedent, is extremely ambiguous, and would impose a chilling effect on an injured worker's independent right to discovery.

§9982 (d)(2):Indexing, and bate stamping is a necessary component of document production , expected by trial judges when reviewing exhibits, and useful to attorneys on both the applicant's and defense side when conducting depositions, preparing letters to evaluating doctors, and for trial preparation. As this is an additional expense that a copy service must incur while preparing records, and a cost saving tool in the industry for employers, and insurance carriers, the regulations should allow for this as an additional allowable service on the schedule.

§9982 (e): The expense of obtaining prints of microfilm, X-ray films, and scans should be borne by the employer, or insurance carrier. It is unconscionable that these draft regulations would put this expense on the shoulders of the injured workers. This violates Labor Code section 4600, and the California Constitution. It also exceeds the authority given to the Director to adopt a copy service fee schedule. The cost of obtaining x ray films can be hundreds of dollars. It is almost always the injured worker requiring them. The treating doctor needs them when making surgery determinations. Medical evaluators need to see them. UR and IMR reviewers need them to determine medical necessity. To require payment by the injured worker would be an "encumbrance" on their ability to obtain benefits and medical treatment on their claim, in violation of the California Constitution.

§ 9983 (a) (1): A flat fee that includes widely varying factors such as mileage, postage, pickup and delivery, repeat visits, witness fees, and release of information (ROI) services makes no sense. A \$180 flat fee to cover all these services is clearly inadequate. The copy services will undoubtedly have written comments on what an adequate flat fee should be, but CAAA recommends that the page count for that flat fee be much lower. The BRG report finds the average copy service job is around 100 pages. We recommend that the flat fee only apply to the first 100 pages of records. Also, mileage, witness fees and release of information (ROI) service fees should be allowed to be billed as an itemized additional charge above the flat fee on the billing invoice as these charges vary widely by job. CAAA has been advised that some ROI fees are as much as \$500. No copy service will be able to stay in business if they have to absorb that cost. Further, employers and insurance carriers can enter into contracts to reduce those charges, but injured workers and their copy service firms can not. Therefore, the impact is that injured workers will not be able to get the evidence needed to prove their case because of these unregulated ROI fees. CAAA also urges the Acting Administrative Director to consider if she has the authority to create a fee schedule for the ROI fees under Labor Code section 5307.9 as they fall under “related services”. It is our understanding that these fees are becoming a growing problem in the copy service industry.

Additionally, we recommend that there be a Cost of Living Adjustment (COLA) added to this regulation. The copy services may suggest a flat fee that is adequate for their costs of doing business in 2014, or even 2015, but that fee will become inadequate over time with inflation, and the costs of doing business increasing.

Lastly, there should be a provision that bills must be paid within 30 days, otherwise penalties and accrued interest are due as recommended in section 9981.

§ 9983 (a) (2)(A): As the BRG report finds the average copy service job is around 100 pages, CAAA recommends that the flat fee only apply to the first 100 pages of records. After that, reimbursable fees should be twenty cents per page, with no maximum. Otherwise, what does a copy service do when they reach a certain number of pages. Stop copying? As currently drafted once 1725 pages are copied, there is no further payment. A single set of records is rarely more than 1725 pages, but when it is, the copy services should be paid.

§ 9983 (a) (2)(B)(C): The costs for additional sets of records under these subsections should be paid by the claims administrator. The injured worker or their attorney should not have to bear the costs of discovery. This section violates Labor Code section 4600 plus it unfairly encumbers the injured worker from getting discovery in violation of the protections of the California Constitution.

§ 9984(a) and (b): This section would allow the defendant to consider anything they copy, produce, or serve as certified, which is in direct conflict with Evidence Code section 1561.

To comply with the evidence code, at a minimum all records copied, produced, or served by authorization should be accompanied by the affidavit of the custodian or other qualified witness,

stating in substance each of the following: (1) The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records. (2) The copy is a true copy of all the records described in the request for records, (3) The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event.(4) The identity of the records. (5) A description of the mode of preparation of the records.

If the business has none of the records described, or only part thereof, the custodian or other qualified witness shall so state in the affidavit, and deliver the affidavit and those records that are available.

Where the records described in the request were delivered to an attorney or his or her representative or deposition officer for copying at the custodian's or witness' place of business, in addition to the affidavit above, the records shall be accompanied by an affidavit by the attorney or his or her representative or deposition officer stating that the copy is a true copy of all the records delivered to the attorney or his or her representative or deposition officer for copying.

CWCSA proposed regulations last year that made it clear that only records retrieved by subpoena, and properly certified by the (original) custodian of records, (as true and complete under penalty of perjury) qualified as evidence. We recommend that this section be revised to comply with the Evidence Code and that the Acting Administrative Director consider adopting the CWCSA language instead of the proposal in these draft regulations.

Carlyle Brakensiek, Legislative Advocate
California Workers' Compensation Services Association

February 24, 2014

Senate Bill 863 (Ch. 363, Statutes of 2012) added Section 5307.9 to the Labor Code to mandate the creation of "a schedule of reasonable maximum fees payable for copy and related services" except for contracted services between an employer and a copy service provider. SB 863 was designed to provide a benefit increase for injured workers while, at the same time, improving efficiencies in the delivery of benefits to those injured workers. As instructed by the California Constitution (Article XIV, Sec. 4), an appropriate copy service fee schedule should promote substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character. In order to fulfill this mandate, CW CSA feels it should accomplish several objectives:

1. It must protect the injured worker's independent rights to complete discovery, due process, and to obtain substantial evidence. For the most part, the burden of proof is on the injured worker to prove that he or she suffered an industrial injury, that he or she is entitled to appropriate medical care to cure or relieve the claimed injury, and that he or she is entitled to certain temporary and permanent indemnity benefits. The Labor Code, commencing at Section 4620, recognizes the right of injured workers to be reimbursed

for their discovery costs of producing substantial evidence to sustain their burden of proof.

2. It should promote predictability and reduce frictional costs in the production of evidence by: (a) providing clarity as to which services are and are not covered by the fee schedule; (b) discouraging inappropriate billing; (c) prohibiting frivolous objections to bona fide billings; (d) not shifting costs from a legally-responsible party to another party or service provider; (e) ensuring prompt payment of legitimate billings; and, (f) not requiring employers to pay for services that were not provided.
3. It should promote a healthy business climate where copy service providers can earn a reasonable profit without being forced to absorb expenses beyond their control or to incur unreasonable collection costs and delays.

With this background in mind, CWCSA thanks the Division of Workers' Compensation for convening a Forum to discuss the draft proposal released on February 14. We have reviewed the draft and offer the following comments to improve its satisfaction of the aforementioned objectives.

Last year, CW CSA submitted a recommended fee schedule to the division for consideration. Although some of the association's suggestions appear in the DWC draft, others were omitted, thereby creating some ambiguities and unresolved issues that could lead to increased litigation and costs. For example, injured workers frequently need copies of their personnel records and other documents to establish their eligibility for workers' compensation benefits that are neither medical nor medical-legal records. The proposed fee schedule does not appear to cover those documents.

Regulation 9980(c): We recommend that the definition be amended, to read: "' Custodian of records' means the person at a specific location who has physical custody and control of the books, records, documents or physical evidence and maintains them in the ordinary course of business." On occasion, a custodian of records may maintain physical custody of an injured worker's records in several locations. For example, personnel records may be maintained in the company's headquarters out-of-state and other records kept locally in California. Even though the custodian may be one person, the definition must recognize that the evidence may be stored in multiple locations.

Regulation 9982(a): This subdivision limits the application of the copy service fee schedule to medical-legal copying yet the enabling language of Labor Code Section 5307 .9 is considerably broader. We recommend deleting the word "contested" from the subdivision.

Regulation 9982(c)(1): Although this language was proposed by CWCSA last year, the DWC's draft omitted the additional language we suggested. The following two sentences should be added to subdivision (1): "It shall be the responsibility of the employer to forward any such notices or requests promptly to its insurance carrier or claims administrator when the claims administrator or insurance carrier is not yet listed on the official case address record in EAMS. Any forwarding of a notice or request by the employer pursuant to this section shall not delay the

start of the 30-day period." In addition, this subdivision fails to account for situations where the employer provides partial records and the applicant issues a subpoena for the suspected missing records. If the subpoena produces some new records but also other records that were earlier submitted by the employer, the innocent copy service will not be reimbursed for those duplicate records. Even if the total number of records copied is under the flat fee cap, the employer is nevertheless likely to object and short-pay the invoice.

Regulation 9982(c)(2): As drafted, this provision is ambiguous. For example, a copy service provider bills an employer for services on January 1 which the employer fails to pay. On April 1, the copy service re-bills the employer for the same service. As drafted, the employer would have no liability whatsoever to pay the bill because both the January 1 and the April 1 bills would constitute "multiple billings arising from a single retrieval of records" Furthermore, a custodian may keep records in multiple locations, necessitating several copying events. As drafted, this regulation would excuse the employer from paying for any services that required copying at more than one location maintained by the custodian.

Regulation 9982(c)(3): As drafted, this provision is ambiguous and will promote disputes because it is open-ended. The copy service is an intermediary between the requester and the custodian and responds to the requester's directives. Prohibiting payment for records "that can be obtained without a subpoena at lower cost" gives the employer a carte blanche to object to all services because it thinks the records could have been obtained without a subpoena and for less. Furthermore, the subdivision erroneously assumes that there is no charge for documents obtainable from WCIRB and EDD. Subdivision (3) is poorly drafted and will increase friction

Regulation 9982(c)(4): As drafted, this provision will cause confusion and significantly increase employers' litigation costs. "[R]ecords obtainable by a Notice to Appear and Produce" include those in the employer's possession. However, an applicant's attorney may not know what records the employer has. The attorney may issue a subpoena duces tecum to obtain an injured worker's medical records from a treating physician and send a copy service to obtain them. If it just happens that the employer also has a set of those medical records in its files, Subdivision (4) would preclude payment to the copy service for its work. There is no way for an applicant or his/her attorney or the copy service provider to know exactly what records are in the employer's possession at the time the subpoena is issued.

Second, if Subdivision (4) remains in the regulations, applicants' attorneys will be forced to issue Notices to Appear and Produce and this process will be more costly to employers who will have to produce custodians at the employer's expense, accompanied by defense attorneys. The subpoena process is considerably less expensive to employers.

Regulation 9982(d)(1). This provision is poorly drafted. Frequently, pursuant to their independent search for evidence, both the applicant and the defendant will subpoena the same records from the same source. They usually employ different copy services, but as this regulation is drafted, one of the copy services would not be paid. In all likelihood, the employer would choose only to

pay the copy service it retained even though the applicant's copy service may have been the first company to copy the records.

This proposal is particularly onerous for copy services because they are attempting to copy documents pursuant to instructions from the party who hired them and they copy whatever records the custodian produces. They do not know, nor do they have the legal ability to find out, what records have been previously produced by the custodian for copying.

Regulation 9982(d)(2): We understand the division's desire to absolve employers from paying for summaries and tabulations. However, both applicants' attorneys and defense attorneys find indexing to be a very valuable service that reduces litigation costs and saves time. Judges strongly prefer indexed exhibits. In fact, DWC representatives acknowledged this value when we met with them last year. Indexing is a cost-reduction service that should not be discouraged.

Regulation 9982(e). The requirement that the "expense of obtaining prints of microfilm, X-ray films, and scans are borne by the party requiring them" is offensive and contrary to the state Constitution and the Labor Code, particularly Section 4600. This is an unreasonable encumbrance on injured workers who should never be required to pay for any evidence. These are clearly costs to be borne by the employer.

Regulation 9983(a)(1). The proposed \$180 flat fee is inadequate, capricious and should be abandoned. The number is not supported by the data analyzed by the Berkeley Research Group and should be increased to \$250 at a minimum. In addition, it is untenable to force copy service providers to absorb fees for release of information (ROI) services. Although some fees are regulated by Evidence Code Sections 1158 and 1563, fees charged by third party ROI companies are not. No copy service would accept an assignment to retrieve records from a ROI company that demands \$500 for access when the copy service can only receive \$180 or \$250 in return. The requirement that copy services must absorb ROI charges will prevent injured workers from realizing their constitutionally-guaranteed access to necessary evidence to prove their cases.

By way of a solution, CWCSA would like to point out that Labor Code Section 5307.9 gave the Administrative Director authority to promulgate a fee schedule for "copy and related services." The DWC's proposed Regulation 9980(a) defines "copy and related services" to be "all services and expenses that are necessary for the retrieval and copying of documents" CWCSA is of the opinion that the Administrative Director has the statutory authority to include within the copy service fee schedule reasonable fees to be charged by ROI companies so that employers and insurers can budget for these litigation expenses. We would hope that the employer/insurer community would join with CWCSA in supporting this essential addition to the copy service fee schedule.

Furthermore, the flat \$180 fee includes mileage. As an employer, a copy service that requires employees to use their own vehicles to serve subpoenas and secure records must pay them mileage. Depending on the distance the employee needs to travel, the employee's mileage

reimbursement may exceed the \$180 flat fee, leaving no money to cover the costs of the other services.

Presently, some services provided by copy services are subject to state sales taxes whereas others are not. If all these services are lumped into one flat fee, how is the copy service going to compute its sales tax liability to the State Board of Equalization? Has DWC even discussed this issue with SBE?

Finally, the "flat fee" concept of this subdivision appears to be in conflict with Labor Code Section 5307.9 that requires the fee schedule to "require specificity in billing." A one-size fits-all "flat fee" schedule fails to satisfy this mandate.

Regulation 9983(a)(2)(A): CWCSA is opposed to the prohibition of per page charges for fewer than 500 copies. According to the Berkeley Research Group report, the average copy assignment produces around 100 pages of records. We recommend that the per copy threshold be reduced from 500 to 100 pages. In view of the imprecise drafting of this subdivision, there are ways to get around the prohibition, but they will be substantially more costly for employers.

Regulation 9984 (a) and (b): This well-intended provision is fraught with traps for the unwary. Read together, Subdivision (a) provides a means for the defense simply to provide whatever records it has, in whatever form it has them, and then Subdivision (b) magically waves a wand over them and declares them "certified." This process may be in conflict with Evidence Code Sections 1561 and 1563. The proposed CWCSA regulations we submitted last year were quite precise on this subject, making clear that only records retrieved by subpoena, with a full chain of custody, and properly certified by the (original) custodian of records (as true and complete, under penalty of perjury) qualified as "evidence." The danger is, we feel, that the defense will deliver a pile of papers, declare them "certified" and will then argue that anything else ordered is "duplicative."

Regulation 9990(a). We note a conflict within this section. The fees specified in subdivision (a) include postage and sales tax, but in (a)(1), it provides that "sales tax and postage will be added to this fee."

Retroactivity. The proposed fee schedule fails to provide that it is not retroactive. Unless the fee schedule clearly specifies that it is not retroactive, many payors will refuse to pay existing invoices thereby resulting in considerable lien litigation and further delays in reimbursement. In addition, many copy services are required to remit sales taxes to the state when they send their invoice, even if it is many months before they collect. If the fee schedule is given retroactive application, and the payment is less than the invoice, how can the copy service recoup any excess sales taxes it paid?

The draft proposal that CWCSA provided to the division last year also included extensive ground rules for billing and reimbursement to improve the expediency and efficiency of the payment process. Many of our suggestions were omitted from the division's draft such as provisions for

timely payment and for penalties and interest when payment was delayed or withheld. In an effort to improve the efficiency of the process and to reduce frictional costs significantly, we urge the inclusion of appropriate payment ground rules in the division's proposal.

Christel Schoenfelder, Esq.
California Applicants' Attorneys' Association

February 24, 2014

§ 9983 (a) (1): A flat fee that includes widely varying factors such as mileage, postage, pickup and delivery, repeat visits, witness fees, and release of information(ROI) services makes no sense. A \$180 flat fee to cover all these services is clearly inadequate. The copy services will undoubtedly have written comments on what an adequate flat fee should be, but CAAA recommends that the page count for that flat fee be much lower. The BRG report finds the average copy service job is around 100 pages. We recommend that the flat fee only apply to the first 100 pages of records. Also, mileage, witness fees and release of information (ROI) service fees should be allowed to be billed as an itemized additional charge above the flat fee on the billing invoice as these charges vary widely by job. CAAA has been advised that some ROI fees are as much as \$500. No copy service will be able to stay in business if they have to absorb that cost. Further, employers and insurance carriers can enter into contracts to reduce those charges, but injured workers and their copy service firms cannot. Therefore, the impact is that injured workers will not be able to get the evidence needed to prove their case because of these unregulated ROI fees. CAAA also urges the Acting Administrative Director to consider if she has the authority to create a fee schedule for the ROI fees under Labor Code section 5307.9 as they fall under "related services". It is our understanding that these fees are becoming a growing problem in the copy service industry.

Additionally, we recommend that there be a Cost of Living Adjustment (COLA) added to this regulation. The copy services may suggest a flat fee that is adequate for their costs of doing business in 2014, or even 2015, but that fee will become inadequate over time with inflation, and the costs of doing business increasing.

Lastly, there should be a provision that bills must be paid within 30 days, otherwise penalties and accrued interest are due as recommended in section 9981.

§ 9983 (a) (2)(A): As the BRG report finds the average copy service job is around 100 pages, CAAA recommends that the flat fee only apply to the first 100 pages of records. After that, reimbursable fees should be twenty cents per page, with no maximum. Otherwise, what does a copy service do when they reach a certain number of pages. Stop copying? As currently drafted once 1725 pages are copied, there is no further payment. A single set of records is rarely more than 1725 pages, but when it is, the copy services should be paid.

§ 9983 (a) (2)(B)(C): The costs for additional sets of records under these subsections should be paid by the claims administrator. The injured worker or their attorney should not have to bear the costs of discovery. This section violates Labor Code section 4600 plus it unfairly encumbers the injured worker from getting discovery in violation of the protections of the California Constitution.

§ 9984(a) and (b): This section would allow the defendant to consider anything they copy, produce, or serve as certified, which is in direct conflict with Evidence Code section 1561.

To comply with the evidence code, at a minimum all records copied, produced, or served by authorization should be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following: (1) The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records. (2) The copy is a true copy of all the records described in the request for records, (3) The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event.(4) The identity of the records. (5) A description of the mode of preparation of the records.

If the business has none of the records described, or only part thereof, the custodian or other qualified witness shall so state in the affidavit, and deliver the affidavit and those records that are available.

Where the records described in the request were delivered to an attorney or his or her representative or deposition officer for copying at the custodian's or witness' place of business, in addition to the affidavit above, the records shall be accompanied by an affidavit by the attorney or his or her representative or deposition officer stating that the copy is a true copy of all the records delivered to the attorney or his or her representative or deposition officer for copying.

Gregory S. Webber, Chief Executive Officer
Med-Legal, LLC

February 24, 2014

ML has engaged proactively across the workers' compensation ecosystem, using best efforts to bring common perspective between providers, payers, and the administration as the *effort* to establish a copy service fee schedule responsive to Section 5307.9 progressed. Many parties are pleased with the progress to date, although work remains to achieve a fully balanced (and appropriate) outcome.

Progress and engagement has been driven around the following key perspectives, including; 1) focus on a simple {deeply bundled} fee schedule value, 2) value in focusing on the elimination of friction and dispute thereon, 3) providing predictability in pricing and payment, 4) motivation for

leverage, scale, and sharing of records, and 5) achieving prescriptive regulation, eliminating gamesmanship.

With continuing focus on these perspectives, ML believes that the administration can move the opening position identified in the DWC Forum to best advance, revise, and more strongly position the proposed copy service fee schedule value and related regulations to achieve well balanced and effective regulation. Taking each in order.

Achieving a Simple (deeply bundled) Fee Schedule Value

The Department of Workers Compensation (DWC hereafter) has hit the mark here. By focusing on a bundled value that is deeply inclusive - simplicity is at hand. With a (mostly) single target value for the fee schedule rate; the payers, the providers, and the administration need not worry or deal with complexity, rather all parties will be encouraged to reduce complexity (and related expense). However, this works only where the providers have direct control (or at least reasonable predictability) over the related expense.

Certain expenses are not under the direct control and influence of the provider. In particular, Release of Information Fees (ROI Fees hereafter) are 'prescribed to' and not 'prescribed by' the provider. As identified in the BRG report, and even the DWC's own prescriptive *effort* {in fact, within the fee schedule proposal itself) ROI Fees are 'external inputs' and cannot be reasonably predicted (or controlled) by the provider. Of particular concern, ML believes that absent regulatory and statutory control, ROI Fees will be increasingly unpredictable, more frequent, and increasing in value.

Recommendation: It is the recommendation of ML that the DWC not bundle ROI Fees in the fee schedule value. Rather, such amount(s) should be added and passed thru to the payer (and fully payable, in addition to the fee schedule value) as incurred, based on documented invoice and cost. Further, it is the recommendation of ML that the payers, providers, and the administration work together in support of appropriate regulatory and statutory control of ROI Fees to secure reasonableness and predictability thereon in the future.

Elimination of Friction and Dispute

While the DWC has partially hit the mark here (with simple (deeply inclusive) fee schedule value(s)) the related regulations need additional work and revision. The fact is, it has been clearly established that the injured worker often requires independent discovery, and for that to be effective independent discovery must follow the common rules of discovery and evidence.

While it is appropriate for there to be safeguards reducing the potential for 'duplicate discovery', ML finds many of the proposed regulations unnecessary, *off* the mark, or inappropriately vague; together reducing the potential for independent discovery on behalf of the injured worker, challenging the basic rules of evidence, and clearly increasing the potential for dispute.

Recommendation: Here, it is the recommendation of ML that the owe consider the input of the California Workers' Compensation Services Association (CWCSA) on all such matters. In fact,

except for the pricing proposal therein, ML supports the CWCSA proposed regulations relative to the fee schedule, submitted to the DWC (by CWCSA) on August 22, 2013.

Predictability in Pricing and Payment

Seemingly, 'predictability in pricing' (except for ROI Fees, which by necessity must be passed through) has been achieved in the DWC proposal. While good for the payers - and seemingly at deep adjustment to the historical payments received by the providers (\$251 as documented in the BRG valuated study); no provision has been similarly included to assure 'predictability in payment' for the providers.

Recommendation: Here it is the recommendation of ML that the DWC consider adding provision to assure predictability in payment (or at least penalty for late or non payment). Here, ML is supportive of the CWCSA proposal establishing clear and meaningful late payment penalties.

Motivation for Leverage, Scale, and Sharing of Records

The DWC has hit the mark here. With a deeply inclusive, (mostly) bundled, and single value focused fee schedule value (as proposed); providers will be forced to look for leverage, scale, and synergies across the records retrieval ecosystem to best control and predict costs and expenses. This will best serve the industry by maximizing efficiency and reducing costs. Further, with the proposal therein relative to the onward/subsequent production of records (and copies thereon) priced at a fraction of the original production, sharing of records will only increase and duplication will be reduced.

Recommendation: Here the OWC has it mostly right (in pricing), but falls short in assuring that such records are appropriately discovered (subpoena), are fully maintained with a proper chain of custody, and otherwise meet the legal standard for evidence. Being shortsighted here will only increase the likelihood of duplication and dispute. Once again, ML recommends that the DWC consider the well-structured input of CWCSA herein.

Achieving Prescriptive Regulation, Eliminating Gamesmanship

As noted previously, the related regulations need additional work and revision. ML finds many of the proposed regulations unnecessary, off the mark, or inappropriately vague; together reducing the potential for independent discovery on behalf of the injured worker, challenging the basic rules of evidence, and clearly increasing the potential for gamesmanship.

Recommendation: Here, it is the recommendation of ML that the owe consider the input of the California Workers' Compensation Services Association (CWCSA) on all such matters. In fact, except for the pricing proposal therein, ML supports the CWCSA proposed regulations relative to the fee schedule, submitted to the owe (by CWCSA) on August 22, 2013.

Bert Arnold, Esq.
California Applicants' Attorneys' Association

February 24, 2014

§9982 (d)(1): This section must be deleted in its' entirety. This regulation exceeds the authority of the enabling statute. Labor Code section 5307.9 provides that the Director has the authority to adopt, after consultation with CHSWC, and public hearings, a copy fee service fee schedule which specifies the services allowed. To not pay for the records of one side because they are duplicative, would essentially block a party from conducting the discovery necessary to prove or defend their case. Most likely, this will be the injured worker as the insurance company is going to make sure their own company gets paid. Copy services don't have the case file or legal authority to know what other records have been copied in a case. They copy what is given to them by the facility. Even when a subpoena specifies a date range to update records previously obtained, the larger medical facilities will only make their entire medical file available. The copy service companies can't be expected to perform paralegal tasks, or attorney level review to make the decision on what should be copied. What if a new Subpoena of records from a location produces 20% new and 80% old records? Is the claims administrator only going to pay for the 20% new? Also, frequently the applicant and defendant will subpoena records from the same source, without knowing it, and this regulation would prevent payment for one of the set of records(most likely to the applicant's copy service). Both sides should be allowed to obtain their own records. If a duplication occurs, the fee schedule should not bar payment, because this can easily happen through no fault of any party, or the copy service company. Historically, the California Workers' Compensation system has not required injured workers and their attorneys to bear the costs of discovery and litigation. The benefits paid and attorney fees allowed only when a case settles would make the costs of conducting discovery prohibitive. This draft regulation sets a dangerous precedent, is extremely ambiguous, and would impose a chilling effect on an injured worker's independent right to discovery.

§9982 (d)(2): Indexing, and bate stamping is a necessary component of document production , expected by trial judges when reviewing exhibits, and useful to attorneys on both the applicant's and defense side when conducting depositions, preparing letters to evaluating doctors, and for trial preparation. As this is an additional expense that a copy service must incur while preparing records, and a cost saving tool in the industry for employers, and insurance carriers, the regulations should allow for this as an additional allowable service on the schedule.

§9982 (e): The expense of obtaining prints of microfilm, X-ray films, and scans should be borne by the employer, or insurance carrier. It is unconscionable that these draft regulations would put this expense on the shoulders of the injured workers. This violates Labor Code section 4600, and the California Constitution. It also exceeds the authority given to the Director to adopt a copy service fee schedule. The cost of obtaining x ray films can be hundreds of dollars. It is almost always the injured worker requiring them. The treating doctor needs them when making surgery determinations. Medical evaluators need to see them. UR and IMR reviewers need them to determine medical necessity. To require payment by the injured worker would be an "encumbrance" on their ability to obtain benefits and medical treatment on their claim, in violation of the California Constitution.

The California Constitution mandates that the workers' compensation system shall accomplish substantial justice in all cases by providing service to injured workers which is "expeditious,

inexpensive, and without encumbrance of any character." (Article XIV, section 4) "Without encumbrance" has been interpreted to mean an injured worker can not be required to pay for the costs of processing a claim.

Bernardo de la Torre, Esq.
California Applicants' Attorneys' Association

February 24, 2014

§9982 (c) (1) : This section will only work in those cases where the employer, claims administrator, or workers compensation insurer fail to provide any records within 30 days from the employee's request. In that case a subpoena may issue and the copy services should be paid. But what happens if only partial records are produced. The injured worker or their attorney believe there are additional records but are unable to prove who is in possession of the "missing" records. If a subpoena issues for the additional records, and "duplicative" records are sent, then the injured worker and their attorney must pay for them under this schedule. Depositions of "custodian of records" will need to be taken to get testimony under penalty of perjury as to where records are kept, what they have in their possession, and when it was received, and the costs will be greater than what would have occurred with a subpoena. CAAA recognizes that Labor Code section 5307.9 provides that the copy service fee schedule will not allow for payment for records that are produced within 30 days from an employee's request to an employer, claims administrator, or workers' compensation insurer, but the regulations must address the situation where partial records are sent. The injured worker and their attorney should not bear the cost.

§9982 (c) (2): This section is poorly drafted and should be deleted in its' entirety. If a copy service company has to bill more than once because their initial bill was not paid, this provision would allow for non-payment. If a bill has to be sent to more than one address or carrier because there is a question who is responsible, or it is a multiple defendant case, this section would allow for non-payment.

As discussed at the stakeholder meeting, on occasion a custodian of records may maintain physical custody of an injured workers records at multiple locations. For example, a medical facility may maintain billing and treatment records in separate locations, or an employer may keep personnel records at an out of state corporate location, while other records are at the local job site. Separate billings may issue under these circumstances. If our recommended changes to § 9980 (c) are made with regard to the definition of "custodian of records", then those changes should be included in any further regulation to be drafted with regard to multiple billings.

§9982 (c) (3): This section is poorly drafted and should be deleted in its' entirety. First there is a cost for records from the WCIRB for injured workers' attorneys. There is also a charge for EDD records after the first 100 pages, at 10 cents per page. The injured worker should not be expected to bear this cost. Further the language prohibiting "payment for records that can be obtained without a subpoena at lower cost" is extremely ambiguous and would allow defendants to raise this objection to virtually every subpoena, if they so wish. Delays and frictional costs in the system would explode, which is exactly what the Legislature wanted to avoid with the creation of a fee schedule.

§9982 (c) (4): This section is poorly drafted and should be deleted in its' entirety. If records obtainable by a Notice to Appear and Produce are excluded from the fee schedule, then records from parties to the case, including the employer, claims administrator, and insurance company could never be obtained by a subpoena. In a perfect world, where records are easily obtainable from employers and claims departments this section might work, but this is not the workers' compensation world that we all participate in. Defense attorneys often have the same obstacles in getting records from their own employers and claims departments, so it is only going to be much more difficult for injured workers and their attorneys. Further, if the employer or claims administrator had medical reports and records in their possession which the injured worker did not know about, and they issued a subpoena for them from the medical facility, the defendant could deny payment on the copy service bill based on this section. The problem is that the injured worker and their attorney will never know all of the records that are in the possession of the other side when they issue a subpoena, so they will be trapped by this section.

Further, this section will increase costs in the system as a Notice to Appear and Produce will require an appearance by the custodian of records, usually with an attorney. The subpoena process is considerably less expensive for the employer.

James Butler, Esq.
California Applicants' Attorneys' Association

February 24, 2014

§ 9980 (c): As discussed at the stakeholder meeting, on occasion a custodian of records may maintain physical custody of an injured worker's records at multiple locations. For example, a medical facility may maintain billing and treatment records in separate locations, or an employer may keep personnel records at an out of state corporate location, while other records are at the local job site. As a result, we recommend that the definition of custodian of records be amended to state:

"Custodian of records" means the person at a specific location who has physical custody and control of the books, records, documents or physical evidence and maintains them in the ordinary course of business.

§9980 (f): As Labor Code section 5307.9 provides that the employer, claims administrator, or workers' compensation insurer has 30 days to provide records in response to an employee's request to avoid payment under this fee schedule , we recommend that the definition in this section be amended to state:

“Records in the employer’s, claim administrator’s or workers’ compensation insurer’s possession,” means all records and documents requested by an injured worker or his or her representative or a medical provider, that were in the possession of the employer, claims administrator or workers’ compensation insurer on the date the production of documents in response to the request was made.

This will avoid any dispute whether records received after the date of the request, but within the 30 days, need to be produced.

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§ 9981 : There is no provision anywhere in the draft regulations with regard to time limits for the claims administrator to pay bills for copy and related services. Additionally there is no provision for penalties if bills are not paid timely. We recommend that this section be amended to state:

Bills for copy services must specify services provided and must be presented to the claims administrator for payment. Each bill for services shall include a statement that there was no violation of Section 139.32 of the Labor Code with respect to the services described. Bills must be paid within thirty days of receipt by the claims administrator. If bills are not paid within this period, then that portion of the billed sum which remains unpaid shall be increased by 25 percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of receipt of the bill by the claims administrator.

§9982(a): We recommend that this section be amended to delete the word “contested” as follows:

This fee schedule covers copy and related services which are obtained for the purpose of proving or disproving a ~~contested~~ claim, except services under a contract between the employer and the copy service provider.

This language is derived from Labor Code section 4620 and section 9793(g) with regard to the definition of a medical legal expense. A “contested” claim is defined in Labor Code section 4620 (b) and section 9793(b) as one where liability has been rejected, liability has not been accepted within 90 days and the claim has become presumptively compensable, the claims administrator has failed to respond to a demand for payment of benefits within the statutory time period , commence payment of temporary disability or issue a notice of delay as required by statute , or where the claim is accepted and a disputed medical fact exists.

As the burden of proof is on injured workers to produce substantial evidence to prove their claim, it is often necessary to obtain evidence to develop the record outside the limited definition of a “contested” claim. An injured worker may need their personnel file and wage records to make sure their benefits are being paid at the correct rate. An injured worker may need records on an accepted claim on issues other than disputed medical facts, such as apportionment and Labor Code section 132 (a) issues. An injured worker may need copies of their benefit notices because they were not properly served but otherwise the claim is not contested.

The need for discovery from the inception of a claim was supported at the California Workers’ Compensation Defense Attorneys’ Association 2013 Winter Conference, where a panel led by the Honorable Anne Horelly, agreed that the trial begins with the initial pleading presented by each side, long before a claim is “contested.”

Citaly Salazar, Scandoc Imaging

February 24, 2014

I have been an employee of Scandoc Imaging, a copy service locate at Costa Mesa, Ca for the past 10 years . I have reviewed the Proposed Copy Service Fee Schedule and believe that the flat rate of \$180 is insufficient to cover the cost of labor. The DWC is not considering all of the process a copy service has to go through in order to obtain any type of records on behalf of the

injured worker. Also, the amount a medical facility might charge for the release of records since each facility has their own rules and fees. It is uncertain of what will happen if the carrier decides not to pay which will cause all copy services to pay the \$150 lien cost. If this fee schedule were to continue it would cost not only my job but the job of other employees. The injured worker would also suffer since it would cause delays in obtaining their records due to most copy services going out of business. I beg you reconsider your decision and think about everyone it will affect.

Yvonne E. Lang, Esq.
Perlman, Broska & Wax

February 24, 2014

The Workers' Compensation Section Executive Committee of the State Bar of California finds the following code sections to impact on the Practice of workers' compensation from the position of a balanced Workers' Compensation Section Executive Committee (WCEC) consisting of attorneys for Applicants and Defendants and Workers' Compensation Judges.

§ 9980 Definitions

As used in this article:

- (g) "Copy and related services" means all services and expenses that are necessary for the retrieval and copying of documents and are responsive to a duly issued subpoena or authorization to release documents for a workers' compensation claim.
- (h) "Claims administrator" means the person or entity responsible for the payment of compensation for any of the following: a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, the administrator of the Uninsured Employers Benefits Trust Fund (UEBTF), the administrator of the Subsequent Injuries Benefits Trust Fund (SIBTF), a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, joint powers authority, the Self-Insurers' Security Fund, or the California Insurance Guarantee Association (CIGA) .
- (i) "Custodian of records" means the person who has physical custody and control of the books, records, documents or physical evidence and maintains them in the ordinary course of business.
- (j) "Set of records" means a reproduction, either in paper form or in electronic form, of all records copied from one custodian of records under one subpoena or authorization.

- (k) “Professional Photocopier” is defined by section 22450 of the Business and Professions Code and includes any person or entity seeking reimbursement through the WCAB for copy and related services.

[COMMENT: some professional photocopiers attempt to avoid licensing requirements by claiming that they are merely independent contractors of the requesting attorney in an attempt to misapply the “professional photocopier” exception to their business activities. This would preclude that tactic and place all photocopiers on a level and legal playing field.]

- (l) “Records in the employer’s, claim administrator’s or workers’ compensation insurer’s possession,” means all records and documents requested by an injured worker or his or her representative or a medical provider, that were in the possession of the employer, claims administrator or workers’ compensation insurer on the date the request was made.

Authority: Section 5307.9 Labor Code.

Reference: Section 5307.9 Labor Code, Section 22450 Business and Professions Code.

§ 9982 Allowable Services

~~(b)~~ This fee schedule covers copy and related services which are obtained for the purpose of proving or disproving a contested claim, ~~except services under a contract between the employer and the copy service provider.~~

~~(c)~~ (a) This fee schedule applies to obtaining records which were ~~not timely served pursuant to section 10608.~~ reasonably and necessarily obtained in connection with a matter pending before the WCAB, except services under a contract between the employer and the copy service provider.

[COMMENT: the fee schedule should apply to all records obtained in any WCAB proceeding whether or not they are medical-legal in nature and irrespective of service timelines, subject to below.]

~~(d)~~ (b) There shall be no payment for copy and related services that are:

- (2) Provided within 30 days of a separate request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's,

or workers' compensation insurer's possession that are relevant to the employee's claim,

[COMMENT: in order for this section to have any beneficial effect, the request should be set apart from a standard, multipage boilerplate letter to the employer/insurer, similar to what is required for requests for authorization in the medical treatment context.]

- (6) Multiple billings arising from a single retrieval of records from one custodian of records.
- (7) For records obtainable from WCIRB, EDEX, EDD or other records that can be obtained without a subpoena at lower cost,
- (8) For records obtainable by a Notice to Appear and Produce.
- (9) For records subpoenaed in violation of section 10608(c).

[COMMENT: non-physician lien claimants are barred from subpoenaing records absent WCAB order.]

~~(5)~~(6) Provided by any person or entity who is not a properly licensed/registered photocopier.

~~(d)~~(c) There will be no additional payment for copy and related services that are:

- (3) Duplicative records previously obtained from the same source.
- (4) Summaries, tabulations, or for indexing of documents.

~~(e)~~(d) The expense of obtaining prints of microfilm, X-ray films, and scans are borne by the party requiring them. If the party requiring them is the injured worker, said expenses may be reimbursed upon a successful petition for costs and shall not be subject to claims of penalty or interest.

[COMMENT: an injured worker should not have to bear costs necessary to properly presenting his/her claim, equally, such costs should not be seen as an incentive to increase profits.]

Authority: Section 5307.9 Labor Code.

Reference: Section 2019.030 Code of Civil Procedure, Section 5307.9 Labor Code.

§ 9983 Fees for Copy and Related Services

(a) The reasonable maximum fees payable for copy and related services are as follows:

(1) A \$180 flat fee for a set of records, from a single custodian of records, which includes mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness fees, check fees, release of information services, and subpoena preparation.

(2) In addition to the flat fee, the following fees are also reimbursable:

(A) twenty cents (\$.20) per page for copies above 500 pages, up to a maximum of \$425 per invoice (and includes the flat fee),

(B) \$50.00 for each additional set of records in paper form ordered within 30 days of the Notice of Parties, payable by the party ordering the additional set. Any fees charged to the injured worker may be reimbursed by the employer upon a successful petition for costs and shall not be subject to claims of penalty or interest.

[COMMENT: an injured worker should not have to bear costs necessary to properly presenting his/her claim, equally, such costs should not be seen as an incentive to increase profits.

(C) \$5.00 for each additional set of records in electronic form ordered within 30 days of the Notice of Parties, payable by the party ordering the additional set, or \$30 if ordered after 30 days and the copy is retained by the registered photocopier. Any fees charged to the injured worker may be reimbursed by the employer upon a successful petition for costs and shall not be subject to claims of penalty or interest.

[COMMENT: an injured worker should not have to bear costs necessary to properly presenting his/her claim, equally, such costs should not be seen as an incentive to increase profits.]

- (4) in lieu of the flat fee, \$100 in the event of cancellation after a Notice to Parties has been issued but before records are produced or for a certificate of no records.

Authority: Section 5307.9 Labor Code.

Reference: Section 5307.9 Labor Code.

§9990. Division Fees for Transcripts; Copies of Documents; Certifications; Case File Inspection; Electronic Transactions

The Division will charge and collect fees for copies of records or documents made available to non-EAMS participants outside of EAMS. For the purposes of this section, “records” includes any writing containing information relating to the conduct of the public's business which is prepared, owned, or used by the Division, regardless of the physical form or characteristics. “Writing” means handwriting, typewriting, printing, photostatting, photographing and every other means of recording any form of communication thereof, and all papers, maps, magnetic tapes, photographic films and prints, electronic facsimiles, any form of stored computer data, magnetic cards or disks, drums, and other documents. .

[COMMENT: there should be some assurance that EAMS case participants and e-form filers will not be charged fees to use the EAMS and e-file systems to view and print items stored within the system.]

Fees will be charged and collected by the Division as follows:

- (a) For copies of papers, records or documents, not certified or otherwise authenticated, one dollar (\$1.00) for the first copy and twenty cents (\$0.20) for each additional copy of the same page, except to the injured worker to whom the fee will be ten cents (\$.10) per page, and one dollar (\$1.00) for scanning to CD and for the CD, postage or shipping costs and sales tax. Any fees charged to the injured worker may be reimbursed by the employer upon a successful petition for costs and shall not be subject to claims of penalty or interest.

[COMMENT: an injured worker should not have to bear costs necessary to properly presenting his/her claim, equally, such costs should not be seen as an incentive to increase profits.]

(1) State sales tax and postage will be added to this fee.

(b) For certification of copies of official records or documents and orders of evidence taken or proceedings had, ten dollars (\$10.00) for each certification.

(1) Where the Division is requested to both copy and certify a document, the fee is the sum of the fees prescribed in (a) and (b) above.

(c) For paper transcripts of any testimony, three dollars (\$3.00) for each page of the first copy of transcripts; thereafter, one dollar and fifty cents (\$1.50) for each page of additional copies of the transcript. Any fees charged to the injured worker may be reimbursed by the employer upon a successful petition for costs and shall not be subject to claims of penalty or interest.

[COMMENT: an injured worker should not have to bear costs necessary to properly presenting his/her claim, equally, such costs should not be seen as an incentive to increase profits.]

Authority: Sections 127, 133, and 5307.3, Labor Code.

Reference: Sections 127 Labor Code.

Ivanna Montoya, Data Entry/Legal Coordinator, Scandoc Imaging

February 24, 2014

In response to the pending fee schedule it will affect all copy services, and myself included. Working in this field for the past 10 years and seeing how difficult it is for our company to collect from the defense party on invoices that are reasonable and fair for work that is being done

on behalf of the applicants attorney seems unfair to set such a low flat rate. It seems as though the DWC still does not understand what circles an applicant copy service must go through in order to obtain records and the expenses that come with it. Why does the DWC get to charge \$500.00 for 500 pages of records and the applicant copy service is stuck to a flat rate of \$180.00 when the DWC does not share the same obstacles? This seems imbalanced and unjust to not only the applicant copy service but the injured workers rights. I hope that all parties are taken into consideration, because the way things are looking the defense seems to be the only one with the upper hand.

Steven Suchil, Assistant Vice President/Counsel
American Insurance Association

February 24, 2014

AIA is the leading property-casualty insurance trade organization, representing approximately 300 insurers that write more than \$100 billion in premiums each year. AIA member companies offer all types of property-casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage for small businesses, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance.

Introduction

We are strongly in favor of these proposed regulations for copy services and believe they will go a long way in reducing disputes and inefficiencies, and speeding payments to the service providers.

We have a few suggestions that we believe will tighten up and clarify some of the sections.

Suggested language deletions and additions are shown in underline or strikeout and highlighted.
Section 9980 Definitions

We recommend the following changes to subsection (f):

(f) Records in the employer's, claim administrator's or workers' compensation insurer's possession," means all records and documents requested by an injured worker or his or her representative or a medical provider, that were in the possession of the employer, claims administrator or workers' compensation insurer on the date the request was made.

These entities are included in the definition of Claims Administrator in subsection (b), and need not be reiterated here. Including these entities may result in lack of clarity and create disputes about the duties of the other entities that have not been provided in subsection (f).

Section 9982 Allowable Services

Subsection (a) should be amended as follows:

(a) This fee schedule covers copy and related services which are obtained for the purpose of proving or disproving a contested claim, except services under a contract between the ~~employer~~ Claims Administrator and the copy service provider.

We favor using the more inclusive term as defined in Section 9980 (b).

The following amendments should be made to subsection (c):

(c) There shall be no payment for copy and related services that are:

(1) Provided within 30 days of a request by an injured worker or his or her authorized representative to ~~an employer, the~~ claims administrator, or workers' compensation insurer for copies of records in the ~~employer's, claims administrator's, or workers' compensation insurer's~~ possession that are relevant to the employee's claim.

These entities are included in the definition for Claims Administrator in subsection (b). Please see the comment above under Section 9980 (f).

Kristen Marsh, Lead Attorney, WCIRB

February 24, 2014

The WCIRB is a licensed rating organization and the California Insurance Commissioner's designated statistical agent. The WCIRB receives workers' compensation coverage information from its member insurers and maintains a record of workers' compensation insurance coverage for all California insured employers. Over the last few years, the WCIRB has seen a marked increase in the number of subpoenas received requesting coverage information for cases before the Workers' Compensation Appeals Board (WCAB). The number of subpoenas received has jumped from a low of approximately 1,300 subpoenas processed in 2010 to a record high of nearly 4,000 subpoenas in 2013. We estimate that more than 90% of the subpoenas we received in 2013 were merely to determine the identity of the insurer for a specific employer as of a specific date, and that information is already available to the public at no cost.

Responding to this ever increasing number of subpoenas continues to be a drain on the WCIRB's resources, especially in view of the comment in Martinez v. Terrazas (2013) 78 Cal. Comp Cases 444, 447 fn. 3 (Appeals Board en banc) that "in the context of a subpoena to recover costs associated with a subpoena to the WCIRB, the copy service would need to establish the expenses were incurred to prove or disprove a contested claim and that they were reasonable and

necessary at the time incurred.” In that case, the parties participated in an agreed medical evaluation before the subpoena on the WCIRB requesting coverage information was served. Consequently, it appeared to the court that the identity of the defendant’s insurer had been established prior to the subpoena for coverage information being issued.

The WCIRB, therefore, is in support of Section 9982(c) which provides that no payment will be made for “copy and related services that are ... [f]or records obtainable from the WCIRB ... that can be obtained without a subpoena at a lower cost.” The WCIRB offers two options for obtaining coverage information at a lower cost than a subpoena. The WCIRB maintains a public website at www.caworkcompcoverage.com that provides the identity of the insurer that wrote a California workers’ compensation insurance policy for a specific employer on a specific date within the last five years. This information is available to the public for free and immediate search results are provided online. In addition, the WCIRB provides coverage information for free to injured workers and at a modest cost of \$10 per coverage year/per employer to insurers, employers, health care providers and attorneys involved in a pending workers’ compensation claim. The Coverage Research Request form is available online at www.wcirb.com.

Peggy Thill, Claims Operations Manager, State Fund

February 24, 2014

§ 9980 Definitions

Discussion

Proposed § 9980 (f) states, in relevant part:

“Records in the employer’s, claim administrator’s or workers’ compensation insurer’s possession,” means all records and documents requested by an injured worker or his or her representative or a medical provider. . . .”

The section does not define the term “medical provider”. Clarification is needed regarding what type of medical provider has a right to request medical records.

Recommendation

State Fund recommends that the definition of “medical provider” be limited to treating physicians in accordance with 8 CCR § 10608 and LC § 3209.3.

§ 9981 Bill for Copy Services

Discussion

While the section indicates that the bill must specify services provided, it does not clarify any other information that the bill must contain.

Recommendation

State Fund recommends that each bill for copy services contain the following: provider tax identification number, date of billing, case information including employee name and claim number, source information and date of service. Additionally, the Division of Workers' Compensation (DWC) should specify that providers must send a separate bill for each claim and cannot submit a bill for multiple cases. Including this information would help ensure compliance with LC § 4603.3 which requires employers to provide an explanation of review upon payment, adjustment or denial of a bill for medical services.

Furthermore, it should be clarified that the provider may only bill for the allowable services described in § 9982. The billing should include an itemization of all services billed for and their cost, as well as an itemization of additional reimbursable costs that are not included in § 9983 (a).

Finally, each bill for copy services should include a copy of the professional photocopier certificate required by BPC § 22462 to ensure compliance with 8 CCR § 9982.

§ 9982 Allowable Services

Discussion

1) Proposed § 9982 (b) states:

“This fee schedule applies to obtaining records which were not timely served pursuant to section 10608.”

The October 2, 2013 report *Formulating a Copy Services Fee Schedule*, completed by Berkeley Research Group, LLC for the Commission on Health and Safety and Workers' Compensation (CHSWC), recommended that a signed declaration of necessity be provided by the attorney issuing a subpoena to ensure that applicant attorneys have knowledge of the request and that records are necessary (pp. 11 – 12). The report also indicated that documentation of the declaration should be submitted with the bill. The proposed regulations do not include this requirement. Omission of such a declaration would make it nearly impossible to ensure compliance with § 9982 (b).

2) Proposed § 9982 (c) (1) states, in relevant part:

“There shall be no payment for copy and related services that are: Provided within 30 days of a request by an injured worker or his or her authorized representative to an employer. . .”

The section does not make it clear whether the employee must request records from the employer prior to obtaining a subpoena for records.

Recommendation

1) State Fund suggests that the party requesting subpoena sign a declaration under penalty of perjury specifying the date of the request, that the request is being made in good faith and that the timeframe for receipt of records pursuant to § 10608 has elapsed. The declaration should be

sent with the subpoena of records. This provision would ensure compliance with the proposed section and with LC § 4055.2.

2) State Fund recommends that the DWC clarify this section of the regulations to ensure compliance and avoid confusion regarding the new fee schedule.

§ 9983 Fees for Copy and Related Services

Discussion

Proposed § 9983 (a) establishes a flat fee of \$180 for a set of records, plus an additional \$.20 per page for copies over 500 pages, up to a maximum of \$425. As described in the report, *Formulating a Copy Services Fee Schedule*, there is a high level of acrimony amongst copy service providers and payers which has been compounded by an excessive amount of billing disputes (pp. 9-10). The report recommends a flat fee for services (p.8). SB 863 amended LC § 5307.9, instructing the administrative director to adopt a copy services fee schedule in consultation with the CHSWC.

Recommendation

State Fund strongly supports the DWC's formation of a flat fee for copy services up to 1000 pages and recommends limiting payment for additional pages to \$.10 per page. This is a good compromise that will likely reduce lien litigation at the Workers' Compensation Appeals Board—a key component of SB 863 reform legislation.

Norma Herra, Legal Assistant
The Law Office of Andrew B. Shin

February 24, 2014

With the new copy service schedule, it is our opinion that our injured will suffer. You are charging the copy services with absorbing fees that vastly exceed the \$15 witness fees that used to be charged. This will cause the copy service to not want to take on the copy job and our client will suffer.

In addition our copy service vendors tell us that when we ask to copy claim files and employment files that the defense wants to provide them and we are never aware of whether or not they have included all the pages. It is important that the defense include a declaration that records are complete and that nothing has been removed. It would be better if those records came from the defense copy service IF THEY HAD THEM AT THE TIME OUR SUBPOENA WAS SERVED. Otherwise, we want them to be provided by our copy service.

Finally, you are expecting the copy service to provide up to 500 pages for this reduced flat fee. This process of reducing what the copy service gets paid and expecting them to copy 500 pages is ridiculous. The number of pages included needs to be reduced to 100 pages if any at all.

Lilly

February 24, 2014

I am wondering whether this proposed Regulation is illegal in its entirety because of anti-trust issues. Federal anti-trust laws preclude state laws which restrict competition. This regulation could have a chilling effect on competition.

Lawrence Scott, Workers' Compensation Supervisor

February 24, 2014

Thank you for the opportunity to comment on the proposed regulations regarding a fee schedule for workers' compensation copy services. My biggest problem is that the final numbers proposed are the result of negotiations between some of the stakeholders. The proposed regulations ignore the findings of the Berkley Research Group (BRG) solicited by the Commission on Health Safety and Workers Compensation (CHSWC).

The study conducted by BRG found that \$103.55 was adequate to reimburse for up to 1000 pages of copies. This was based on the review of over 1/2 million documents provided by "applicant copy services" and 1,647 documents from "defense copy services". They also recommended \$0.10 per page for additional sets of paper records or a \$5.00 flat rate for an electronic copy.

Proposed section 9983 would allow \$280.00 for the same services, almost three times the studies recommendation and \$29.00 higher than the studies proposed late payment amount of \$251.00.

What is the point of having a study done, then ignoring it entirely? The RBG study is the only somewhat unbiased input into the process. I use the term somewhat as part of the data relied upon was provided by stakeholders

While I think the BRG study came in a little low, it is the only input based on research. I conducted a study of copy services with offices in the Sacramento area on behalf of my employer as part of our litigation with one of the primary "applicant copy services". Our survey found an average flat rate of \$89.75 plus the witness fee (per section 1563 of the evidence code) plus a reasonable cost of \$0.31 per page. The flat rate in our survey ranged from \$45.00 plus \$0.17 per page to \$108.75 plus \$0.45 per page. The flat rate in the survey provided by lien claimant as part

of our litigation ranged from \$82.00 plus \$0.65 per page to \$222.00 plus \$0.65 per page. The average of both surveys was \$115.89 plus \$0.47 per page. None of these numbers include the witness fee as it was our position that the witness fee has already been set by the legislature in Evidence Code Section 1563. My review of over 250 bills from our litigation found the average copy job to be just under than 200 pages. Applying the various rates identified in our survey as well as that done by lien claimant, produces the following rate ranges:

Our Survey Average: \$163.75 plus witness fee
Our Survey Low: \$79.00 plus witness fee
Our Survey High: \$198.75 plus witness fee
Combined Survey: \$209.89 plus witness fee
Their Survey Low: \$212.00 plus witness fee
Their Survey High: \$342.00 plus witness fee

In our survey, the second highest results (\$106.50 plus \$0.30 per page plus witness fee) came from one of our contracted providers who we have a contract rate of \$40.00 plus \$0.15 per page plus witness fee. In lien claimant's survey, referenced above, the lien claimant had the highest rates of those they surveyed. Through discovery we determined that for the same work performed on the civil (superior court) side they charged one client a \$45.00 flat rate plus \$0.20 per page plus witness fee which results in a total for 200 pages of \$85.00 plus the witness fee. The only reason for the discrepancy in billing is that their rates for work in the superior court have to be based on competitive rates. While those charged in the work comp arena are limited only by their greed.

The purpose of the copy service fee schedule was to eliminate the profiteering by "applicant copy services". I am not sure the proposed rates achieve this goal. As an example of the profitability of "applicant copy service", a vice president for the lien claimant in our litigation testified that he had knowledge of the pricing for "defense copy services" because his company had explored purchasing a "defense copy service", but they didn't purchase one because the "defense" side was not as profitable as the "applicant's" side. So even with all of the added expenses claimed by "applicant copy services" they are still more profitable than "defense copy services".

I would propose a flat rate not to exceed \$80.00 for all services, plus \$0.20 per page, plus a witness fee as established in section 1563 of the Evidence Code. The copy service would be responsible for providing supporting documentation for a witness fee in excess of \$15.00. In response to "applicant copy services" concerns about the fees charged by ROI, Evidence code section 1563 limits what can be claimed. It would seem to me the copy service should contact their client for direction. The client then has the choice to pay the difference out of their own pocket, or drag the custodian of records in front of a judge.

Additional sets of records would be charged at \$0.10 per page, and electronic copies would be a flat rate of \$5.00, this would apply to the initial copy as well if the party seeks the records in an electronic format rather than paper. A certificate of no records would not exceed \$80.00.

When market forces set the rates for copy services as they do on the “defense” side records are routinely provided for a flat rate well below \$100.00, and the per page rates is in \$0.20 per page range with the witness fess as outlined in section 1563 of the evidences code. When market forces do not play a role, the rates are what we see charged by the “applicant” side. This is evidenced by the significantly lower rates they charge applicant’s attorney for work performed in the superior court. These rates seem to be in the same price range as what “defense” firms charge in workers’ compensation. Because of this disparity, between what “applicant firms” charge for workers compensation work vs. superior court work, it seems to me that little credibility can be attributed to the “applicant firms” numbers when it comes to workers’ compensation.

The proposed regulations also set rates for records obtained from the WCAB. Some of these rates proposed and already in place in Section 9990 would seem to be in conflict with Evidence Code section 1563. Since the Evidence code is “law” it would seem to trump some of the proposed rates for the DWC to provide copies.

Marietta Gomez, Paralegal, Scandoc Imaging

February 24, 2014

I have reviewed the Proposed Copy Service Fee Schedule and have the following comments:

A flat rate of \$180 for up to 500 pages is insufficient to cover the costs and labor that goes into securing records on behalf of the injured worker.

The DWC should consider the costs facilities charge us to obtain records. ROI fees are out of control and should be an added cost on top of the \$180.00 flat rate.

There is no mention of consequences for untimely payments which would result in a copy service filing a \$150.00 filing fee putting copy services out of business.

I have worked for Scandoc Imaging for 3 years and am concerned that if the fee schedule passes, I could lose my job.

Rosa Villalobos, Legal Assistant, Law Offices of Andrew B. Shin

February 24, 2014

This new fee schedule will impact our ability to protect our injured worker. Are you trying to eliminate the applicant copy services by saddling them with these restrictions and at the same time reducing what they can charge to services us? When we give the applicant copy services an

order for records, we don't want to put them in the position of having to make economic decisions as to what they will do for us, but that is the position you are putting them in. You should reduce the number of pages that are included in this flat fee to 100 pages and put some penalties in the system for late or refused payment of their invoices.

In addition, If you are going to force us to take records from the defense for claim files and employment files, at least require the defense to respond timely to the subpoena request for those files and if they do not object or produce the files timely, they are not entitled to provide the files.

Joe Karapetian, Platinum Copy Services

February 24, 2014

I am a small mobile photocopy service out of southern California. First of all I want to thank the DIR for taking the time to hear our questions and concerns. I believe a fair fee schedule will give more clarity to the copy service industry and it will create a more stable billing and collection process. I think we are headed in the right direction with the adjustments that have been made from the prior proposed fee schedule, however there are a few key details that have been overlooked.

1) ROI companies are becoming more and more common with our day to day copy work. We have no choice but to pay their fees in order to obtain records. ROI fees cannot be included in the proposed \$180 flat fee. I am now looking at paying a ROI company (ex. [Redacted]) \$531.82 in order to obtain records that are crucial to the case. With the recommended \$180 flat fee there is no way I would be able to copy these records in the future. This is not a once in a while occurrence. I am receiving charges that range from \$50 -\$250 on a daily basis. There is simply no way any copy service company would be able to absorb these charges and stay in business. The ROI fees should be outside of the flat fee of \$180. The future could be where the applicant will be charged for these fees as costs and it could come out of the applicant's settlement amount. The ROI fees and witness fees should be outside of the flat fee.

2) 9983(a)(2)(A) There is a proposed cap of \$425 for all copy work. There needs to be clarification if the \$425 is in addition to the \$180 fee or is the \$425 the cap for the entire billed amount. If the maximum bill amount is \$425 then we would only be paid for records copied up to 1725 pages. There could be many issues if copy services are not paid for records copied beyond that number. This could result in obtaining partial or incomplete records where copy services would not want to copy records beyond 1725 pages. There should not be a cap if there is a set price per page. I also think 500 pages is too many to include in the \$180 fee. 200 pages is what the \$180 should include. With the increasing cost of doing business, gas/mileage, and postage fees it just doesn't make sense. The cost of copying 5 pages to 500 pages is drastically

different. Most of the copied files are under the 200 page range. I agree with having a set amount of pages included in the flat fee, but 500 is a number that just doesn't make sense.

3) There should be a penalty for non-payment of our invoices in a timely manner. It is very common in our industry for our invoices to not be paid in a timely manner or simply just not paid at all until the settlement of the case. We are hoping that with a fee schedule in place we would have to avoid our collection costs. This will allow us to copy records at a lower rate by eliminating a major part of our overhead that defense copy services don't have. It is already understood that we will be paid far less than what we have been in the past for our services. We are all willing to accept certain changes. We should have the right to be paid for our services in a timely manner if we are in compliance of all the laws set in place. It would be devastating to our industry if we are forced to be paid less and also wait years in order to be paid for our services. There should be a **SUBSTANTIAL** penalty if our invoices are not paid within 60 days. If we are forced to work with a set fee schedule we should be paid in a timely manner. What advantage would an Insurance carrier or TPA have to resolve an outstanding invoice if they are not penalized for not doing so. It is well know in the industry that our invoices are constantly being set aside and compensation is constantly being prolonged for no apparent reason. It would be financially devastating to all copy service companies especially Applicants copy services. I don't see how we can afford to maintain our current collection costs with the proposed fee schedule if we are not being paid in a timely manner.

I hope you take my concerns into serious consideration. I feel as though Copy services are on the lowest end of the totem pole for lien claimants. We are constantly being pushed around and not taken seriously. The Workers compensation system will not be fair to both the applicant and the defense without a solid discovery process. The future of this industry and our livelihood is based on the decisions the DIR makes.

David Cadelago
Scandoc Imaging

February 24, 2014

After reviewing the proposed fee schedule, I'm concerned that this can ultimately impact the rights of the injured workers as well as my job. For instance, \$180.00 flat rate up to 500 pages is an insufficient amount to cover the costs and labor that goes into securing records for the injured worker. At that rate, I possibly can't see how any of the copy services can survive. I think it's completely unfair for the DWC to charge a dollar per page and the copy services to only charge 36 cents especially since copy services go through a lot more obstacles. The DWC needs to revise this fee schedule in order to make it fair for everyone. Otherwise, many people will lose their jobs.

Cecilia Doty

February 24, 2014

My comments in regards to the fee schedule are that it limits right to discovery for the injured worker. By setting the fees on the applicant's attorney's copy service it will affect the applicants claim as the copy services will not be able to copy obtain and process records in an efficient way due to the fee schedule.

Copy services will be very affected as the only amount that will be allowed to charge is \$180.00 and that is not including advance fees being paid a lot of times to the medical facilities. The cost to copy records is very high and \$180.00 will not be a sufficient amount for copy services to stay in business and that will be in disadvantage to the injured worker. It would give defense council all benefits of the discovery process as these fees do not apply to the copy services for the defense attorney's. The cost of issuing Subpoena's and copy records is a lot higher than \$180.00 and it seems as if the perks and benefits are being given to the defense attorney, the insurance company and the copy services for the defense side and leaving the injured worker with all of the disadvantages and taking away benefits and his right to discovery. These fees will have a big impact on the California copy service business and will affect a huge work force for the state. The DWC is not being considerate of the injured worker who is the person who to benefit with the discovery process of records to help them rehabilitate from the work related injury.

Sally Vega, Scandoc Imaging Inc.

February 24, 2014

I personally think this fee schedule is unfair for everyone. A flat rate of \$180.00 is unreasonable for many reasons. For example, when we copy records the facility's often request a storage fee and a witness fee to be paid before releasing records. It is unclear if we will be able to apply that fee on top of the flat rate of \$180.00. Secondly a flat rate of \$180.00 is reasonable if there were only up to 200 pages copied but not for 500 or more pages. Lastly, what will happen if we don't receive payment from the carrier and are forced to pay a lien fee of \$150.00? This will take a big toll in our company and sadly we may get a pay cut or even lose our jobs. I really hope you reconsider this fee schedule because it will affect many lives.

David Han

February 24, 2014

Our copy services are sharing with us the impact of this new fee schedule on them and correspondingly on the injured worker. By reducing what the applicant copy services get paid to about what defense copy services get paid, but not correcting any of the differences is ludicrous. Applicant copy services have to fight objections, rarely get paid timely (a problem you have not addressed), and you expect to have them continue their service while making them

do the service for 500 pages. Meanwhile, you have made sure that the DWC gets paid for copying records and you have given them a raise. How is this fair? When they produce 500 pages under this new schedule for the amount of time they spend getting our records and you produce 500 pages and get a nice premium of over \$300 above what they get paid you have stacked the deck against them.

Diane Przepiorski, Executive Director
California Orthopaedic Association

February 24, 2014

We support the Division's efforts to develop a fee schedule for copy and related services that are subpoenaed in a Workers' Compensation claim.

In addition to copying companies, physician offices are also served with subpoenas to produce and copy medical records in their custody. As currently proposed, the regulations would seem to preclude physician offices from billing for the copying of the medical records that are subpoenaed because they would not be a "registered photocopier." It is then also unclear how physician offices would be reimbursed for these services.

When the medical provider is also the custodian of the medical records, we believe it is unnecessary for the person copying the records to be a registered photocopier.

We, therefore, respectfully propose the following amendment to the proposed regulation – Section 9982 (c)(5) Allowable Services:

(5) Provided by any person who is not a registered photocopier. Subdivision (5) shall not apply if the person copying the records is employed by or is the medical provider who is the custodian of the subpoenaed medical records.

We believe this change would clarify that medical providers could be paid for the duplication of their subpoenaed medical records. This change would also require medical providers, who are copying the medical records, to meet all of the other same requirements required of a copying service. It would also give the payor an alternative to hiring a copy service to copy the records.

Finally, we receive complaints that when copy services come into a physician's office to copy the medical records, they are very demanding, require dedicated space within the office, and they often leave the area and medical record not as it was found, causing the physician's office to reorganize the record and clean-up after the service. We noticed in the forum comments that some of the copy services complained about the access fees charged by the medical office to gain access to the records. We would appreciate more information about these fees, but we imagine

that some of these costs are due to having to pay fees to retrieve the records from storage and/or cover the staff time and intrusion into the medical office operation when they are on-site.

Matthew Vatandoust, President, Scandoc Imaging Inc.

February 24, 2014

Scandoc Imaging Inc. is a corporation doing business in California since 2001, on behalf of California's injured workers and their attorney's, providing document recovery that is essential to the discovery process of workers' compensation claims. Scandoc Imaging maintains the following remarks with respect to the recommended fee schedule proposal submitted for public comments.

Please see the response of Scandoc Imaging, Inc. below with regards to the proposed fee schedule:

Section 9982 (a)

The fee schedule for copy related services should apply to contested and non-contested claims for the purposes of apportionment. Additionally, the rule indicates defense contracted vendors are exempt from the fee schedule and this should be verified. It was our understanding that defense copy services shall also be subject to a fee schedule.

Section 9982 (c)(2)

The DIR should take into consideration that when we secure the records from a facility and the patient returns to that facility/doctor there are updated records that need to be reviewed causing a request for additional records from one custodian of records.

Section 9983 (1)

The flat rate of \$180.00 is reasonable for up to 200 pages not 500. A flat fee of \$1800 for copied records up to 500 will limit the injured workers right to independent discovery due to the high costs the applicant copy service will suffer without reimbursement.

Section 9983 (1)

The rule is unclear whether or not the witness fee is separate from the flat rate of \$180.00 if additional costs are incurred. If it is included in the flat rate than any additional costs from the custodian that is over and beyond the \$15.00 witness fee, then that additional cost should be reimbursable to the copy service. The facilities have their own rules and their charges can vary well into hundreds of dollars with various associated fees. If these costs are not in addition to the flat rate, the injured worker may lose his right to discovery as the applicant copy services cannot afford to pay those fees.

Section 9983 (1)

The rule is uncertain as to when the \$180.00 flat rate is payable and doesn't verify the consequences for untimely payments. If the carrier decides not to pay the billing of an applicant copy services then the applicant copy service is forced into filing a lien costing \$150.00. This is not justified and the DWC should use more definitive language with regards to penalties for lack of payment.

Section 9983 (2)(A)

It does not make clear if the \$425 maximum for copies above 500 pages is in addition to the flat rate of \$180.00.

Section 9990 (a)

It seems as though the DWC still does not understand what circles an applicant copy service must go through in order to obtain records and the expenses that come with it. Why does the DWC get to charge \$500.00 for 500 records and the applicant copy service is stuck to a flat rate of \$180.00 when the DWC does not share the same obstacles? This seems imbalanced and unjust to not only the applicant copy service but the injured workers rights.

There are many oversights and uncertain references that the DWC should address in order for the injured worker to receive fair and just rights to workers compensation benefits.

Natalie Ekmekjian

February 24, 2014

This is gonna make the entire process counter-productive. At that rate, copy services will not be able to obtain records. It is going to be a hassle upon every party who is involved.

D. Diann Cohen, AVP Client Relations, Macro-Pro, Inc.

February 23, 2014

Only one winner

- The state wins because it will reduce the lien issue.
- The payers will over pay as this plan has them paying for "EVERYTHING" every time, just for the sake of a flat fee.
- Copy Services, well the proposed regulations will require the copy services to absorb ALL fees charged by custodian of records . . . regardless of amount. The financial burden of getting records from the custodian is transferred from the party who needs the records, to the copies services securing them. It makes no sense that the copy service should have to bare the cost for the fees charged by records facilities. More custodians of records are charging fees to

provide the records to be copied. Why should copy services absorb this cost? Is this even legal? I agree there needs to be reform but, shifting the financial responsibility is unconscionable as it will put many companies out of business. **The copy service reforms were to control cost, not shift who pays for the records.**

A more fair system would be pay for the services provided. Employer would only pay for what they needed and the benefiting party would pay the cost of getting records, from a custodian.

The state should regulate the custodians. That plus a reasonable copy service reform would go a long way in saving the workers' comp. system a lot of money.

Anonymous

February 21, 2014

This fee schedule was to be for ALL copy services. Based on the proposed fee schedule it is **clear** that this is one sided by excluding contract copy services aka defense copy services so they can charge whatever they want and be able to get reimbursed on ROI and witness fees which applicant copy services will not. Most importantly this fee schedule would ensure that the injured workers do not get fair treatment or representation. Please understand without records the injured worker cannot get properly diagnosed, and treated in order to get back to work.

By approving this fee schedule, you would eliminate ALL APPLICANT COPY SERVICES causing hundreds and thousands of people out of jobs not to mention most importantly take way away ALL RIGHTS OF THE INJURED WORKER. With \$180 per job, ROI fees, and \$5 for additional set, it is clear that Applicant copy services would have to work at poverty level if not less in order to assist injured workers rights.

I beg you not to make rash decisions and take the time to understand what you are passing and how many people you will be effecting.

Lisa A. Moore, President, Sundance Copy Services, Inc.

February 21, 2014

I am a small business owner of a defense oriented copy service. I have just reviewed your new proposed Copy Service Fee Schedule regulations and have the following comments and concerns:

Placing a maximum/cap of \$425.00 seems unconscionable:

- a) It seems unfair to limit fees we can charge if we produce the work product.
- b) When we go to a job to copy records we do not know if there are 20 or 10,000 pages.

- c) Are we to refuse to process large jobs as we are not going to be paid for our work product? We will then potentially lose all of our clients.
- d) Who is going to secure records over 1700 pages and not be paid for it?
- e) You have failed to consider and include shipping fees on these large jobs as this cost substantially increases with a high volume of records.
- f) These large jobs are not frequent but do occur.
- g) Cases that involve "valley fever claims" have large volumes of medical records and are imperative to defending a claim. The last one we processed was over 10,000 pages.

Regarding job assignments exceeding 2,200 pages, which is not unusual where a past injury or medical history is relevant, this proposed Regulation is illegal as prohibiting reasonable compensation for services rendered. This could prohibit companies from earning a living and may prohibit defendants from properly defending their claims.

This proposed Regulation creates a danger that neither Applicant nor defendant will be able to obtain all records if subpoena services refuse to copy more than 2,200 pages of records. Such a situation will prolong the litigation process, and therefore increase expenses, because the parties will set cases for hearing and request assistance from the WCAB on the issue of establishing a complete record for the purposes of substantial evidence.

The only sensible solution is to provide a per page payment of compensation for pages produced.

I do not believe that a flat fee of \$180.00 for up to 500 pages is adequate to cover all of our incurred expenses:

- a) Most subpoenas require in person service as well as a separate return trip to copy the records. Thus our process servers/professional photocopiers have to make two separate trips to each location statewide.
- b) There is no allowance for out of area locations for one of the largest states in the US.
- c) We have to pay a process server an hourly rate or a flat fee, gas reimbursement for wear and tear on their vehicle at the standard IRS rate of .55 cents per mile on top for their wages.
- d) A majority of our clients require all records to be bates stamped which is an increased production cost.
- e) Shipping and handling requirements have not been taken into consideration for up to 500n pages of records as they can go out regular mail, UPS, overnight mail or in person delivery.
- f) There are no allowable fees for "Research" when we are more often than not only provided a doctors name or a business name with no address or telephone number and have to complete extensive research to locate the business to prepare and serve a subpoena.
- g) Reimbursement for witness fees is not allowable and is a potentially huge problem. In many cases ROI fees can exceed \$150.00. We have a choice of paying the fees or not obtaining the records. Out of state fees vary from .50 cents a page to \$1.25 per page. How can we possibly recoup these fees if they are not allowable in the cap? We can provide each client with a copy of our check proving up we paid the additional fees. I have attached one example that was received

in our office this week for a demand of advanced fees in the amount of \$288.00 from Met Life in New York. This was to produce 275 pages. We either pay the fees or do not get the records.

I do not believe Allowing payment of \$50.00 for each additional set of records provided in paper form is adequate to cover all of our expenses:

- a) This fee would only cover up to 250 pages of records at your suggested rate of .20 cents per page.
- b) This does not cover shipping and handling.
- c) This does not cover our manpower time and expense to retrieve, print and ship the old file.

You have only allowed \$5.00 for additional electronic records ordered within 30 days.

- a) This does not cover our manpower time and expense to retrieve the old file.
- b) If records are sent to attorneys via a secure site or electronically, clients will still have to pay an attorney or his paralegal to print the records. They will not only charge an hourly rate but will not be held to the same flat fee and can charge up to .25cents per page in additional fees. Thus, making legal costs increase for carriers.

You have not allowed a charge for supplemental records requested on CD.

How is sales tax to be calculated?

You have stated that documents obtained from the WCIRB, EDES or EDD that can be obtained without a subpoena at a lower cost and would not be reimbursable.

- a) Please explain how these can be obtained at a lower cost and who is going to obtain them.
- b) If a defense attorney obtains the records on their own they are charging the client up to \$180.00 an hour for all work completed. EDD can take up to six months to release records and have to be contacted monthly for a status on the records. How would this be more cost effective?

You have stated the expense of obtaining prints of microfilm, X-ray films, and scans are borne by the party requiring them.

- a) Discovery fees are always charged to the defendant
- b) Are applicant attorney's now going to be required to pay for this?

There does not appear to be any allowances for a penalty to the insurance carriers that consistently make late payments.

- a) I am a defense oriented firm and it often takes us over a year to be paid on each invoice and we receive no penalty or interest payments.
- b) We have to file liens, pay fees and waste money attending hearings to obtain payment.
- c) None of this is calculated into the flat fees.

Fees being charged by state agencies do not have to follow the same fee schedule.

- a) This does not seem fair and equitable.
- b) Why don't they have to follow the same regulations?

You should also focus and consider implementing rules to make recipients of subpoenas comply with the required time frame to produce the records. The majority of businesses know there is no real recourse in the workers' compensation arena if they fail to timely comply to the subpoena. My clerical staff has to make weekly follow up calls to these businesses to attempt to obtain the records and it can take up to six months for compliance. Sometimes, they never comply. One of the worst offenders is California State Disability for EDD and Unemployment benefits.

All of my photocopiers are professionally licensed photocopiers as well as licensed process servers. I pay their bonding fees and insurance. I also pay for their workers' compensation insurance, health insurance, E and O Insurance and business owners insurance. We pride ourselves as professionals and take the necessary steps to provide every client with confidentiality and comply with all HIPAA rules. If this current legislation passes I will not be able to continue to pay for al of these benefits.

The fees as recommended will put me out of business and will eliminate many jobs for my staff. My husband and I are both employed with Sundance Copy Service and we will all become a statistic as we will not be employable as the professional expertise will be eliminated as no other copy service will be able to afford to hire and retain quality employees at this fee level.

The Copy Service Fee Schedule will not reduce workers' compensation litigation. Subpoena services are only necessitated after litigation has commenced in the vast majority of situations. Thus, this proposed Regulation will not reduce litigation in any way whatsoever.

Wendy L. Cantrell, Law Offices of Richard Mark Baker

February 21, 2014

Reviewing the text it appears that there are some fixes that must be made to these regulations. First, the witness fees must be excluded from the flat fee of \$180.00. The copying services cannot control what a doctor's office charges for the records.

Second, the defense should be required to use the same fee schedule and follow the same rules as the applicant.

Third, the limit of 500 pages is arbitrary and should be removed. I have clients who have been Kaiser patients for 20 plus years. Their records are literally thousands of pages long. Putting a cap on the records makes it impossible to develop the case properly. Who is going to decide which 500 pages should be copied?

Fourth, “The expense of obtaining prints of microfilm, X-ray films, and scans are borne by the party requiring them” is unfair to applicants in that it requires them to bear costs that have always been paid by the insurance carrier. It also means that doctors examining the applicants will not have access to the information they need in order to make a clear diagnosis.

Ruth Leshay, ARS Legal, Inc.

February 21, 2014

The new proposed fee schedule proposed by the DWC seems to be lacking in some keys areas with regards to “copy service and related expense.” In any service industry—time and labor are key components. The proposed fee schedule lacks a foundational methodology. What value is given to the amount of time needed to perform the services? What portion of the valuation is given to the labor involved in procuring the records? Does that valuation operate at the same levels presented currently in the evidence code or the new proposed labor valuation recommended by the DWC at \$85 per hour? Is the labor valuation below the legal minimum wage standard of \$8 (an hour).? Does Workers compensation Industry, which was designed to uphold the laws and standards for labor and service provided by any workers in California, slated to enact rules and regulations without consideration of the current laws of California? DWC may want to take a closer look at what is going to be a proposed fee schedule. Even the Official medical fee schedule currently in place has specific measures for time and labor.

In the evidence code, official medical fee schedule and DWC ‘time and labor’ have specific valuations. Where is the specific valuations for time and labor which the DWC has built into the ‘official medical fee schedule, interpreters fees schedule, and DWC administrative rules §9990(e)(4)?

Rebecca Gomez, WC Hearing and Post Judgment Coordinator
Associated Reproduction Services, Inc.

February 21, 2104

The new DWC fee schedule treats the applicant copy service providers unfairly and seems designed to put them out of business. The main flaws appear to be when addressing a per page count, witness fees, ROI fees, taxes and penalty and interest when addressing late payments.

The above fees cannot be included in a base rate because they place an unfair burden on the provider by forcing them to charge the same fee for small jobs completed with no issues or obstacles and larger or more difficult jobs.

The fee schedule does not address any penalties that might be imposed on the defense providers who fail to pay properly and timely. It allows too many loopholes when addressing what can be reasonably billed. It also fails to address tax that might be due to the State for the services performed and provided.

It is curious that the DWC allows itself to charge \$1.00 per page (regardless of the number or pages) to make copies of documents in their possession (per Administrative Rule 9990) in essence charging \$500.00 to copy 500 pages, but allows the photocopy providers to only charge \$180.00 for the same job and they must include the cost of witness fees, drivers, secretaries, mileage, billing and a myriad of other charges for work that goes into producing a work order.

The fee schedule as it stands is unfair ONLY to applicant photocopy service providers and will eventually affect the injured worker when the economic realities of working under such a strict fee schedule begins to affect the quality and availability of these services to them.

Dan R. Jakle, Associated Reproduction Services, Inc.

February 21, 2014

In a meeting at the DIR in November of 2013 when asked of Christine Baker “isn’t this fee schedule supposed to be for applicant copy services she responded NO, one fee schedule for both defense and applicant”. Now here we have a fee schedule that by its own wording applies only to applicant copy services, not contract copy services [section 9982(a)]. The defense was concerned about the ROI fees but is currently making agreements with the carriers to pay their ROI fees so they will undoubtedly not be complaining about the ROI fees. The result is that the injured worker is the one who will suffer. The applicant copy services will not take the job if they have to absorb hundred dollar ROI fees and the injured worker represented by the applicant attorney is the one who will suffer by not getting the records to support his case.

Marc Leibowitz
Shelley Dowdle
Nancy Rice, County of San Bernardino

February 22, 2014
February 22, 2014
February 21, 2014

Thank you for the opportunity to provide feedback on the draft copy service fee schedule regulations. SB 863 (de Leon, 2012) aimed to lower costs for employers by ridding the workers' compensation system of unnecessary dispute and litigation. One of the problems addressed by SB 863 was the mission-creep and litigation associated with copy service providers and their billing practices.

We commend the DWC for taking decisive action by creating a fee schedule structure that:

1. Ensures that employers will only be required to pay for legitimate copy service needs; and not the concierge services requested by some applicant attorneys.
2. Reduces costs for both employers and copy service companies by eliminating disputes with an all-inclusive fee schedule model.

We are fully supportive of the draft regulations posted in the DWC forums, and we encourage the DWC to continue down this path when formal rulemaking is commenced.

Joe Pena, Hearing Representative, ARS, Inc.

February 21, 2014

The fee schedule proposed by the DWC completely ignores several aspects of the industry which are vital in developing a reasonable fee schedule. The fee schedule appears to go above and beyond the authorities given in Labor Code 5307.9 by completely revamping the way discovery and evidence is handled, thereby relegating the workers' compensation litigation system to the position of illegitimacy when compared to all other litigation systems throughout the state and country.

Exclusive remedy allowed the workers' compensation insurance companies and administrators the ability to control costs by allowing a separation from civil courts in order to settle disputes between the injured worker and the insurance carriers in a more efficient manner without infringing on the rights of the injured worker. Originally, in its wisdom, the DWC decided to allow discovery and its rules to be dictated by the Evidence Code and the Civil Code of Procedure. Now, the DWC dictates new rules to govern discovery, ignoring the aforementioned codes and recommending a fee schedule that appears purposely skewed in favor of the employers and defendants without any consideration whatsoever to the rights of the injured worker, the single entity in this entire industry that the industry itself was created to protect.

Equality in the law allows either party to obtain medical records by its most reliable means possible. In the context of this discussion, a "schedule", by definition, is a list of reasonable charges to be charged for various duties and aspects of the photocopy and records reproduction business, not to mention costs of obtaining legally binding subpoenas. By instituting a one-size-

fits-all flat fee, the DWC completely ignores common sense business practices in the execution of any reasonable business model. And, although SB863 specifically mentions that contracted defense copy provider fees cannot be used to implement such a fee schedule (as they are negotiated fees that are intentionally well below actual market rates) the DWC uses them as the litmus to develop such a fee schedule.

According to the DWC, we are to assume:

- The cost of locating, retrieving, manipulating, copying, storing, transmitting, reviewing, binding, mailing and reproducing 500 sheets of paper is the same as those for reproducing 1 sheet of paper.
- That the cost of handling and shipping 500 sheets of 20 lb. paper, which weigh approximately 5 pounds, is the same as mailing a single sheet of paper.
- That the man power and time needed to handle and reproduce 500 sheets of paper is the same as that needed to handle one sheet of paper.
- That issuing subpoenas and notices on cases with one party costs the same as issuing subpoenas and notices to up to 10 parties or more.
- That retrieving documents from metropolitan Los Angeles, CA, with its myriad of freeways, roads, tolls, parking fees and other incidental driving issues should cost the same as retrieving documents from more rural Yreka, Blythe or even Tehama, CA, not to mention records from Florida, New York or Texas.
- Litigation, denials, delays, disputes and lien fees have no effect on costs.
- That litigation by definition is adversarial and current laws have been implement to allow a level of equality in the discovery process with the ultimate goal of protecting the injured worker. The two distinct natures of the services involved and their unique services to their each clientele are needed within this industry.
- The issuance of a fee schedule is going to stop the need for photocopy providers to make appearances at the WCAB in order to get their billing resolved and that in doing so, there is no additional cost to the lien claimants to bring and defend that action.

The proposed fee schedule clearly demonstrates a lack of understanding of current and prevailing law, business management and accounting principles. It appears these figures were pulled from a computer program and/or flawed report and no one at the DWC took the time or initiative to actually visit any of the service providers they are ultimately going to put out of business if their one-size-fits-all fee is implemented as it stands.

When you completely understands the industry, price guides, economic forces and eventualities that arise in the completion of a subpoena/photocopy order, you develop a fee schedule that addresses all those factors with flexibility. It is apparent that the DWC does not understand the industry it is attempting to regulate. A one-size-fits-all approach will not work.

I believe the study and its figures do help in determining a base rate, however you have to add a per-page count or the entire thing will not work. A proper page count will allow proper

compensation for actual work done. You must also give consideration for time and distance traveled by allowing a field rate and mileage, otherwise, no one will be servicing areas that are remote or difficult to get to, or that simply take too long to service. As well as consideration for shipping and handling disparities between orders.

A proper fee schedule would be more reasonable if it allowed a base rate, a per page fee (at par with actual charges for certified document retrieval charged at most California municipalities i.e. Administrative rule 9990), a separate witness fee and or ROI fee (as charged by the custodian of records), tax (as imposed by the Franchise Tax Board) and fixed shipping and mileage costs (variable if supported by the individual job).

The fee schedule should also include penalty and interest due to the provider should the claims administrator fail to pay the appropriately billed services within a reasonable time frame. And should the providers need to file a lien in order to recover its costs, the entire lien fees should be reimbursable to them directly by the defendants causing the lien to be filed.

Failure to address these flaws will only serve to hamper progress in resolving these types of issues and willfully strips the injured worker and his attorney's rights to equal justice in the workers' compensation arena.

Bruce Taylor, Associated Reproductions Services, Inc.

February 21, 2014

- (1) § 9982(a) – Speaks to copy services provided to prove or disprove a contested claim except for those defense copy services under contract by the carriers. Although there appears to be an acknowledgment of the two distinctly different service models, no effort has been put forth to assist the applicant's position concerning this matter in SB863. Does this mean any dispute or contested issue within an accepted claim are not to receive proper discovery and thus the applicant is not allowed their due process rights as described by the rest of SB863?
- (2) § 9982(c)(1) Is the understanding of this section and clear language of 30 days the point an applicant copy service is considered valid and should be paid? Thus, objections when a carrier fails to meet these parameters are invalid? Additionally, this section speaks of records "relevant to the employee's claim." Is it not true that an employee's history comes into play many times and in many workers' compensation claims, and therefore should include an employee's entire medical history? Who determines which records are relevant to the employee's claim?

- (3) § 9982(c)(4) The Carriers and employers are parties to case and currently charging witness fees to applicant copy services when requesting the records. As a result, we have been forced to pay these fees or risk not getting the records. Is this section meant to eliminate this practice and stop the carriers (as parties to the case) as it appears the copy service cannot be reimbursed this fee?
- (4) § 9983 (1) Due to (ROI) services within many hospital facilities charging a fee (the witness fee) before giving applicant copy services access to the records, this “fee” should not be included in the \$180.00. To do so, is tantamount to an agenda designed to eliminate the applicant’s copy service entirely. ARS has been required to pay upwards of \$1,500.00 and more of (ROI) fees before gaining access to records for the purpose of copying them.
- (5) § 9983 (1) Is there a penalty for late payment to the applicant’s copy service? In the BRG report, there was at least an acknowledgement of the fact carriers are capable of paying late and thus the report provided a remedy in the form of the \$251.00 late fee. Where is the acknowledgement of this reality in the proposed fee schedule? Defense copy services do not have to be concern about this issue because they are typically under contract and are paid on time. Or does the carrier simply have the option of paying or not paying when they feel they should and the applicant copy service has no recourse?
- (6) § 9983 (A) (1) The \$180 flat fee includes “subpoena preparation,” but does not include the “service of a subpoena.” Does this mean an applicant copy service can charge an additional fee for service of a subpoena?
- (7) § 9983 (2) (A) speaks of a \$425 maximum over and above the 500 page point. Does this mean an applicant is not entitled to due process and access to their records for discovery if a traumatic injury generates records in excess of 2,000 or more pages and the carrier does not provide them? For this idea provides a disincentive to applicant copy services to copy beyond a certain number of pages? No copy service is equipped to provide this type of volume at this fee. What does this mean?
- (8) § 9984 (a) Does this mean an applicant copy service as requested by the applicant can initiate a subpoena and proceed to copy records if these parameters are not met with no possible problem of being paid?

Dan R. Jakle, Associated Reproduction Services, Inc.

February 21, 2014

There is no penalty for late payment. What prevents the carrier from not paying the fee timely? – just the 10% penalty and 7% interest? How do we get that paid? At least with the BRG report we

had the \$251 fee for late payment. This proposed fee schedule is actually not as good as the BRG report as flawed as it was. At least with the BRG report we received \$108 flat fee PLUS a fee for the subpoena prop and serve (probably \$50) – roughly \$160 plus the witness fee. And as previously mentioned a fee paid by the carrier of \$251 if they were late, which they usually are.

Carriers and employers are charging witness fees and we have been paying them thinking we will be reimbursed. The carrier and employer are a party to the case and have no right to collect the fee. Is anything being done to limit this?

Dale Baughman	February 24, 2014
Marilyn Relles	February 21, 2014
Karen Oxman	February 21, 2014
James C. Relles	February 21, 2014
Jim Roberts	February 21, 2044
Dan Corriea	February 21, 2014
Kami Linan	February 21, 2014
Benny Viloría	February 21, 2014
Janet Selby	February 21, 2014
Benny Viloría	February 21, 2014
Tony Sharp	February 21, 2014

I am writing to thank the Division of Workers' Compensation (DWC) for its proposal to establish a fair and predictable pricing model for photocopy services, and encourage regulators to quickly adopt this proposal as a regulation.

The legislative reforms to the workers' compensation system signed by Governor Brown in 2012 (SB 863), contained several provisions to reduce costs in California's system. Realizing the goals of SB 863 requires the timely implementations of these provisions.

The "photocopy fee schedule" is one of several provisions contained in Senate Bill 863 aimed at reducing the delay and costs associated with litigation disputes and offsetting the cost of increasing disability benefits. Photocopy services had become one of many services where the lack of clear guidelines led to inconsistent pricing, the inclusion of unnecessary and unwanted add-on services, and, ultimately, liens and costly litigation that played a role in making California's system among the most expensive in the U.S.

The DWC's recently proposed guidelines will ensure injured workers receive the services they need, vendors are paid, and that employers paid in a timely manner, and employers have a

reasonable expectation of what services are being provided and a rational basis for these costs. I urge regulators to quickly adopt this proposal as a regulation.

Rob Huston, Regional Sales Manager, ARS Legal

February 21, 2014

Concerns:

- (1) There is no penalty for non-payment or non-timely payment. Expect a flood of liens unless you put some teeth in this to motivate payment.
- (2) 9982(a): "...except services under a contract between the employer and the copy service provider." Why carve out an exemption for anyone? Remove this to level the playing field or at least allow us to review these contracts.
- (3) 9983(a)(1): ROI and witness fees **MUST BE REMOVED** from the flat rate and reimbursed at cost, with provided receipts. Witness & ROI fees can vary widely, sometimes exceeding the proposed \$180 flat rate. No copy service will take this losing business.
- (4) 9983(a)(2)(A): There should be no \$425 cap. There are rare times when copy jobs exceed 1,725 pages and these jobs won't be done.
- (5) When will the fee schedule go into effect?

Steve Appleby, President, Appleby & Co., Inc.

February 20, 2014

Response to the Ca DIR Proposed Copy Service Fee Schedule:

1. Section 9982(c) (1) needs to be amended to read as follows: "Provided by any person who is not a registered photocopier or duly licensed Private Investigator". Section 22450 of the Business and Professions code specifically excludes licensed Private Investigators from the requirements to become a registered photocopier, however Private Investigators are hired all the time to retrieve and copy various documents in all forms and therefore, for clarification purposes, this definition should be amended.
2. Section 9983 (a)(1) cannot include in the Base rate of \$180, any fees in excess of the standard \$15.00 witness fee. 3rd parties such as [Redacted], in all its iterations and [Redacted], to name just a few ROIs, are charging fees above and beyond the witness fee and all of these charges are "pass through" charges paid on the client's behalf by the copy

service. If we cannot be reimbursed for those fees, then you will cause most copy companies to cancel the assignment when we learn fees exceed the \$15.00 witness fee.

3. State and local Taxes as well as expedited shipping costs, cannot be included in the flat fee of \$180 for the same reason listed in number 2 above.
4. Any records obtained through the WCAB where we incur charges issued by the state, as listed under section 9990 of this fee schedule, should also not be included, in the flat fee but added as a pass through charge.
5. Prompt payment by payers is not addressed at all in this schedule, and penalties should be accrued after charges that are allowed under this schedule are not paid within 60 days.
6. If the intent of this fee schedule is to reduce costs for obtaining records under Worker's Comp cases, then the system would be best served by allowing the copy companies to compete in an open free market, in an unrestricted, unfettered manner. True competition in an open market amongst copy companies will weed out the greedy companies and allow fair and honest services for a reasonable fee.

A.I. Gonzales

February 19, 2014

As a medical legal liaison to many physicians my comments are as follows: Section 9980 Definitions (d) There will be no additional payment for copy and related services that are (1) Duplicative records previously obtained from the same source (2) Summaries, tabulations or for indexing of documents is ludicrous. As a liaison to many medical providers in this industry for many years when physicians receive medical records/documentation that has been previously sorted and indexed for their review these related services listed above are a great time saving tool. It provides the physician an overall review of medical-legal records in a chronological view which simplifies and assist his staff and or physician to analyze the facts of medical evidence; and when this occurs it saves time and costs. When a medical provider can have quick access & review to medical-legal records more than likely the physician can also turnaround his medical reports in a timely manner. How can a service of valuable time frame be denied payment?

Daniel Lopez, President, Lopez & Associates, Inc.

February 19, 2014

9880(a) – Currently, applicant request for records under a subpoena are regularly challenged with an **Objection** or **Motion to Quash**, usually signed by a **defense oriented WCJ** after service is complete.

9880(c) – This should eliminate Release of Information (ROI) companies [redacted] as these companies do not have physical custody and control of records nor do they maintain them in an ordinary course of business.

9880(d) – Defense carriers/TPA's/attorney regularly order and produce multiple sets of records billed to the claim/employer. **NOT A LEVEL PLAYING FIELD FOR AN APPLICANT OR THEIR ATTORNEY.**

9880(e) – **THIS IS GOOD!**

9880(f) – Many cases an applicant attorney will request records and after a PARTY NOTICE is served on defense/claim administrator an objection will be issue demanding originating copy service to stop while the defense/claim administrator will order same records from their preferred copy service. Records are regularly not served in a timely manner under reg 10608 or are incomplete. **Indexing** identifies all records produced saving both sides time and money.

9881 – This does not reflect a flat fee schedule but an itemization for services rendered. Bills are regularly served on claim administrator and regularly ignored for payment or issue a partial payment per a invalid copy service bill review. **139.32 GOOD CLAUSE!**

9982(a) – Contested issues arise upon the filing of an Application for Adjudication and during the course of the case. **Discovery is beyond the scope such as subpoenaing a witness to trial.** Copy service contracts must be made available upon request as ALL defense copy service state that they have **NO CONTRACTS currently!**

9982(b) – Claim files and employment files which are routinely delayed even under subpoena.

9982(c)(1) – **Applicant or Applicant Attorney must provide a Letter of Representation with supporting documentation (DWC-1, 4906(g), fee disclosures) and make a Demand for ALL non-privileged records in Employers/Claim Examiner's possession to be served.**

9982(c)(2) - **CLARIFICATION NEEDED:** Does this pertain to updated medical records; or billing for employment and wage as separate billed items? Employment and wage in many occasions are handled separately and require follow up with different individuals. This is similar to a medical facility when medicals and films are requested.

9982(c)(3) – **WCIRB ONLY PROVIDES 5 YEARS** of online date history. Anything beyond must be requested through WCIRB office and should be paid.

9982(c)(4) – This process is under civil request between parties and no subpoena used. Paperwork still has to be generated.

9982(c)(5) – This should have been done **YEARS** ago.

9982(d)(1) – This is similar to 9982(c)(2). Is there a time frame possible updated records on treating patient.

9982(d)(2) – These items assist in the overall management of the case and **indexing is a** certification of the documents with cost and time savings compared to what an attorney or doctor would charge to review records.

9982(e) – **This is basically charging an applicant to obtain these items which are part of evidence to support claim of injuries or not.**

9983 – **NOTE: THERE IS OT PROVISION TO ENCOURAGE TIMELY PAYMENT. LITIGATIONON LIENS IS HIGHLY PROBABLE.**

9983(a)(1) – Flat fee is inconsistent with Section 9981 that copy services **must specify services.** IRS mileage reimbursement is .55 per mileage. Release of information services are **NOT** custodians of records per Section **9980(c)** and have no legal authority to charge additional fees and **MUST NOT BE INCLUDED.** Witness fees under a subpoena according to California Evidence Code Section 1563(b) state: **“All reasonable costs incurred in a civil proceeding by any witness which is not a party with respect to the production of all or any part of business records.”**

9983(a)(2)(A) – all inclusive pages of 500 pages with a max rate of \$425 dollars represents a max number of pages at .20/page of 2625 pages. This could limit the completion of an assignment in obtaining all evidence.

9983(a)(2)(B) and (C) – are limiting labor cost being incurred by free enterprise copy services where the DIR will continue to charge a page rate of \$1.00 per page and \$85.00 per hour billed at 15 minute increments without the difficulties of a copy service.

9983(a)(3) – designed for defense oriented copy services with no requirement to actually serve a subpoena. This is a cost on employers that they are unaware.

9984(a) – This primarily pertains to Reg 10608 and the service requirement between parties. Custodians **will not** sign any affidavit pursuant to an authorization for release of information. **Itemization in detail** reflects an Index or Schedule of Records which is normally produced by defense counsel and billed at attorney or paralegal rates. An index is more cost effective.

9984(b) – this should not stand alone. It must be included with the service requirements in the above section (a).

9990 – **Why does the division exempt themselves from regulations being imposed on free enterprise business? There is a labor cost in producing records and the DIR is able to charge without the need or requirement to generate a request, travel to serve the documents to release information, collect after the fact pay out of fees and be required to EAT those costs.**

9990(a) – Professional Photocopy services incur lots of upfront costs and expenses as it pertains to witness fees, salaries, workers’ compensation insurance premiums which have more than doubled with the 2006 implementation of SIC 8821 per WCIRB, mileage reimbursements.

9990(a)(1) – Sales tax is charged even when the DIR is presented with a Resellers Permit. The above schedule is not clear if Sales Tax is to be included in the \$180 flat rate.

9990(b) – Certifications or Affidavits as it pertains to records are being charged \$10.00 to sign/certify a document.

9990(c) – ALL FEES BEING CHARGED BY A QUASI STATE AGENCY ARE INCONSISTENT WITH FEE SCHEDULE BEING IMPOSED ON FREE ENTERPRISE PROFESSIONAL PHOTOCOPY SERVICES.

Edward F. Fernandez

February 19, 2014

After reading the article of proposed fee changes, I was left a little perplexed about certain issues that were not addressed. In efforts to obtain records on behalf of clients problems have been faced with (c) which identifies "Custodian of records". There is an obvious misunderstanding by many clinics as to this definition and their contractual agreements with copy services under the guise of being custodians. This has resulted in substantial increase in cost for us to obtain these records in the best interest of our clients. There should possibly be some form of revision in the actual Subpoena Duces Tecum to reflect this description.

Under the section for Bill for Copy Services, there were no mentions as to the importance of have the original or copy of the service request to engage in obtaining these records. This is a necessity due to many cases in which the representing defense attorney's are requesting the records and therefore, the adjuster would be aware as to the specifics of the request. This allows the adjuster to know what records were in fact not requested as well as copies being requested for applicant attorney as well to avoid any issues pertaining to 9982 Allowable Services section (d) (1).

In addition, under 9982 Allowable Services section (c) (2) creates a problem in which many locations utilize separate locations for obtaining records at one and billing at another and request that we serve subpoenas separately to each department as well as separate retrieval dates.

Furthermore, under section (d) (2) our company provides medical summaries on records by qualified reviewers at a significant cost savings to having an attorney review the file for same contents. An average time is anywhere from 1-2 hours at an average of \$45. per hr to where an attorney's firm can charge up to \$300. per hr.

9983 Fees for Copy and Related Services section (2) (A) should be revised with no maximum. In many cases we have been able to obtain crucial records which in fact reflected fraudulent issues related to the claim in which the records consisted of over 2500 pages. A maximum fee would result in many copy services retrieving records at basically no cost as a result of the loss that would be impacted on a maximum rate.

9982 Allowable Services section (c) (1) is vague to which it creates an issue as to the claimant being able to provide their own records, allowing the claimant to review and potentially remove information pages vital to a proper decision in the process of the claim to which the claimant may construed as being negative on their behalf.

Moreover, (c) (5) is vague as to whether or not the individual field tech is required to be a registered photocopier or if he/she is permitted to operate under the registration of the photocopier business owner (example): an investigator is permitted to perform task without a license as long as he is a direct employee of a licensed private investigator.

Finally, no indication as to when the fee schedule taking effect has been provided.

Robert M. Santoyo, Jr., United Document Imaging

February 18, 2014

I am the owner of a small copy service which employs about 25 people. First off let me extend my gratitude to the DIR for their patience and giving the applicant and defense copy services an opportunity to meet and discuss the fee schedule. I do believe that the \$180.00 is a fair number, but bundling the ROI / custodian / doctors fees is a job killer. The abuse by the ROI / custodian / doctors' offices is becoming more and more prevalent and something definitely needs to be done if the DIR wants to include this fee in \$180.00. The ROI / custodian / doctors' office fee's may be an issue we can address along with the implementation of the fee schedule in order to keep costs down for both providers and payers. Currently to my knowledge there is no mechanism and or ramifications in place to force any of the aforementioned entities to adhere to the evidence code. I think that strong language needs to be implemented that allows for sanctioning of an entity and or person when it can be proven that they not adhering to the evidence code currently in place. The ROI / Custodians / doctors' offices are using this phantom "Storage fee" and charging up to \$100.00 in some cases refusing to release records unless this fee is paid. If this

fee's is not taken out of the bundle and left in as a part of the flat fee it would most likely force many layoffs and may put many people out of business as a company cannot survive on what little will be left after the ROI / Custodian / doctors office fee's. Below is a basic outline of the evidence code and keep in mind that all Subpoenas and requests are served with a \$15.00 Witness fee check which should deducted from the final total charge for records (it rarely is applied):

California Evidence Code Section 1560-1567-Subpoenas

- Not more than \$.10 per page for 8.5x14 inches or less
- \$.20 per page for microfilm copies
- actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to a subpoena
- reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of twenty-four dollars (\$24) per hour per person, computed on the basis of six dollars (\$6) per quarter hour or fraction thereof
- actual postage charges

Evidence Code Section 1158-Authorizations to Release Medical Records

If a patient's attorney requests the medical records:

- Ten cents (\$.10) per page for documents 8.5x14 inches or less
- Twenty cents (\$.20) per page for document copies from microfilm
- Actual costs for oversize documents or special processing
- Reasonable clerical costs to retrieve records; \$4.00 per quarter hour or less
- Actual postage charges

I recommend taking the ROI / Custodian / Doctors facility fee's out of the bundle and making them reimbursable as long as there is proof of payment. Then add language that would modify the evidence code to only allow a maximum of \$50.00 for ROI / Custodians / doctors offices.

Dan R. Jakle, Associated Reproduction Services

February 18, 2014

(9) § 9982(a) - Should include accepted claims if there is still a contested issue identified such as apportionment.

(10) § 9982(a) According to Christine Baker there was to be one fee schedule for both applicant and defense copy services and yet this fee schedule excludes copy services under a contract with employer – i.e. defense copy services. This is a nice surprise for

defense copy services as their average invoice is \$170. They can carry on business as normal unlike the applicant copy services that have substantially greater expenses, which has been explained to the DIR several times, to which the DIR seems oblivious. This fee schedule will put several applicant copy service employees out of work. The DIR seems oblivious to that as well.

- (11) § 9982(c)(1) This is a big issue of potential objections. If Applicant copy service issues a subpoena for records having waited 35 days (and there having been no records provided by defense) following the receipt of the letter of rep from the applicant attorney and if there is a valid case number, defense should have only 14 days to object from receipt of the subpoena and if the records are in defense's possession, they should have only 7 days thereafter to produce said records. If there is no timely objection or no records are produced defense cannot argue that applicant copy service's records are duplicative.
- (12) § 9982(c)(2) – We assume that a subpoena for Kaiser Hospital and Kaiser Clinic at the same address would be accommodated by the fee schedule as there would be 2 different custodians. Please confirm.
- (13) § 9983 (1) The witness fees and release of information (ROI) services fee MUST be excluded from the flat fee of \$180. Witness fees are at many times more than the standard \$15 sometimes over \$50. They must be paid in addition to the flat fee against actual receipts otherwise the injured workers records will not be copied and that will be a disservice to the injured worker.
- (14) § 9983 (1) ROI fees can range into hundreds of dollars. If these fees are not excluded most, if not all copy services, will not take copy service jobs where there is an ROI provider in the hospital or medial facility. ARS has paid fees of as much at \$2000 for an ROI fee. They must be paid in addition to the flat fee against actual receipts otherwise the records will not be copied.
- (15) § 9983 (1) When is the \$180 fee due and payable? Presumably after the job is complete. What penalty is there if the insurance carrier acts normally and does not pay the bill timely. Do we get the \$251 suggested by the BRG report?
- (16) § 9983 (2) (A) does the \$425 maximum mean it is in addition to the \$180 or inclusive? If inclusive, then likely no more than 1725 pages will ever be copied. Nobody will copy pages for free.

(17) § 9984 (a) Presumably this paragraph means that whenever the defense provides copies of records, if they are not accompanied with a declaration, then they are not valid. Please confirm.

(18) § 9990 (a) So for 500 pages the DWC gets to charge \$500 and applicant copy services get to charge \$180 for all the labor and expense of proving 500 pages of records that will conceivably assist the injured worker get his proper disability. If the applicant copy services have to live with \$.36/page then so should the DWC. The DWC goes nowhere to copy the records. They just put out a self-serve machine. How do you figure this is equitable? This is backwards. The applicant copy services should be paid the \$500 for the 4+ hours of work providing the records and the DWC should be paid \$.36/page.

Alfonso Velasco Jr., Statewide Records Services, Inc.

February 18, 2014

I love that we are finally going to have a fee schedule and everything that is on the fee schedule looks great. I don't agree with the Cap of \$425. There are some files that may have 1000's of pages and if we are not allowed to charge more than \$425 then some people would be inclined to not copy the entire file. I think if you are going to allow a \$0.20 per page for file that have more than 500 pages then you should not have a cap. There is no need for a cap if you have a set price per page.

Randall Wilemstein, Co-Founder & Vice President
InSight Legal Support

February 14, 2014

As Co-Founders of a Subpoena/Photocopy Service providing services for both Applicant Law Firms and Defense in the Workers Compensation system, we fully support the implementation of a fee schedule to ensure clarity for the service provider and the paying party.

Regulation 9983(a)(1)

The \$180 flat rate fee is an amount that adequately furnishes the service provider with equitable payment, allowing the provider to continue provide a quality service and remain profitable, with one **exception**; the inclusion of release of information charges into the \$180 flat rate fee is completely unreasonable. It shows a lack of understanding of the ROI effect on records request. Our company alone has experienced ROI fees that have exceeded the \$180 flat fee being allowed. We have also experienced ROI fees that have consistently topped \$100. This

would leave no room for the copy service to remain profitable. *Our suggestion would be to keep the \$180 flat rate fee for up to 500 pages and with that include the statutory \$15 witness fee for the record location to make the records available for copying. Any ROI charges beyond the \$15 charge should be reimbursed to the service provider upon providing proof of payment of the ROI fee with their billing in addition to the \$180 flat rate fee.*

Regulation 9982(c)(4)

We find it unrealistic to put this type of burden on the system to expect parties to conduct discovery in this fashion. Records/Document discovery should be conducted without causing friction on the WCAB where at all possible. It would behoove all parties to use a much less expensive and less burdensome method of discovery by employing a copy service to obtain the documents needed. A Notice to Appear and Produce would likely bring on many costly objections and additional costs into the claim.

Regulation 9982(e)

We see this regulation to be conflicting with Labor Code 4620, et seq. which describes X-Rays as a medical-legal expense reimbursable by the employer.

Regulation 9983(a)(2)(A)

This should allow for \$.20 per page for every page over 500 pages with no maximum. Using the pricing provided in the proposed regulations it would take an additional 1225 pages to reach the maximum \$425 allowance. From our combined 15 years in the industry we find it rare to have page counts over 1725; however, with each page there are costs, *thus we believe it to be the most equitable model is to allow \$.20 per page for every page over 500 with no maximum.*

Regulation 9983(a)(2)(B)

It is our position that the allowance of a \$50 charge for fulfilling an additional set is illogical. Paper, ink, employee time/cost, packaging & delivery of an already copied set of records will exceed the amount of \$50. If it costs the copy service \$.04 per page for paper and ink, at 1000 pages the copy service would be left with \$10 to pay for employee time, packaging & delivery. This would without question require the copy service to provide that set of records at a loss. *Our position is that there should be a flat rate of \$25-35 to cover time and expenses in processing, packaging and delivery plus a rate of \$.20 per page for printed sets. The regulations should provide the copy service with a schedule that allows for covering costs with an acceptable profit.*

Regulation 9983(a)(2)(C)

This regulation does not account for the administrative cost to fulfill the additional set request. Not to mention the costs associated with HIPPA compliance of providing secure electronic delivery of records. This section should allow for a similar base charge we mentioned in regards to Regulation 9983(a)(2)(B). *It is our position that electronic records transfer/sharing should be a charge of at least \$10-20 per transmission plus a base rate.*

Regulation 9983(a)(3).

We fully support the price of \$100 for cancelled requests or CNRs.

Lastly, we believe all of these proposed and/or potential final regulations will mean little to nothing without putting teeth into the requirements for timely payment of valid services. As per the BRG report, the cost for Applicant copy services to routinely pursue payment for services properly provided can drive up their cost significantly. This should be accounted for in the fee schedule. We believe the model provided by the BRG is a suitable mechanism for handling untimely paid bills. They proposed a roughly 140% increase to a bill that was not paid timely, when the service was provided properly per the statutes/regulations. It is essential to place an equal burden on the paying party to timely pay for properly rendered services.

Sam Bragg, President & CEO
Castle Copy Service, Inc.

February 14, 2014

My initial comments/questions are as follows:

- I am very concerned about the inclusion of witness fees in the flat rate, considering this is a hard cost absorbed by copy services that we cannot control. Although a typical witness fee is \$15, we sometimes advance hundreds of dollars in fees to obtain records. Perhaps any fees over \$15 could be billed in addition to the flat rate if accompanied by the witness location's invoice and copy of our check?
- How are we supposed to calculate sales tax on the flat rate? Is this amount included in the flat rate, itemized separately, or do we no longer charge any sales tax?
- 9983 (a) (2) specifies "in addition to the flat fee" and (2)(A) specifies "up to a maximum of \$425". Do I understand correctly then, that up to an additional \$425 is allowable on top of \$180, or is the intent that the \$425 is inclusive of the \$180?
- When is this expected to be made effective / will there be a grace period to implement changes to billing systems?

Overall, I think this appears to be a fairly reasonable approach and I hope with some further clarification that this does help address billing related issues. I look forward to receiving answers to my questions and others that I am sure will come from other copy services.

Michelle

February 14, 2014

Please provide a fee schedule for when a Certificate of No records is obtained. This should also be a flat fee but less than the \$180

Leticia Hammitt

February 14, 2014

Were any cost analysis completed in order accurately consider the actual costs associated with collecting the records, copying them, collating, binding? Then there are all of the phone calls and follow up calls, emails, faxes and trips down the rabbit trails just to get the right person who holds the records. Printing is expensive and we have had the misfortune of having to copy records in a series of 8 record boxes from a single location. Not only was there a lot of man hours associated with the undertaking but the wear and tear on your equipment. This is not a cheap endeavor.

Another big question I have due to the huge expense we have to front more often now then two years ago:

Were the enormous costs that so called "Medical Records" (Record Retention companies) charge us to obtain records aside from the \$15.00 fee. We try to fight it but they come back with evidence codes asserting their right to charge for labor, storage fees, retrieval fees. These invoices can reach upwards of \$400.00 that copy services have to front or finance for several months because that's how long it takes to get paid very often by insurance companies and TPA's and we're a Defense Only copy service.

My last question is: Will this flat rate apply to copy services that have service agreements and agreed pricing?

These flat rates as described are very alarming. We have such difficulty getting paid sometimes 3 to 9 months out and on top of that to know you aren't going to be reimbursed for your costs makes being in business non profitable.

Horrified!