STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

PUBLIC HEARING

Tuesday, April 16, 2013
Hiram Johnson State Office Building - Santa Barbara Room
455 Golden Gate Avenue
San Francisco, California

COMMISSIONERS

RONNIE G. CAPLANE
Chairwoman

FRANK M. BRASS

ALFONSO J. MORESI

DEIDRA E. LOWE

MARGUERITE SWEENEY

Reported by: Julie A. Evans

COPY

INDEX

PUBLIC HEARING

SAN FRANCISCO, CALIFORNIA

TUESDAY, APRIL 16, 2013 - 9:55 A.M.

--o0o--

MS. CAPLANE: Okay. It's almost 10:00. We can start a little early. I want to thank you all for coming this morning. We are here to discuss our new pro -- or get public comments on our new proposed regulations. I'm sitting here with my fellow commissioners. To my far right is Frank Brass. Next to me is Al Moresi, Deidre Lowe and Marguerite Sweeney, who is doing her first -- this is the first time she's been part of the public hearing process, so be nice.

I'm going to call -- we've got several sheets of people who have asked to speak. We'll call you up. If you have a prepared statement, please give it to -- I guess to Annette Gabrielli, who's sitting over there *(indicating)*. And I'm going to remind everybody to speak slowly because our court reporter, Julie Evans, is here, and she is going to be taking down everything that has been said. And I think there is a speaking limit of ten minutes per person, so I will be vigilant in watching that. I think those cover all of the preliminaries, so let's get started with Sue Borg.

Sue? She's asked for one minute. Time's up.

SUE BORG

MS. BORG: I was just gonna say that I'm here on behalf

of CAAA, and our comments were submitted electronically in writing.

MS. CAPLANE: Okay. Okay. Thank you.

Joel Sherman.

JOEL SHERMAN

MR. SHERMAN: I've got my notes on an iPad here, so I don't know if I can give it to her here.

MS. CAPLANE: You know, if anyone has -- if you can reduce your comments to writing after the hearing, that's very helpful 'cause we do go back into our judicial sessions and discuss all the comments and the regs, so --

MR. SHERMAN: Oh, okay.

MS. CAPLANE: -- that would be helpful for us.

MR. SHERMAN: I just want to thank you, Commissioners, for the opportunity to address you today.

MS. CAPLANE: Wait, just a second. They have to be in by 5:00 today. That's the end of the public comment period. So, if you can get them in by 5:00, that would be great.

MR. SHERMAN: Well, I'll see if I can e-mail somebody and get it mailed back to me.

MS. CAPLANE: Okay.

MR. SHERMAN: I want to be brief here. It's important to remember that the intent of SB 863 was to reduce the cost of the workers' compensation system, while increasing benefit payments to injured workers. It was a grand bargain, if you

will, in the spirit of the grand bargain and the great compromise --

MS. CAPLANE: You're -- I'm sorry. You're gonna have to slow down a little bit for the sake of the court --

MR. SHERMAN: Okay.

MS. CAPLANE: -- reporter.

MR. SHERMAN: It was a grand bargain, if you will, in the spirit of the great compromise between employers and employees that created the first workers' comp laws in California.

If we do not maximize the potential savings inherent in this bill, we will ultimately cause it to fail, possibly push the system into crisis, and end up serving neither party in the fashion originally intended.

Everyone recognizes that California has one of the costliest and most litigious workers' compensation systems in the nation. Friction points create this needless level of litigation and present -- the present system for handling liens is a major frictional point that significantly contributes to excess litigation. Countless system resources and valuable court time end up being siphoned away to resolve issues that could be better addressed through the use of Independent Bill Review.

Interpreters and copy services represent a significant source of liens in the workers' compensation system, second only to medical providers according to a recent CHSWC study.

Failing to incorporate these sources of liens into the filing fees and the IBR process will greatly undermine the potential cost savings and allow a continued drain on court resources to resolve issues that could be more appropriately addressed elsewhere. The appropriate mechanism has been created. It needs to be put to use in all appropriate situations.

I would urge you to consider: Interpreters for medical treatment are part of medical expense under Labor Code Section 4600(g). Medical records copies and interpreters for medical-legal exams are part of the medical-legal expense under Section 4620(a). All billing disputes for medical treatment and medical-legal expense are supposed to go through IBR, and there is no need to ignore one statute to carry out another.

In conclusion, one of the largest components of the savings associated with SB 863 was from the changes to lien laws. Allowing the Petition for Cost mechanism as proposed will simply perpetuate a failed practice from a broken system. I understand that SB 863 has a few gaps, and these must be filled by your interpretation. But I would urge that all possible consideration be given to avoid a continuation of business as usual.

Thank you very much.

MS. CAPLANE: Thank you very much.

Patricia Brown? And give your name and state on whose

behalf you're speaking.

PATRICIA BROWN

MS. BROWN: Good morning. My name is Patricia Brown, and I am a Deputy Chief Counsel at State Compensation Insurance Fund.

State Fund, as the largest insurer in California, adjusted over 130,000 claims last year. As a not-for-profit insurer, State Fund is focused on the goal of delivering superior claims outcomes to the injured employees and the employers that we serve.

But we are being choked by liens. In recent years, and particularly last year, we worked exhaustively on resolving liens in order to clear out old lien inventory, both internally, and during the lien intensive weeks last October. Despite the success of these efforts, the lien volume continues to grow.

Without tight regulatory controls that carry out the legislative intent of reigning in liens, loopholes will render new lien provisions meaningless, the demand for precious WCAB resources will continue, the finality of cases will be elusive at best, and liens will continue to overrun the system, all to the detriment of injured workers, employers and the WCAB.

Today, I would like to emphasize three areas of deep concern in the proposed regulations that we raised in our written comments:

First, Labor Code Section 5811 expressly references interpreters but does not reference copy services or other providers. Under the canons of statutory interpretation, Labor Code Section 5811 applies only to interpreters. We believe that the inclusion of other providers is an impermissible expansion of 5811.

Secondly, all medical provider bills are subject to IBR as referenced in Labor Code Section 46032 -- I'm sorry -- 4603.2(e)(4). Since Labor Code Section 4600(g) characterizes interpreters' services as medical services, they are subject to IBR. Petitions for costs under 5811 does not conflict with the IBR statutes.

And third, it is critical that the statute of limitations be strictly enforced to allow case closure and finality. Labor Code Section 4905.5(a) provides ample opportunity for a provider of medical services, including interpreting services, to pursue additional payment of claimed amounts. The legislature intended to bring finality to cases by implementing a real statute of limitations. It is entirely consistent with the legislative intent to make petitions for costs subject to the statute of limitations. To do so -- to do otherwise will allow providers, or their heirs and assignees, to continue to breathe new life into bills that were long ago written off and forgotten, creating zombie liens.

I thank you for allowing me this opportunity.

MS. CAPLANE: Thank you very much.

Steve Cattolica.

STEVE CATTOLICA

MR. CATTOLICA: Good morning. My name is Steve Cattolica. It's spelled C-a-t-t-o-l-i-c-a. Excuse me. I represent the California Society of Industrial Medicine and Surgery and the California Society of Physical Medicine and Rehabilitation and the California Neurology Society, among other providers, in the comp system.

I have really only one comment, but it -- and our written comments will be provided to you electronically later today. And it has to do with, first of all, thanking the Appeals Board for allowing for appeals that seem to be absent in the division's regulations. It's your place to do that, and we appreciate that, but it was great to see and read Section 10957, 58 and -- excuse me, 957, 57.1 and 59 where the petitions for appealing administrative director determinations were outlined, however, specifically in 10957. And it's repeated in 57.1, so it applies to both.

Subdivision (a) reads, in relevant part, "... For purposes of this section, a "determination" includes a decision regarding the amount payable to the provider" -- speaking about Independent Bill Review -- "and a decision that the dispute is not subject to Independent Bill Review."

The highlighted phrase, that last phrase I just mentioned --

MS. CAPLANE: You're gonna have to slow down just a little bit. It's --

MR. CATTOLICA: Oh, I'm sorry.

MS. CAPLANE: I know, I have the same problem.

MR. CATTOLICA: I'm sorry.

The highlighted phrase, that is, the -- the last phrase that I read, the dispute not subject to Independent Bill Review, is important to parties who believe that they have been inappropriately held out -- held out of the IBR process, and we applaud the ability for these individuals to petition the Appeals Board for a remedy.

However, subdivision (h)(1) limits the eligibility for use of the petition to one or more of the grounds specified in Labor Code 4603.6(f). That is an appeal only allowed on the grounds of an action in excess of the administrator's -- administrative director's powers: fraud, conflict of interest, bias and erroneous finding of fact.

Given the limitations of (h)(1), how does an aggrieved party gain access to the use of the 10957 petition if they're not subject to IBR in the first place? For instance, if a party's deemed ineligible because the reimbursement issue involves application of a PPO contract, subdivision (h)(1) does not apply. Where does the party go for a remedy? And as

I say, we believe that that same issue, using different phrases obviously, is present in 57. -- 57.1, and in a different way, in 59. And so we'd like you folks to take a look, please, at that -- at those sections and -- and accommodate that. That appears to be a conflict.

As I say, there are other comments. We've put them in writing, and we'll get them to you this afternoon. Thank you.

MS. CAPLANE: That's wonderful, yeah, by 5:00, and also if you can include what you've just -- what you've just read.

MR. CATTOLICA: Oh, it's all in there.

MS. CAPLANE: Okay. Good. Great. Make sure it's in by 5:00. Thank you.

Saul Allweiss? Oh, there you are.

SAUL ALLWEISS

MR. ALLWEISS: Chairwoman Caplane, Commissioners, thank you for this opportunity. My name is Saul Allweiss. I'm a defense attorney in Southern California. Officially, I'm here on my own behalf as a concerned member of the community. Also, I have worked with Coalition -- CCWC, the Cal Chamber, and a number of other entities who will be submitting extensive written comments later today.

I would like to just summarize the concerns that are in these comments. The comments have all of our citations to specific sections of the regulations that we have concerns in, but I'd first like to talk about the origin of SB 863 that has

already been alluded to once by Mr. Sherman.

SB 863 was a benefit increase bill. It was intended to be a benefit increase bill. SB 863 was also intended to be a cost saving bill. This was the deal that was negotiated between Labor Management and Governor Brown. The benefit increases are very apparent. They exceed over 800 million dollars a year. They are already being delivered to injured workers, inappropriately being delivered. The cost savings are projections, estimates based upon reforms such as independent medical review, Independent Bill Review and a myriad of statutes that have been enacted specifically in regard to addressing lien claims.

If it turns out that the assumptions and projections that we created in IBR/IMR liens don't occur, the cost savings will not -- will -- will never occur. And as a result, we will have a massive benefit increase without the cost savings that were intended by the parties when they negotiated this. The core of our concern lies with the Board's interpretation of Labor Code Section 5811. We believe that your -- you may have interpreted 5811 too narrowly, without taking into account the entirety of SB 863 and, in particular, the provisions enacted in -- as part of 4903.

We acknowledge that you have original jurisdiction over services provided under Labor Code Section 4600 for medical care, 4620 for medical-legal costs, but we also believe that

regardless of whether this might fall under the guise of 4903 as a lien, or 5811 as a cost, it's the same. The statute -- 4903 makes reference to liens or costs, and we don't believe that parsing where the comma is, is -- you know, solves the problem. You have to look at the entire intent of the statutory scheme.

And that being said, that would mean that lien activation fees, lien file -- actually, not lien activation fees -- activation fees and filing fees are as applicable to 4 -- under -- liens under 4903 or costs under 5811. And the same would apply as to how these -- the procedures for handling bills or -- or disputes that arise under 5811 or 4903. We don't -- you don't have to set up separate procedures for the two. They can be handled exactly the same.

The -- specifically, when we're talking about 40 -- medical bills arising out of 4600 or 40 -- medical-legal that arises under 4620, this applies to medical costs, it applies to interpreters, it applies to photocopy services. We don't have to carve out anything special for interpreters. They -- they provide medical services as clearly defined by your -- your en banc decision, the *Guitron* case, and further defined by 4600. 4620 has always allowed for interpreters. And photocopy services have always been acknowledged to be part of a party's attempt to prove or disprove a contested claim, which makes it fall clearly under the guise of 4620.

The suggestion -- your proposed regulations under 5811 appears to create a whole new procedure for pursuit of payment of these -- of these bills and liens under this specific labor code section. And as a result, it appears to create a loophole for providers that, you know, fall under the strict guise of 4903 to avoid filing fees, to avoid activation fees, and also to perhaps avoid their bill -- their bills being put through IBR and -- and the entire process that actually takes place before IBR.

Unfortunately, your release of proposed regulations, which is entirely appropriate, has gotten incredible amounts of attention, and it is -- it has sparked the creative juices of many of the lien claimants in Southern California that have plagued our system for -- you know, for decades now. And -- and as many -- as many of my colleagues will testify later on, we'll address this, that they are using -- we already know that they're using what you've proposed clearly as a solution as a way of actually undermining the system. And at the end of the day, we believe it could end up turning the intended -- the intention of Labor Management to create cost savings out of liens, to create -- cause less friction in the system to actually make these cost drivers. The -- the propose -- the written comments that you'll be receiving before the end -- by the end of the day actually have very specific language that we would suggest that you -- that you adopt and that you --

Thank you for your consideration.

MS. CAPLANE: Thank you very much.

Bill Zachry.

WILLIAM M. ZACHRY

MR. ZACHRY: Chairwoman and Honorable Commissioners, thank you very much for allowing me the opportunity to be here to speak on your proposed regulations.

Very quickly -- I think you've heard it, but it bears saying again -- SB 863 was a bargain where we increased the permanent disability appropriately to a legitimately injured worker in exchange for significant savings to the fast grow -- fastest growing costs within the system, our interpreter fees and copy service fees. And to address those issues and still allow and provide the appropriate access to this information, there was a proposal in 863 to have fee schedules and IB&R or IBR, Independent Bill Review, should there be a dispute over that.

And I strongly feel that if there's one part of your proposed regulations, it seriously undermines the intent of 863 in terms of allowing people to bypass the system, bypass the IBR, the lien filing fees, the activation fees and the necessary processes that were established in 863. I would ask that you seriously reconsider, I think, an unintended consequence of your regulations, and that is undoing a significant part of the bargain that was put together in 863.

Thank you.

MS. CAPLANE: Thank you very much.

The next one is Mr. Matian? M-a-t-i -- oh, Ms. Sorry. I can't -- your first name is --

MS. MATIAN: Negar Matian.

MS. CAPLANE: Negar Matian. Thank you.

NEGAR MATIAN

MS. MATIAN: N-e-g-a-r, M-a-t-i-a-n. Thank you for allowing me the opportunity to speak today, Commissioners and Ms. Chairwoman. My name is Negar Matian. I have been practicing as an attorney in the field of workers' compensation for over eleven years. I represent the opinions of large self-insured employers, franchisees and small businesses throughout California.

I believe SB 863 will have an influential effect on increasing benefits with less overall legal friction costs to our employers. In order to meet this goal, though, I would like to bring your attention to a few unintended consequences of the proposed lien regulations in hopes that we modify the regulations to curtail the possible ramifications of these issues. Specifically, I want to comment on the Petition for Costs, LC 5811, ex parte communications by parties and the circumvention of the lien activation fees.

To give you some background, Labor Code Section 5811 discusses requirements and procedures for obtaining costs

between parties. A cost is a transaction paid by one party for which they believe they need to be reimbursed for. It was never the intent for vendors to use LC 5811. As vendors, in order to request payment for their services, would fall under the definition of a lien claimant. Now with the lien activation fee, we have seen some vendors file Petition for Cost and Sanctions, and this has caused a significant litigation cost to our employers. To illustrate, I want to give you two specific examples have that occurred in my practice.

In one case, a lien claimant walked through a cost for petition to the workers' compensation judge. Now, they were initially a lien claimant, but they withdrew the lien claimant definition, or that presence, and filed a Petition for Cost. They never filed a lien activation fee. The judge denied the cost for petition for one reason or another. In light of this, the petition was still uploaded into EAMS. And a few days later, a lien claimant went to the Board and requested an Order for Denial or an Order for the Petition for Cost which was received by a different judge. As you can see, this created somewhat of a problem for the employer and the defense attorney because now they had to file a DOR, and two appearances later the issue was finally rectified.

To illustrate another example, in one case the WCA -- the WCJ issued a dismissal of the lien claimant because no lien

activation fee was paid. That provider later walked through a Petition for Cost, which the WCA -- WCJ issued a payment, an order for payment. As a result of this, cross-petitions were filed, sanctions were filed on both sides, DOR's were filed, two DOR's, and we are now in the midst of dealing with that litigation. A hearing has not yet been set, but I would assume the matter will be litigated for the next three to six months.

As you can see, some of these actions are being undertaken by lien claimants on an ex parte basis. And the problem with this is, in order to assure due process in an ex parte system, you have to increase litigation. And that, essentially, means increased costs to the employers.

I'm bringing these two examples to you because as a defense attorney at the Board -- and as I like to say, "the trenches" -- I can give you real examples of the consequences of the statutes and the proposed legislation that's being made, and I can give you concrete illustrations of where the money's going.

Thank you for giving me the opportunity to do this today, and I hope these examples are taken into consideration.

MS. CAPLANE: Thank you very much.

MS. SWEENEY: May I ask a question?

MS. CAPLANE: Oh, sure.

MS. SWEENEY: About both of your examples -- were those

lien claimants interpreters, or can you tell me what kind of a --

MS. MATIAN: One was an interpreter, and one was a copy service.

MS. SWEENEY: Thank you.

MS. MATIAN: Uh-huh.

MS. CAPLANE: Okay. Joyce Altman?

JOYCE ALTMAN

MS. ALTMAN: Good morning. My name is Joyce Altman. Last name is spelled A-l-t-m-a-n. I am a court certified interpreter, and I am here on behalf of our organization, which is CWCIA, California Workers' Compensation Interpreters Association. We have submitted our written comments electronically. However, we'd like to add one more comment today.

We called to question that there is no provision regarding penalty and interest or for fail -- failure to timely pay Petitions for Costs. That's where we are now. There was no found consequence for lack of payment, so we would request that be addressed.

MS. CAPLANE: Okay.

MS. ALTMAN: And also, whether we are indeed lien claimants or a Petition for Cost because judges at all the different boards are handling it very differently. There's been a consensus in Marina Del Rey where we are only to file

liens and pay the fees, and at every other board that I know of we are now doing petitions. So there is quite a bit of -- for costs, so there is quite a bit of confusion out there.

Thank you for your time.

MS. CAPLANE: Thank you.

Matthew O'Shea.

MATTHEW J. O'SHEA

MR. O'SHEA: Thank you, Commissioners. My name is Matthew O'Shea, and I am with Safeway. And while I agree with the comments made by Mr. Allweiss, Mr. Sherman and Mr. Zachry, I wanted to talk a little bit about 10608 and the service of records on the parties.

The proposal requires physician lien claimants throughout -- are served throughout the life of the claim once the activation fee and/or filing fee has been paid and a demand is made on the parties. The proposal doesn't take into account that a physician claimant's disputes may be solely based on a fee dispute that doesn't require the service of medical records. The proposal does not further resolution of any dispute, but merely adds frictional cost. The proposal -- we propose that the lien regs be redrafted to eliminate service on physician lien claimants prior to settlement of the case or a final order.

The sole dispute involves reimbursement of fees. We would propose that no service of medicals is required. If the

dispute involves medical necessity, then service should not commence until thirty days post issuance of a final order provided the IMR was addressed as applicable to the various dates of injury. We believe that this will allow the parties a reasonable period of time post the final order, service of the final order, to resolve the dispute. And if unable to resolve the dispute at that time, that the defendant be required to serve the lien claimant the medical records subject to the limitations of fee disputes.

The WCAB proposed sanctions does include a provision for sanctions and penalties for violation of 10608, and we agree that those are necessary and should be applicable to everyone. We also have no dispute with 10608(c) relative to non-physician lien claimants. However, we do recommend that a regulation include language barring the use of a waiver or a release secured by the non-physician lien claimant as a method of securing access to medical records in order to protect the privacy of the injured worker.

We propose that the regulations include language precluding -- excuse me. Further, we propose that pertaining to non-physician lien claimants, together with the new regulations that we would like you to write addressing physician lien claimants, that they be combined into a separate regulation, completely separated from the rest of the parties who are active in the case up until the case is

resolved.

We propose that this language is in keeping with the -- we propose that the regulation language precluding a lien claimant from employing a subpoena or copy service without the order of the Board. We don't want to have to -- we think this language is in keeping with the stated purpose of SB 863 to limit frictional costs and to elim -- eliminate further litigation in the system. Adding copy services fees for furtherance of a lien claim at any point in the process only goes to create additional costs and friction in the system.

As with 10608, we support the WCAB proposal of sanctions and penalties in support of physician changes, services on -- on physicians and non-physician lien claimants, and we think that should be applied to the new section of what we hope you write.

Thank you.

MS. CAPLANE: Okay. Are you gonna submit these comments?

MR. O'SHEA: Yeah, we're --

MS. CAPLANE: We haven't seen these comments in writing.

MR. O'SHEA: -- gonna submit these comments.

MS. CAPLANE: Okay. By 5:00?

MR. O'SHEA: And we have other written comments already prepared.

MS. CAPLANE: Okay. Great. Thank you.

Are you doing okay?

THE COURT REPORTER: I'm fine.

MS. CAPLANE: Okay. Martin Brady.

MARTIN BRADY

MR. BRADY: Yes. Good morning. Thank you for hearing our testimony this morning. My name is Martin Brady. I'm the Executive Director for Schools Insurance Authority, a Joint Powers Authority that works with public schools in California. We are self-administered and self-insured for that purpose. I also serve as the current president for the California Joint Powers Authority, JPA, and we're made up of public agencies up and down the state, be they cities, counties, other special districts, as well as other school district.

I wanted to just share that Senate Bill 863 was designed to reduce the cost so that California would not go into another crisis pertaining to the workers' compensation system, even while we improve the direct benefits for injured workers. We need those savings if we're going to make this bargain work. As you contemplate these rules, please ask yourself "Will this action carry out the sustained agreement between both labor and employers that was sought after?"

Liens contribute to making California one of the most costly and litigious comp systems in the country. According to the Oregon survey, we're now ranked third out of 50 states. Interpreters and copy services are second only to medical providers as the most common source of liens in a recent CHSWC

survey. We must try to get billing disputes out of the courts. Independent Bill Review will provide prompt resolution of billing disputes so billing disputes don't turn into liens. The loser pays the cost of the IBR, so both the provider and the claims administrator have an incentive to act in good faith.

The Board's proposed rules would allow interpreters and others to circumvent the IBR as well as other filing fees. That puts us back to where we were before SB 863 in terms of costs. We don't have to do that. Interpreters for medical treatment are part of a medical expense under Labor Code Section 4600(g). Medical record copies and interpreters for med-legal exams are part of the med-legal expense under Section 4620(g). All billing disputes for medical treatment and med-legal expense is supposed to go through IBR. You do not have to ignore one statute to carry out another.

When the Workers' Compensation Insurance Rating Bureau scored the impact of Senate Bill 863, the largest component of savings was from the changes to lien laws. Do not allow the Petition for Costs to be just another name for liens to erode those savings. Yes, there are some holes in Senate Bill 863, and it's open for your interpretation. But please, if you can consider the bargain between employer and labor that was just enacted, we certainly would appreciate that.

I'll tell you that the cost pertaining to schools and

other public agencies are significant at this time. Between September of '05 and September of 2011, costs for an average indemnity claim in California have gone up 49 percent so that an average indemnity across all class codes today is an expense of $72,000. That's a lot of money when you consider that 20 percent of the marketplace is made up of public sector risk.

As a superintendent friend of mine in one of my districts poignantly says to me, "Martin, regretably I can spend only -- each dollar once." And I would just encourage you to factor and consider what we could do with the savings from these dollars for the public good.

Thank you.

MS. CAPLANE: Thank you very much.

Michael Sullivan, who in our office is known as "the other Sullivan on comp." We have Neil Sullivan in our office.

MICHAEL SULLIVAN

MR. SULLIVAN: Good morning, and thank you for the opportunity to speak with you. This is --

MS. CAPLANE: Wait.

MR. DIETRICH: Do you need a break?

THE COURT REPORTER: I'm fine.

MS. CAPLANE: As far as I know, this is the last speaker, so --

THE COURT REPORTER: Okay.

MS. CAPLANE: Unless there's more people outside.

MR. SULLIVAN: I'm the last one?

MS. CAPLANE: Well, for the moment, yes, unless --

MR. SULLIVAN: I'll try not to make a mistake.

MS. CAPLANE: -- other people rush the door. Yeah.

MR. SULLIVAN: I'll also try to be somewhat brief.

The Chamber of Commerce, the California Coalition of Workers' Comp and CWCI all have extensive sets of paperwork being filed with you today, I believe. And as you can see, there's sort of a unified serious concern about the circumvention of lien activation fees, statute of limitations issues and the use of IBR in this new trend. What I can offer, aside from all this generalized arguing -- which I, obviously, can't make well in a couple of minutes right now -- is one legal point and some anecdote -- anecdotal experience, okay?

Here's the legal point: 5811 refers to costs between parties. At the time of the enact -- enactment of SB 863, parties included applicants, defendants and lien claimants, and that was it. So in the environment of SB 863, the -- that was what a party was. And I think that the rules regarding these three things, statute of limitations, IBR and fees, were made with that definition in mind. It's only after SB 863, through regulation, that the definition of "party" was expanded to include petitioners for cost. And that's why I

think -- I don't know if you've seen the paper we did in association with our publication, but we concluded that an expansion of Petitions for Costs to replace what were traditionally lien claimants was an impermissible interpretation of the statute. That's my legal point.

Probably more poignant is my anecdotal experience. I run a firm of about 30 lawyers and hearing reps, and four -- we have four hearing reps that are at the Board all the time doing liens. I've done enough depositions to know to slow down. It's bad out there right now for us because -- I mean I was talking to the head of a copy service at a conference the other day, and she says, "SB 863 is no problem for us. We never have to deal with the fees because we can just file Petitions for Costs."

And that's the reality. Regardless if it's in association with med-legal, regardless of whether it can be characterized as treatment, that's what they're doing. And the judges are responding to this different ways. We heard testimony about how a Petition for Cost will be filed in order to overcome a dismissed lien, but let me add this point: I have a case where we went to court and the lien claimant didn't file an activation fee -- it was an interpreter -- and they got dismissed with prejudice. That was followed by a Petition for Cost. And, you know, that lien would have been subject to a statute of limitations argument, but the Petition

for Cost wasn't necessarily.

So, you see the problem. We have this interlocking, and -- and I want to just tell you that in our experience, our consistent experience, this Petition for Cost avoidance tactic is real and material and confusing and prevalent, and it is my judgment that it will have a very serious impact on the intent of SB 863, which was to require these new provisions for all parties.

Thank you.

MS. CAPLANE: Great. Thank you very much.

Okay. I have no other -- no one else has put in any sign-in sheets. Oh, there's one back there. Okay. Never mind. You need to fill out a --

MR. SULLIVAN: Do you want to take a little break for the court reporter?

MS. CAPLANE: Yeah, why don't we take a -- let's take a ten-minute break and let the court reporter exercise her fingers.

(Whereupon a recess was taken.)

MS. CAPLANE: Okay. Let's get started again. I've got -- I would like to mention that we -- that there are certain -- there seems to be certain themes developing in today's comments, and if you've -- if you want to come up, everyone has a right to speak. I would suggest if you're repeating what's been said before, you can come up and say, "I agree

with the prior comments." If you have something new to add -- we're not gonna cut anyone off if you repeat what's been said, but it might save everybody time.

I've got two groups of three -- three people who are representing the same organization. I don't know whether you all want to speak individually or if your comments can be joined together.

Oh, before I go to -- go to that, there is a sign-up sheet in the back of the room if you would like to -- if you haven't signed up already and you would like to receive a set of the -- the regulations when we complete them, sign up and they will be sent to you.

So I've got three people from Landmark Medical Management: Norma Garner, Danielle Carter and Glenn Hull.

MR. HULL: That would be Brian with very bad handwriting.

MS. CAPLANE: Oh, my God. You're not kidding. It's terrible handwriting. Okay, forget him.

If you would all like to come up together or do you -- I mean it's gonna be -- you've each asked for ten minutes.

MR. HULL: We prefer to do it individually.

MS. CAPLANE: Okay. Okay. Let's get moving.

Okay, Brian.

BRIAN J. HULL

MR. HULL: Good morning. As was said, I'm Glenn Hull (sic). I represent medical providers in California, doctors

and pharmacies mostly. I wanted to talk today because the proposed changes to the rules affect a lot of rules regarding discovery, and this is something that my clients have to -- have to cope with.

So, as I said, I -- I deal with medical providers, and I'm also responsible for training a great deal our -- of our reps as well. And one of the things that I tell them is that litigation is like playing poker with your hand open, your opponent's hand open and half of the deck face up. There's no surprises. There's no gotchas. Either you're going to prevail or they're going to prevail, and the way you determine that is through discovery so that you know the strength of your case, the merits of the case and where to proceed and how to proceed in the most efficient manner possible.

The changes to discovery that these proposed rules would make would, essentially, take away most of their hand and deny them the rest of the deck. Specifically, proposed Rule 10538 would prevent many of my clients from using the right of subpoena to obtain medical information. Now, I can understand that with SB 863 there was a change in the way that medical information was to be disseminated, but the right of subpoena is something that private citizens have. They can go and request a subpoena. And I don't know exactly why me, as a representative of a physician or of a pharmacy, would not at least have the opportunity to request discovery and allow the

carrier to state the case as to why they feel that the subpoena should be quashed. I also don't understand why an insurance carrier or a defendant who does not even provide treatment would still have the right to that subpoena, to that same information. If the intent was really to prevent patient information from being disseminated to multiple parties that don't really need to do anything with it, then I -- I don't understand the distinction.

Further, on Regulation 10608, the proposed change 85 -- that inhibits not just non-physician lien claimants, but that actually inhibits the physician's right to discovery as well. If I -- and I'm not talking about assigned liens. I'm talking about when I represent a physician, that physician has to request the document and receive the document himself or herself. Excuse me. I can't receive that for them. And doctors are busy people. They don't have time for that.

So further on 10608(d)(5) -- or excuse me, (d)(3) -- we would like some clarification in the regulations. Regulation 10608(d)(3) would allow AME and QME reports to be admissible as evidence before the WCAB. What we would like to see is a clarification that that is for the purposes of determining industrial injury only. As you know, Labor Code 4610 provides for Utilization Review, and now we have Independent Medical Review as well to determine disputes of the reasonableness of treatment. But a pretty big trend in litigation lately has

been the case is settled, let's go to the AME to get an evaluation of all this treatment. Never mind that it's inadmissible per the *Sandhagen* decision. Never mind that it's years after the treatment took place. Our fear is that if that regulation was to be included as written, that there may be some defendants out there that would try and introduce this report to speak to medical necessity of treatment rendered. So we're just asking for a little bit of clarification on that.

10608(d) now says that if a defendant would like to serve discovery -- just let's say for the purposes of expediting the lien settlement process -- it is now a bad faith act. It's sanctionable for a defendant to serve medical documents without the order of a judge. And I don't understand how an equity could be a bad faith act, especially when you consider the alternative which is 10608(c).

Now if I, as a lien claimant, regardless of if I represent a physician or a pharmacist or what have you, want documentation, I have to file a petition. That petition has to be served. The judge in the matter can either set it for hearing, grant it through a Notice of Intent, or deny it. I don't understand what the appeals process for that would be. It's not really clarified in the regulation. I can only speculate. But either way, this sounds like it's going to have the opposite effect of what SB 863 was hoping to attain,

which was faster resolution of cases.

So, now I can imagine the scenario in a heavily-litigated case with multiple lien claimants, where each one of them has to file a petition. And let's say somehow they find out the name of the medical-legal report, the date of the report, and they request it. It goes to the judge, the judge sets it for hearing. We have a hearing. The judge says, "I'm going to allow it." This has already taken a long time. We get that report. We go to analyze it and we find out, oh, there's a supplemental. We have to file another petition again and again and again as more evidence comes to light. We have to justify all of these requests for discovery even though we have the exact same burdens that the applicant has, but we're not entitled to the exact same evidence that the applicant is entitled to. And if you can imagine heavily-litigated cases with 30 lien claimants or more, and all of these hearings and all of this discovery request, it's going to burden the courts. I don't see how that is going to make things easier.

So what I would try to see, as -- as a request, is that there be some kind of rule added to these proposed regulation changes that would state that this is effective for dates of injury or dates of service after 1/1/13, all of the changes to discovery. That way, going forward at least, my clients and I would know where we stand, what kind of discovery we have to get and the steps we have to go through. But on cases that

may have settled years ago, where even long before SB 863 was ever passed I still hadn't received discovery in accordance with the law, I can continue to go after that and satisfy my burdens before the court.

And that's all I have. Thank you very much.

MS. CAPLANE: Thank you.

Danielle Carter?

DANIELLE CARTER

MS. CARTER: Good morning, Commissioners.

MS. CAPLANE: Good morning.

MS. CARTER: Again, my name is Danielle Carter. I actually work very closely with the litigation department at Landmark Medical Management.

Part of the struggle that we have been seeing with the passage of SB 863 and a lot of the language in it is that there is not a whole lot of clarification with regards to how it effects lien claimants, and so we're running into a lot of issues with whether or not certain aspects of SB 863 are retroactive. Are they applicable to all dates of services? Are they applicable to all dates of injury? Are they applicable to all contracts?

The portion of the proposed regs that I wanted to comment on has a lot to do with the liens themselves, starting with Rule 10250(b), which would prohibit parties from filing a DOR if they do not appear in EAMS, even if they have filed a lien

for the previous periods and are not scanned in EAMS still.

Our company, prior to everybody turning into E-filers -- we did a lot of walk-throughs. We did a lot of paper filing of liens. And for some reason, a lot of the liens were filed -- were stamped at the Board. They were walked through, and they never appeared in EAMS. So according to EAMS, we are not lien claimants of record. However, we do actually possess confirmed copies of the liens that are date stamped by the individual boards as having been received. We still feel that we should be permitted to file a DOR, along with the confirmed copy of the lien and pay the activation fee -- fee upon being entered into EAMS by the WCJ.

Rule 10770.1(c) we feel is unnecessary at this point if the WCAB would issue proof of payment and then turn around and demand proof of payment upon -- upon filing a DOR. We feel that this is basically redundant and unnecessary. If the fee is not paid, the matter should not be set for hearing and the DOR should be denied.

Proposed Rule 10770.1(c)(2)(c) would specifically state that a WCJ does not have to check EAMS. But if a lien claimant appears without a proof of payment for their activation fee, they would be dismissed and cannot be reconned. Now, as somebody who makes several appearances a week at the Board, this is an issue that we are running into where the new decision that came down, that gave us time lines

with regards to paying the activation fee, says "prior to the time lien conference starts." This means that we have usually up until about 8:30 in the morning for our a.m. hearings and 1:30 in the afternoon for p.m. hearings. It's not always feasible for us to have a proof of payment with us when a lot of the times the judge will be asked and has been asked -- and I have seen this -- to check and see if the lien claimants have paid their activation fee.

EAMS is public record. The activation fees are public record. I can go on my computer from my office and do a search to see if an activation fee has been paid. To require the lien claimants to show up with proof, and if they don't -- if they've forgotten, if it wasn't included in their packet, if they had no access to be able to -- to deny the lien claimant the right to have the judge to verify that an activation fee has been paid if we did, in good faith, pay the activation fee prior to the hearing in accordance with the new decision -- it just doesn't make any sense. Not only does this deny the rights of a lien claimant to appeal, but it is unconscionable to dismiss a lien claimant who may have a serious legitimate claim for payment, who has paid its fees, only because they forgot to bring proof that it is readily available to any judge.

MS. CAPLANE: Actually, if I can correct you there. It's not readily available. EAMS does not show the time of

payment. It just shows the date of payment, so --

MS. CARTER: Okay.

Another proposed change to 10250 would require a moving party to declare under penalty of perjury that they have completed discovery. But between 10582.5 and 10770.1, lien claimants have only a 90-day period to exercise discovery. And when combined with proposed regs regarding discovery, this would severely hamper the ability of claimants to obtain discovery, analyze a case and then attempt settlement.

This issue, in particular, that we're dealing with, as far as the time line in which we have to actively file a DOR to make sure that we're not dismissed for, basically, lack of prosecution, combined with the new regs regarding discovery -- if we're required to file a Petition for Discovery, set the matter for hearing, get in front of a judge -- it takes months sometimes to get a hearing on calendar. We have regs and rules that are working contradic -- in contradiction with one another at this point, so we either have a time limit to file a DOR, and now under these new proposed regs say, yes, we're done with discovery, we're ready to move forward, we could go to trial if we set the matter for hearing, which is not always the case.

A lot of the times, as lien claims, we require further discovery. So which rule do we abide by? Do we file our DOR under penalty of perjury and actually stipulate to having

completed discovery, while on the other hand we have to go through the motions over here and file petitions, set it in front of the judge, and let the judge make a decision as to what we are entitled to, then go back and review the discovery once it's been ordered, if it has been ordered, and determine if we're ready to proceed with our case?

That's all I have.

MS. CAPLANE: Okay. Thank you very much.

MS. CARTER: Thank you.

MS. CAPLANE: Norma --

MS. SWEENEY: If I could make --

MS. CAPLANE: Oh, I'm sorry. Wait.

MS. SWEENEY: -- just a brief comment.

Perhaps a solution to that last problem would be when you file the DOR, you specify what the issue is is limited to a discovery dispute. It's not that you've completed it and are ready for the underlying principal issues.

MS. CARTER: I think the language says that we are supposed to -- we are supposed to stipulate that discovery has been completed at that point, so --

MS. SWEENY: Yeah, but it could be just discovery on whatever that -- what your discovery dispute is. You've asked for something. They've said no. You've tried to work it out. That's the only issue.

MS. CARTER: Okay. Thank you.

MS. CAPLANE: Norma Garner?

NORMA GARNER

MS. GARNER: Good morning.

MS. CAPLANE: Good morning.

MS. GARNER: I'm Norma Garner. I'm the Collections Manager at Landmark Medical Management and --

MS. CAPLANE: You're going to have to speak slower and a little louder I'm afraid.

MS. GARNER: I just have a couple comments to make regarding the regulations that are being proposed.

MS. CAPLANE: Uh-huh.

MS. GARNER: I made a trip to Pomona yesterday because last week I got a call from my rep saying that no judges will sign any Stipulation and Orders to Pay. So I said, "Well, we paid the fee. They didn't dismiss our lien. Why would they not sign?" No idea. They refused to sign them.

I tried to speak to the presiding judge, and I asked "Why would you not sign them?" He said, "Call my office, make an appointment, and maybe I'll talk to you."

Okay. I went to the other judges, and I asked the same question: "Why will you not sign the Stipulations and Orders?" I finally got to talk to Judge Coutts, and she said, "I don't have to. There is no regulation that states that I have to sign the Stipulation and Order to Pay Lien Claimants."

I said, "And yet, you're dismissing all of the liens that

have not paid the activation fee?" She said, "Yes, because there's a regulation and labor code that says that I have to do that."

So, I then am here requesting and proposing that apparently you add a regulation that says that they have to sign these Stipulations and Orders to Pay the Lien Claimants when we have, in good faith, paid the activation fee and/or filing fee, and we're there to adjudicate our claim. And yet, the judges refuse to sign these orders.

As I flew into San Francisco this morning, I got a call from a rep who apparently was pulled by the presiding judge to let him know to tell me that he is asking the judges to sign those stips and orders. I did get a chance to speak to him personally yesterday, and he said, "I can't force them. I can't make them do and sign those orders. I can sign them myself," but he was not signing them last week. So I heard that there's another two boards that we're having the same issue with. And so, maybe a regulation that says that they have to sign it. We're paying the fees.

A regulation that is not in -- or not anything that's being added to these proposed regulations that I would like to comment on is 4903.8, and that is the assignment. We have already sent a -- went to trial on a case, so here's the scenario: My -- some of our clients purchase receivable. They purchased it before SB 863, and they decided after SB

863, of course, that they cannot do business in California. That's fine. They understand the business, and they have chosen to go elsewhere.

SB 863 made huge changes to how things were going to be done in California, and my clients understand that. What they don't understand is that there was a regulation, and there was laws in effect before SB 863, that allowed them to purchase the paper, that allowed them to purchase the receivable and become a party. They had to disclose per 10550 that -- they had to disclose to the defendants and the insurance company and all the parties that they were purchase receivable. And yet, as of 1/1/2013, all of a sudden that receivable is no longer receivable.

They are refusing to negotiate with any of our office staff. They are refusing to pay that provider, even though either some of those providers are out of business or they no longer do business. They are now putting the burden back on that purchaser and asking them to, I guess, withdraw their lien and -- and give away all their rights to that.

I think it's unfair. I believe that it was not the intent. Now they understand SB 863, effective 1/1/2013, you cannot do that anymore, and they're okay with that. But to make it retroactive to where everything is now for any and all dates of services and any and all dates of injuries -- I think it's unfair to what was something that they could do business

in California, and I think that regulations should be added that says yes, any and all dates of service, just as you have it proposed right now in the labor code -- it needs to also include that it's only for any dates of service effective 1/1/2013.

Thank you.

MR. MORESI: May I ask a question?

MS. GARNER: Absolutely.

MR. MORESI: The stips and orders you're talking about that aren't being approved -- what kind of stips and orders are they?

MS. GARNER: To pay the lien payment.

MR. MORESI: Okay. Thank you.

MS. GARNER: Settlements between the parties.

MS. CAPLANE: And that sounds like something that you should take up with the Division of Workers' Comp.

MS. GARNER: Well, I -- and I totally agree, but here we're making regs. They're saying, "Well, there's no reg or labor code." That -- that was her --

MS. CAPLANE: Yeah, but that's sort of outside of our jurisdiction. But I'm just making a suggestion.

MS. GARNER: Okay.

MS. CAPLANE: Okay. Great. Thank you.

Okay. Now we have another -- another three people from CWCIA. I don't know if you all want to speak individually or

together. I've got Robert Duram, Duran -- Duram, Andrea Mariquez --

MS. MANRIQUEZ: Manriquez.

MS. CAPLANE: Manriquez, okay. And Iris Van --

MS. VAN HEMERT: Hemert.

MS. CAPLANE: -- Hemert.

MS. VAN HEMERT: Uh-huh.

MS. CAPLANE: Do you want to speak together or do you want to speak individually?

MS. VAN HEMERT: May we approach together?

MS. CAPLANE: Yes, yes. Although, you may have to bring your own chairs.

MS. VAN HEMERT: Thank you.

THE COURT: And I would ask that you just announce who you are before you speak.

MS. VAN HEMERT: Okay.

MS. CAPLANE: Or if you have cards, that would be great.

MS. MANRIQUEZ: We'll go slow.

MS. CAPLANE: Okay.

ANDREA MANRIQUEZ

MS. MANRIQUEZ: My name is Andrea Manriquez --

Would you like me to spell it for you?

THE COURT REPORTER: Please.

MS. MANRIQUEZ: Okay. M-a-n-r-i-q-u-e-z.

-- from the CWCIA, which stands for California Workers'

Compensation Interpreters Association. I just quickly want to comment on the IBR issue that's been raised today. We have already submitted comments, but I just want to draw a highlight to something significant about the IBR issue.

As we concur with the Board's initial statement of reasons, at the present time, Labor Code 4620(d) refers to the future adoption of a fee schedule for interpreter fees. There has been no fee schedule adopted with regard to our fees. Thus, until such a fee schedule is adopted, it would be inappropriate to impose regulations that cannot be implemented absent the occurrence of some future event. With that -- when that event occurs, further regulation may be addressed at that time, pertinent to that which exists, versus that which is merely contemplated. Therefore, the discussion regarding potential recourse to Independent Bill Review and how that might impact the treatment of interpreter fees as costs is in -- inapplicable at this time.

For at least the present time, we do concur with the Board's conclusion reached in the initial statement of reasons on page 8. Thus, even if the interpreter fee schedule had already been adopted, interpreters may still rely upon the procedures of Labor Code Section 5811 and are not obligated to proceed with an IBR procedure.

Furthermore, based on the ISOR, we concur that if Labor Code Section 139.5 refers to bill reviewers and there's

nothing really discussing about the training under Insurance Code 11761 regarding the standards for interpreter bill reviewers, we do call to question how can you really go through an IBR process for interpreter fees if qualifications and standards and trainings haven't even been adopted or implemented?

So furthermore, with something that was said earlier regarding the activation fees and filing fees, interpreters whole-heartedly -- our duty is to accurately and impartially translate oral communications and transliterate written materials and not to act as an agent or an advocate, and that's straight out of 4600(g). So if that's our role, we are a cost and not an actual medical provider, thereby not being a lien claimant.

MS. CAPLANE: Okay.

IRIS VAN HEMERT

MS. VAN HEMERT: Good morning. Iris Van Hemert, V-a-n H-e-m-e-r-t. I concur whole-heartedly -- whole-heartedly with my colleague's comments. 9795.2 of the regs specifically refer to an injured worker's right to access to a language professional, or in this case, specifically an interpreter. And in today's proceedings, it appears that interpreter services and copy services almost seem to be used interchangeably, and I think we can all agree that is not the case. To refer to an interpreter problem or that interpreters

plague the system or are a clog to the system, I believe, are without merit as it is a fundamental right to due process to avail oneself to the services of an interpreter. And as my colleague mentioned, we are the neutral party.

Some -- a speaker previously stated interpreters fall under vendors, and therefore are subject to liens. Per Webster's Dictionary, vendors specifically refer to office sales supplies or sales of office supplies. I don't believe that's applicable to interpreters in this setting. Therefore, I, too, agree that the Board's designation of interpreters as 5811 costs and therefore availing themselves of the ability to petition the courts for an order for costs is absolutely appropriate and would encourage the implementation permanently of such a reg.

Thank you.

ROBERT DURAN

MR. DURAN: Good morning. My name is Robert Duran, D-u-r-a-n, and I have more comments versus prepared statements. And primarily, it's why are we filing liens? You know, in a perfect world there shouldn't be any liens. However, there are disputes, and the dispute primarily has to do with payment.

Now, carriers have the right to object to our services. But what are the objections? One, was the treatment -- or was the interpreting reasonable and necessary to prove or disprove

the injury? But -- I'm sorry, but that's not our job. Our job is to act as an interparty between the injured worker and the provider. But yet, we're being asked to prove the necessities of the treatment, was it reasonable and necessary. Second, we get objections saying that we've filed the wrong national drug code or we've filed some other code that deals with medical providers. Next, we use the wrong billing form. There is no billing form for interpreters, so we get objections for that.

So what do -- what does this do? It delays payment. And therefore, we have one recourse: File a lien. Now, are we doing something wrong? I don't believe we are. We're doing due process. Now, the defense will come after us. One will impose sanctions, one will impose penalties or have our lien dismissed, everything in the world. But yet -- I have yet to see a single judge in any of the courts I've attended to apply a penalty or a sanction to the defense for frivolous delay of payment, for unreasonable objections. We're the ones that are put on the hot plate, not the defense.

Now, we always tell -- they're always talking about savings. The intent of the bill was to save money. Okay, where are these savings coming from? They're coming off the backs of interpreters, medical providers, copy services who have very small liens. Now, a 150-dollar lien activation fee sounds great, but if my bill is $200, I have to pay $150 just

to have -- to be before the Board, then I have to pay additional costs to have a representative there, to all these other things. Okay, I prevail. I won my -- I -- I win $200. But other than that, I've lost because of this fee.

Now, I do not believe that going through the Petition of Cost procedure is a way to get around, find the loophole or anything else like that. It's something, I think, that's long past due, and we are using that as a right to stay on the case and to see about getting payment. One of the former -- one of the previous speakers mentioned the fact that there had been a Petition for Cost filed, and then it delayed the case maybe two or three months. But she did say at the very end that the issue was rectified. Okay. Now, whether they rectified it at the original cost of the -- of the lien or not -- but it was rectified.

Now, my experience with going with lien conference is, one, you go to a lien conference, the defense will say, "Oh, well, we're not really ready. Could we take it off calendar?" Okay. What happens with off calendar?

MS. CAPLANE: Slow -- slow down.

MR. DURAN: I'm sorry.

MS. CAPLANE: Please. Thank you.

MR. DURAN: It goes off calendar. What happens to it? It falls into the abyss. Now, they're the ones that ask for it to go off calendar, so they're the ones who should be

filing the DOR to get it back on calendar. But that doesn't happen. Six months later, the bill is still sitting there. So we have to then go upon ourselves to file a DOR to get it back on calendar. You contact these adjustors. The adjustor will flatly tell you, "You don't like it, file a lien." So we file a lien, and now we are the red-headed stepchild because we dare to cross the line and file the lien. It's -- it's unnecessary.

I think if we could all sit down, get along and get these things resolved, you know, the -- the problem would go away. But as long as we're acting as adversaries and the whole thing, like I'm trying to watch my wallet and he's trying to watch his wallet, we're not gonna get anywhere.

But thank you for your time.

MS. CAPLANE: Thank you very much.

Maria Palacio?

MARIA PALACIO

MS. PALACIO: Good morning. It's P-a-l-a-c-i-o. And -- well, first, with all respect, I noticed a little while ago you asked the kind reporter, who we work with on a daily basis, if she was okay, if she's tired. Interpreters never get that. We are -- you know, I'm not saying it like, "Wha-wha, you know, poor us," but I mean your -- your mind is going, you know, over a hundred percent because you really -- it's just non-stop. Even when people take breaks, we still

interpret.

And what I have come to feel is almost like we're a necessary evil, and I hate feeling like that. And I shouldn't, but that's sometimes how I feel. I -- I -- I do belong to CWCA, but I'm here on behalf of just interpreters. I'm here for myself. We provide a legitimate service. And as an interpreter, I'm requesting, please, crystal clear clarity from the DIR, WCAB with regard to issues that have to do with getting paid for Board appearances, depositions, AME's, QME's, all these leg -- what we call "legals," or I call them "legals." So then, I don't have to spend so much time and resources on collecting.

I go to lien conferences to get paid for interpreting from -- and --- and I wish I could bring solid examples -- I don't know if it's allowed, but -- I mean from years ago with objections. I get objections, just like a blanket objection. Like, I might get one for a medical I did two months ago. And the same objection, exactly word for word, for two board appearances -- I'm thinking of one specifically that I did four and five years ago. I -- that's -- that's not right.

So I, too, have -- would like to illustrate an example as the previous attorney did. I have two examples. I interpret for an attorney who works in Southern California. I do his Board appearances. He had a Mandarin client. It was an accepted case, Mandarin language, and he asked me to provided

a Mandarin interpreter for it. I did, and several years went by -- I'll keep it short. Several years went by. I wasn't getting paid. Told the attorney. The case by then had resolved. I hadn't been paid for Board appearances and I hadn't been paid for any of the medicals at -- so he took the time, was very kind, went and argued, and we got an order from the judge: "You have to keep paying for this." We came to an agreement for payment. No problem. That was in September. I haven't received any payment.

I sent the interpreter for -- for medical for November, December, January, February, March and this month. The appointment was yesterday. And I said to the interpreter, "I'm sorry, I can't." So what's gonna happen? The patient for two or three months is not gonna get medical treatment because there's no interpreter. The attorney has to go back down to the Board. That's one example.

I have another specific case. Over the years I've interpreted a handful -- six, under ten -- maybe about six or seven cases for a school district, Board appearances only. Every time I get the objection the employee has to speak English if they're gonna work here. They don't need an interpreter, so -- the deposition was taken with an interpreter, the Board. And I have to go and -- and, you know, litigate that. So I'm going to the Board to fight for my liens, for something I don't -- I don't believe I should

have to.

Let's see. So anyway -- okay. So what happens at one board -- as they were saying before -- is really different than what happens at other boards. One judge says one thing, one says another. I've been dismissed because I didn't file my -- the -- the fee for board appearances. I mean it makes my hair -- it makes my hair curl, curled. And so, you know, I -- it's very odd 'cause I interpret on the stand, and I do, you know, Superior Court. I do other cases, and I never get nervous, but -- I don't know -- here, I am.

So, I'm almost done. I believe interpreters are being treated as lien claimants. I don't think that we should have to pay the lien activation fee for they type of appointments that I just said. I request for uniformity, consistency in the way that practice and procedures are applied, as well as enforce -- enforcement of the current Labor Code with regard to interpreters at these type of appointments.

And that's all I can think of. Thank you very much.

MS. CAPLANE: Okay. Thank you very much.

Anyone else sign in to make a comment?

BILL POSADA

MR. POSADA: I haven't signed in, but can I have a few words?

MR. CAPLANE: You've been --

MR. MORESI: If you identify yourself, yeah.

MS. CAPLANE: Yeah, identify yourself.

MR. POSADA: My name is -- my name is Bill Posada.

MS. CAPLANE: You'll need to spell your name also.

MR. POSADA: P-o-s-a-d-a. I'm from San Jose, California. We are an agency of interpreters. It's California Interpreters Network. I've been in business for 40, 50 years. Got involved in the interpretation field about three or four years ago. And as I process this interpretation field that we have and deal with this lien process, which is all new to us, and challenging, I ask you to please take a look at this. I share the same concerns as my colleagues, the interpretation -- but there's something in the regs there or in the guidelines that are missing. Big issue, just a big issue. The big issue is insurance companies are not (inaudible) to pay the bills, period.

THE COURT REPORTER: I'm sorry. Can you repeat that?

MR. POSADA: The insurance companies are not incentivized to pay their interpreter's bill. What happens? You submit an invoice much like my colleagues have discussed. They're rejected for frivolous reasons, and they're set. I suggest that in order to resolve this issue, you put a ten -- ten-percent penalty fee on insurance companies for not paying their bills when there's merit. And the reason for that is because they only understand money, okay? They want to pay as little as possible. The moment you tell insurance companies

"Pay the bill properly or you get penalized," they won't do that. I think that's a very important part of this discussion, just get incentivized insurance companies to pay the bills properly.

Thank you very much.

MS. CAPLANE: Okay. Thank you.

No -- okay. No further comments?

I want to thank everyone for coming today. I just want to comment a little bit on the process. This is obviously not an adversarial proceeding, and we rely very heavily on community input as we do our regulations, as was evidenced by the subpoena rate that we took a shot at before we filed our initial informal -- we did our initial informal posting, and we got such a huge outcry on that that we immediately dropped it.

The Board and everyone here, our industry professionals -- so you understand, we are a judicial body, and our job is to interpret the law and apply the law as developed through our regulations. Often, it comes where you know the intent of a law is one thing, but it says something different. And I think one of the best examples of that is what happened with 899 with the two years of temporary disability. I think we had an initial case which said that temporary disability -- you got it for two years from the date of the first payment because that was the very clear wording of the statute, and

people said, "No, but that's not what we intended. We meant two years within five." And it didn't matter because that's what the statute said, and that's -- our job is to interpret what is written.

You know, we -- I think that there are -- I don't know what will happen when we go back. I've -- your comments are very -- are well taken. We will absolutely consider them because we -- we spent a lot of time slaving over these regs already. We will spend even more time on them and, you know, that is a good time. But -- we will work on them, but we really are constrained by what the law says. And in some instances, the proper place to be addressing some of these complaints is with the legislature. And I expect that there will be -- as there was after 899, there will be some clean-up legislation with 863, so --

But I thank you very much for your comments. Anyone who has not submitted written comments that would like to, please make sure they are in by 5:00 today. You can get -- if you need the e-mail address, you can talk with Rick Dietrich or Neil Sullivan, and they will give you the e-mail address where you can send them. We will be getting a transcript of this, but I think that written comments are very, very helpful to us, so --

(Whereupon a discussion was held off the record.)

MS. CAPLANE: EAMS is a problem. You know -- I mean --

MS. SWEENEY: There were some very good suggestions today, for example, that when you file your DR, you file a DR, that the case not be set unless the required fee is also paid. Those kinds of good suggestions EAMS does not allow because it's EAMS.

MS. CAPLANE: Well, EAMS is also -- let me -- to be fair, EAMS is a work in progress, and -- you know, as we are coming up with new issues -- they can't anticipate everything, so as things come up we bring them to the attention of the IT people. And they are constantly working on modifications in EAMS, so we hope that some of these problems will be cured.

So, thank you very much for coming, and we are going to adjourn now. And if anyone -- we'll put a sign on the door after -- if anyone has any more comments after 1:30, they need to come up to the ninth floor.

So, thank you very much.

(Whereupon the public hearing concluded at 11:45 a.m.)

--o0o--

REPORTER'S CERTIFICATE

I, JULIE A. EVANS, Official Hearing Reporter for the State of California, Department of Industrial Relations, Division of Workers' Compensation, do hereby certify that the foregoing matter is a full, true and correct transcript of the proceedings taken by me in shorthand on the date and in the matter described on the first page hereof.

Julie A. Evans
Official Hearing Reporter
Workers' Compensation Appeals Board

Dated: April 19, 2013
San Francisco, California