

Public Comments and Feedback on  
“Formulating a Copy Service Fee Schedule,”  
Berkeley Research Group, October 2013

Received by October 15, 2013 to  
*The Commission on Health and Safety and Workers’  
Compensation (CHSWC)*

My initial response when I first reviewed the recommendations by the *Berkeley Research Group* was one of total disbelief. There appear to be many assumptions made in their research that, for those of us in this industry understand, do not add up. First and foremost - we are not *only Copy Services* but have evolved into Litigation Support Services that today, perform many of the tasks previously handled by Defense Attorneys and Examiners.

And I for one would love to review my monthly P & L statement knowing that my only fixed overhead/cost of doing business would be limited to "Rent and Utilities!!

We will be represented at this hearing next Thursday – with an open mind – hoping that logic and strong business decisions lead the way to reform. But, as we all know, "Hope is not a business strategy". We must be prepared to present the facts and obstacles all of us overcome on a daily basis to help defend work comp cases in California.

I hope to see many of you in attendance on Thursday.

Sincerely,

Jim



James (Jim) Naley

President

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Hello,

I think that having a fee schedule would be EXTREMELY beneficial. This would free up time for us to be able to actually handle claims and process them rather than spend unnecessary time negotiating liens that should not be liens.

Right now it is such a struggle to deal with copy service liens and payments. It is hard to believe that I can be charged \$157 from one company for copy services and over \$500 from another company for the same thing.

It seems that it would be fair for everyone to come up with the standard so we can all just pay the bills and do our jobs.

Thank you!

**Shannon Tamtreg**

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I have read the report, which made curious about comps (prices on comparable legal copying service). My research led me to the DWC web site dealing with Public Records requests. There it states that the DWC charges \$1 per page to copy Public Records and \$3 per page for transcripts. The price drops to 10 cents per page for injured workers.

If the administration were to approve a \$103 for up to 1,000 pages for copy services, a reasonable person might ask why the DWC needs \$1 per page to cover its paper, tone and employee time. Isn't 10 cents per page sufficient to cover materials and labor?

If the answer is no, then the DWC should re-consider the proposal to pay the same 10 cents per page to the copy service businesses providing discovery materials in litigated workers' comp cases.

The DWC copy price for Public Records is found online at [https://www.dir.ca.gov/dwc/PublicRecordsAct/PRA\\_Guidelines.html](https://www.dir.ca.gov/dwc/PublicRecordsAct/PRA_Guidelines.html)

CompRob

Legal services provider

Oxnard, Calif.

If you use the fee schedule as mentioned on that report you will be responsible for promoting poor discovery. Potentially higher discovery costs if all this is done by an attorney. There is no way good professional work can be done for that amount of money when you add all the costs associated with retrieving records.

If this goes through many people will be unemployed.

Steve Pineda

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Hello,

I have been spending some familiarizing myself with S.B. 863, California Labor Code 5307.9 and the recently released report from Berkeley Research Group.

I am interested in finding out if S.B. 863, California Labor Code 5307.9, and/or Berkeley Research Group intend to have a maximum fee schedule for copying and related services apply to copy services working for the defense side or if the maximum fee schedule is only going to apply to the copy services working on the applicant side.

Any help will be appreciated.

Regards,

**Mike Arth**

**The MERJANT Group**

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## Med-Legal, LLC

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October 11, 2013

Mr. Martin Brady, Chair  
Commission on Health and Safety and Workers' Compensation  
Department of Industrial Relations  
1515 Clay Street, 17<sup>th</sup> Floor  
Oakland, CA 94612

**RE: Med Legal LLC position on The BRG Study "Formulating a Copy Service Fee Schedule for the California Division of Workers Compensation"**

Dear Mr. Brady,

I am writing on behalf of MedLegal to provide comment on the Berkeley Research Group Report related to California establishing a copy service fee schedule for workers' compensation payments. MedLegal appreciates this opportunity to respond to the BRG report and share with the Commission the positives about the report and areas where the BRG report falls short.

MedLegal is pleased to see that BRG's draft report on the SB863-required copy service fee schedule not only recommends a simple fee schedule for copy services serving the applicant attorney and the injured worker, but also identifies unnecessary friction in the system and highlights additional system-wide changes necessary for the DWC to properly implement such a change. The BRG report is on the right track on both counts.

MedLegal strongly supports BRG's opinion that it is essential to break the vicious cycle of inefficiency regarding the services and fees for copy services in the workers compensation system. In this case, the report recognizes the friction (and costs) of the repetitive objections and the non (or late) payment cycle often promulgated by the defense; by proposing a tiered fee schedule deeply rewarding timely payment. Likewise, the report also describes the various pricing techniques copy services have been

forced to use to effectively cover the cost of such system inefficiencies. The BRG report has it right. There is fault on both sides and both should be subject to correction.

It is the position of MedLegal that an accurate, reasonable, clear, absolute, and prescriptive fee schedule, together with tighter regulation regarding same, and thereafter mindful enforcement by the WCAB will best eliminate the identified friction and is the best course of action at the DWC. The BRG report provides the DWC a solid foundation for starting that process, subject to adjustment and correction at the direction and discretion of the DWC. MedLegal believes such adjustment is warranted given that the BRG report did not fully evaluate or include the costs of applicant copy services, and has utilized inaccurate data to determine an appropriate (timely payment) lump sum rate for the copy services fee schedule. The following identifies the few key areas where BRG fell short in their analysis and recommendations.

**Payment Value must accurately reflect California costs for applicant copy services**

While MedLegal is strongly in favor of encouraging proper behavior and improving system efficiency; the proposed (timely payment) reward cuts too deep. The BRG report proposes that 'timely payment' (payment within sixty (60) days) be rewarded with a discount from what the BRG report positioned as the established fair market value for applicant copy services. Though well intended, the reward may be too deep; with timely payment 'rewarded' with a 'discount' of \$147.65 (\$103.55 if paid within 60 days (the 'frictionless' price) or \$251.20 (the 'with friction' price) if paid after 60 days). It is just not realistic to believe that all of the friction is a result of a short 60 days on the calendar, is solely associated with 'collection' or 'payment' friction, or even that \$147.65 of the friction will disappear on the basis of an established fee schedule. It is much more likely that the answer lies somewhere in-between.

Further, it is not clear if the proposed lump sum fee is consistent with the requirements of LC 5307.9 (as specified in SB 863), which requires that, *"on or before December 31, 2013, the administrative director, in consultation with the Commission on Health and Safety and Workers Compensation (CHSWC), shall adopt, after public hearings, a schedule of reasonable maximum fees payable for copy and related services.* In the case of the timely payment, the lump sum fee proposed (\$103.55) is even less than the mean reported for the defense-based copy services.

Fact is, regardless of when payment is made, applicant copy services have a deeper (and more challenging) record production burden than do defense-based copy services. Employers, carriers, and the defense have deeper and more direct knowledge, information, and access to the records necessary for discovery. Often, the records are 'known' and easily 'delivered'. On the applicant side, such records must be 'discovered', and even then, production (retrieval) of such records often must be 'compelled' (at considerable cost and effort). On this point, MedLegal believes that at least half of the friction (identified by BRG at a value of \$147.65) is actually reflective of the extra burden and effort of the applicant copy services in completing discovery and compelling retrieval of records and not solely the result of costs associated with payment and collection disputes and delay.

Taking these points together, MedLegal believes the lump sum fee proposed in the BRG report is not consistent with the requirements promulgated in LC 5307.9 and must be increased.

**Data utilized to determine payment not relevant to the larger California workers compensation system or applicant copy services**

*Use of limited defense data*

The data represented in the BRG report related to defense-based copy services – positioned in the BRG report as reflective of the fair market value of a copy services in California – is deeply limited (with only 1,657 transactions); and even then the context is likely incomplete and inaccurate given that; 1) 470 of these transactions (over 25%) were identified as ‘CNR’ (or no records found) where the costs therein are not at all reflective of the work to actually retrieve and copy records, and 2) seemingly the source of such transactions was from a (very) limited source likely related only to certain self insured’s where more visibility (and likely deeper (frictionless) access) to the records is a given. With the utilization of these defense copy data, the lump sum payment that BRG recommends is entirely too limited, inaccurate, and not at all representative of the industry as a whole. MedLegal believes that the ‘real world’ comparable for even defense-based copy services is meaningfully higher than that reflected in the BRG report.

*“Other state” data not relevant to California workers’ comp system*

MedLegal takes exception to the inclusion of ‘comparables’ from other states data in the BRG report. This just ‘missed the mark’ and is likely irrelevant (and not comparable) to the workers compensation industry in California. Clearly, just the costs, geography, population, and regulatory environments are so deeply divergent that even the thought to compare them is deeply flawed. Further, the data collected therein seems more reflective of a cost (or input) to the process (what is allowed for the ‘release’ of information) versus what is an allowable cost of the ‘collection’ of such information. And, none of it is directly related to the workers compensation environment itself. Finally, six (6) of the sixteen (16) links included are ‘broken’ and cannot even be verified as to the source or content or value.

*Calculations of profit are incomplete*

The calculations related to profit are incomplete. Even if it were reasonable to include them at the values represented, the math to adjust the calculations for profit and overhead is incomplete and arrives at a value more representative of ‘mark up’ versus ‘profit’. Calculated correctly, the ‘comparable’ result would be meaningfully higher.

**Fee Schedule Should Provide Payment for (Copy) Related Services**

The BRG report recognizes that applicant copy services provide certain services directly related to the retrieval and copying of the records necessary for the applicant attorney to properly represent the case. The required services include; preparing and serving copies of a subpoena on all known parties, personally serving the subpoena on the witness, and paying the witness the statutory witness fees then required by the custodian of the record(s).

BRG does recognize that the fee schedule recommended does not include payment for such services, and that the DWC should supplement the fee schedule for/with same. Here, MedLegal strongly agrees

with BRG. And, this also is required by LC 5307.9 which specifies that *the administrative director shall adopt a schedule of reasonable maximum fees payable for copy and related services*. Clearly, with the BRG report noting that the lump sum payment does not include payment for such related services, the DWC must include and specify such amounts in any final fee schedule.

For the avoidance of doubt, MedLegal thinks it important to make clear that such related services are necessary and required to properly and fully research, secure, retrieve, copy, and protect the integrity of necessary records in accordance with the rule of law and evidence. Clearly, BRG is supportive of such concepts, even suggesting that personnel (and possibly copy services directly) should be 'registered' and required to perform to certain standards of professional conduct. MedLegal strongly agrees. Of course, with this being required, DWC must adjust the fee schedule to include and specify appropriate payment for such fees.

MedLegal proposes only a modest and reasonable charge for such services including; 1) twenty dollars (\$20.00) for researching and preparing the subpoena for service, 2) thirty-five dollars (\$35.00) for the actual service of the subpoena (as provided in Government Codes 26721 and 26720.9) and 3) twenty dollars (\$20.00) for researching and preparing payment of the then required statutory witness fees (in addition to those fees subject to State Evidence Code Section 1563); together for a total of seventy-five dollars (\$75.00).

#### **Lump Payment proposed does not recognize specific applicant copy service costs**

Unfortunately, the BRG report also misses one or more of the key cost drivers experienced by the applicant copy services in retrieving and copying records. Without question, the system is complex and (often) opaque, and it is not surprising that BRG modestly missed the mark here. These (modest) oversights can be easily corrected.

First, no provision is made for locations. Rather, the BRG study references the term 'copy set' seemingly indicating that a 'copy set' is associated with just one location. That is often not the case, where a 'copy set' (in BRG report terminology) is often only assembled upon visit and work at multiple locations. Having the lump sum payment (as increased) applied to each 'location where records are requested' would be an appropriate (and incremental) adjustment and reflective of the actual costs, effort, and results.

Second, no provision is made for the size (page counts) of the records retrieved and copied. While the BRG report positions that this is covered (on average) in the 'lump sum' payment (up to 1,000 pages), MedLegal questions if that sets all the proper incentives to produce the most complete set of information in support of the injured worker. Surely, some per page payment is appropriate. Both applicant and defense based studies focused on 'average' page counts (per record set) in the range of 100 pages. Perhaps the lump sum payment (as increased) should be limited to 100 pages, with an appropriate per page accelerator thereafter.

### Summary and Recommendations

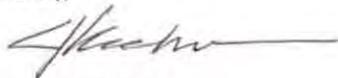
Overall, MedLegal is encouraged by the work of BRG. It is a step in the right direction. They have taken on a challenging subject and put some reasonable and foundational perspective in place. Given the complex nature of the industry, and all of the frictional complications therein; it is not surprising that they have missed the mark on just a few of the elements. In particular the following elements bear additional analysis and adjustment.

- Because the timely payment reward is too deep, based on data that is not relevant to the California workers' comp system and applicant copy services, and because all the 'friction' was wrongfully attributed to only payment and collection activities, the proposed lump sum payment recommended in the BRG report must be increased, to meet the intent of LC 5307.9 and assure a successful review by the Office of Administrative Law, and
- There is clear need for the DWC to provide appropriate payment to applicant copy services for the related (and required) services as indentified by BRG within the parameters of the final fee schedule, and as required by LC 5307.9, and
- A stronger connection between actual costs of retrieval (location) and actual costs of production (per page) is recommended.

With the changes outlined above, BRG, CHSWC, DWC, and DIR will be on the right track. It is encouraging to see the DWC move so aggressively to implement SB863 and to do so mindful not only of the direct economic costs, but also the indirect costs of friction. With some modest adjustments to the economic models proposed in the BRG report, some additional (regulatory) steps by the DWC to eliminate friction, and finally with thoughtful (and meaningful) enforcement of both by the WCAB; MedLegal believes that the copy service ecosystem can be improved, and overall costs (significantly) reduced. Taken together, this will put the system in a stronger position to better serve the whole of the California Workers Compensation System.

Please contact me if I can provide you with any further information at 800.244.3495 x 101 if by telephone, or on [greg@getrecords.com](mailto:greg@getrecords.com) if by email.

Sincerely,



Gregory S. Webber

Chief Executive Officer, Med Legal LLC

Cc: Members, Commission on Health and Safety and Workers' Compensation  
Lach Taylor, Acting Executive Officer, Commission on Health and Safety and Workers' Compensation  
Christine Baker, Director, Department of Industrial Relations  
Destie Overpeck, Acting Administrative Director, Division of Workers' Compensation



# SUNDANCE COPY SERVICE

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October 10, 2013

Commission on Health and Safety and Workers' Compensation (CHSWC)  
1515 Clay Street, 17th Floor  
Oakland, CA 94612  
Fax at (510) 622-3265

Re: Formulating a Copy Service Fee Schedule for the  
California Division of Workers' Compensation

Dear Gentlepersons;

I am a small business owner of a defense oriented copy service. I have been in business since 2001. I just reviewed your commissioned study on "Formulating a Copy Service Fee Schedule for the California Division of Workers' Compensation." The study results and recommendation are absurd. A flat fee of this small amount will put us all out of business and will drive up legal costs for the insurance carriers. Attorneys' will bill insurance carriers at \$300.00 plus an hour to do the same work. I strongly believe the results of this study will increase costs for the insurance carriers in the long run and defeat the purpose of this legislation.

**There are several things your study has failed to consider:**

File Set up fees: This fee is for the clerical work and input of all information on a claimant, parties involved and billing information for the client. As well as making multiple telephone calls to all parties involved. We do not charge extra for telephone calls.

Charges for "Bate Stamping of Records" (numerical numbering), which most of our clients require, is not considered in this flat fee. When pages are numerically stamped it makes for easy reference for the attorneys and all parties referring to the records.

Most attorneys' still prefer their records by way of a hard copy. This allows them to easily reference specific pages with tabs while in court or at a deposition. It is difficult to pull out your lap top and skip from page 3 to page 765 to page 52 in just a second and then page back and forth.

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

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rate but will not be held to the same flat fee and can charge whatever they want per page. Thus, making legal costs increase for carriers.

There are no allowable fees for Research when we are more often than not only provided a doctors name or a business name and have to do extensive research to locate the business to prepare and serve a subpoena.

We are required by law to personally serve each location on the subpoena. This requires a process server to physically drive to each location and serve the subpoena. When the records are ready we have to drive back to the location and copy the records. Are we going to be allowed to charge for these trips? We have to pay a process server an hourly rate or a flat fee, gas reimbursement and wear and tear on the vehicle and insurance.

Subpoenas for Personal Appearances require us to attempt physical service three times. Which means driving to the location on three different days. We then have to send the subpoena via regular and certified mail to the person being served as well as to serve the notice on all parties involved.

Does your flat fee include shipping and handling to all parties? We pay an extensive amount in shipping fees. Records are shipped via US mail, UPS ground and overnight mail. Sometimes drivers deliver records in rush situations. This is at the direction of the client.

A \$5.00 flat fee for electronic records is not reasonable. First the records have to be copied and then printed so we can bate stamp them and then they have to be scanned into the system. A \$5.00 fee is not reasonable for the manpower involved.

What about fees for clients that request their records on a CD. I did not see an associated fee. We have to pay for the CD we provide.

You should also focus on 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 workers' compensation if they fail to comply and honor 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. They take an average of six to nine months to comply with providing records. Blue Cross takes several months as well as Kaiser Permanente.

The statement in the report that refers "To ensure that copy services are not issuing subpoenas without attorney knowledge, we recommend consideration of a requirement

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that each attorney who requests the issuance of a subpoena file a declaration that the subpoena is issued in good faith is not duplicative and the records sought are necessary to the litigation of the applicant's claim." This is not a necessary step. First, it will cost our client's more in legal expenses and again defeat this legislation. Second, a party cannot admit records into evidence that the other party was not notified of.

Thus, it would not do a party any good to obtain records that they could not admit into evidence to defend their claim. That is why we are required to serve notice of any and all subpoenas to all parties involved.

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.

I would have appreciated being considered in the study. Your samplings appear to be from two extremes and no averages in charges as a happy medium.

This study 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 any of my staff.

Lisa A. Moore  
President  
Sundance Copy Services, Inc.

I agree with Debra Hinz on this issue.

Applicant copy service costs are out of control and the entire reason this is such an important issue. For what it's worth – it's been my experience that a fair and reasonable value is \$100 per location + \$0.35 per page. Most applicant copy service companies seem to accept this amount without further dispute and those that do dispute it have, for the most part, failed to take it further than harassing phone calls, which tells me it's fair and not worth litigating.

Anxiously awaiting this new fee schedule....

Thanks!



**Eric Blair** | *Senior Claims Adjuster*

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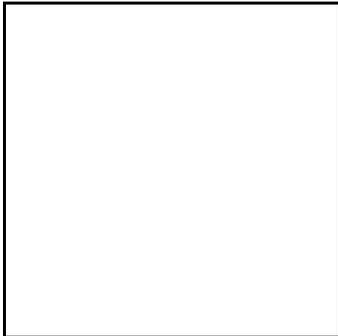
**From:** Debra Hinz [<mailto:Debra.Hinz@yahoo.com@mail25.wdc03.rsgsv.net>] **On Behalf Of** Debra Hinz

**Sent:** Thursday, October 10, 2013 9:24 AM

**To:** Eric Blair

**Subject:** New Photocopy Fee Schedule-Will hurt the Workers' Compensation Industry





# The New Photocopy Fee Schedule

***Is very bad for the workers' compensation community! We need everyone to get involved by sending a simple email.***

Debra Hinz is a photocopy bill review expert, co-author of Gaining Cooperation with the Injured Worker, public speaker, founder of the Association of Insurance Professionals in San Diego, CA. She also puts on educational events for the workers' compensation industry.

Contact information:

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[Debra.Hinz@yahoo.com](mailto:Debra.Hinz@yahoo.com)  
760-613-4409

I hope that you will join me by sending a simple email to Commission on Health and Safety and Workers' Compensation stating your opinion on the fee schedule and how it will impact the industry.

Their email address is: [chswc@dir.ca.gov](mailto:chswc@dir.ca.gov)

If possible send your

If you have not read the new fee schedule being proposed by Berkley Research Group, let me be the first to tell you. BRG obviously did not understand the scope of what copy services do. Which is the real reason that this fee schedule cannot be considered in any way, shape or form. In a nut shell, BRG believes a flat fee of \$103.55 is sufficient payment for photocopies up to 1,000 pages. If payment is not made within 60 days, the cost goes up to \$251.20.

The fee schedule, at first, seems like a great and wonderful thing for the insurance companies, TPA and Self Insured's, until you start to take a closer look and realize that there are many unintended consequences, the most obvious to me are:

- Both applicant and defense copy companies will go out of business or no longer service the workers compensation industry. The pricing does not account for all of the work that is required in order to retrieve the records, much less the cost of running a business, paying for workers' comp. Insurance, payroll and the list goes on and on. *Leaving the claims handlers with a huge problem of how to get the records timely.*
- The insurance companies, TPA's and self insured will be *force to accept every claim because they are not able to gather*

company representatives to the meetings on Oct. 17th, 2013.

*the evidence to dispute the claim.*

- The new fee will actually driving up claims costs because attorneys will have to prepare and serve subpoenas and track down documents.
- Copy companies that do not immediately stop servicing the workers' compensation industry will not be able to produce records with binding, tabbing, or even numbering the pages. It just not cost prohibited. For those that try to stay in business will product a substandard work product and eventually close their doors.

If you take a moment to run the numbers you will find it is impossible to stay in business with the new fee schedule and this will have a negative impact to the workers' compensation industry as a whole!

This fee schedule does not do what it originally was intended to do, which was to reduce the cost of applicant photocopy bills. At no time was the cost of defense copy service pricing ever thought to be unreasonable or unfair, why wouldn't the Berkeley Research Group take into account what is working in the state of California and use that as a guideline? According the their report, they had over 1600 defense invoices to use as a launching pad. Instead, BRG has suggested the most ridiculous solution possible. Even high school students could have come up with a better solution than what has been suggested by BRG.

I said it before and I'll say it again, ***BRG obviously did not understand the scope of what copy companies do. Which is the real reason that this fee schedule can not be considered in any way, shape of form.***

I need your help in this matter. Please send an email to the Commission on Health and Safety and Workers' Compensation stating your opinion on the fee schedule and how it will impact the industry.

Written comments must be made by October 15, 2013 That's only 3 days away!

Send your email to: [chswc@dir.ca.gov](mailto:chswc@dir.ca.gov)

[http://www.dir.ca.gov/chswc/PublicCommentsAndFeedback.h](http://www.dir.ca.gov/chswc/PublicCommentsAndFeedback.htm)

If you would like to attend the meeting, information is below.

**October 17th, Thursday, 10am**

Elihu Harris State Building, Auditorium

1515 Clay Street, Oakland, CA

The meeting agenda is attached.

Kindest Regards,

Debra Hinz

**ad:**

**the new rates only further the control that carriers have. they are attacking copy services as if copy services were not officers of the court and not valued legal support personnel.**

**the proposed rates encourage lowskilled people to copy documents, instead of professionals. the rates only cheapen the quality of legal support services.**

**this erosion is part of the nationwide campaign of carriers to put work injury costs onto the public**

**a) mentally disabled workers have to turn to state and federal funds based on draconian elimination of compensation for mental illness**

**b) paltry pd rating schemes, not rating tables, also put work injury costs on the public. any doctors who determine true alterations/limitations of adls are bumped from mpn contracts and sent packing**

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To whom it may concern,

Due to the recent release of the proposed copy service fee schedule by The Commission on Health & Safety & Workers' Compensation, many questions and issues have arisen. As a result of this, Appleby & Co. has developed, for your review, questions as well as a practical recommendation for how to move forward and formulate a copy service fee schedule that would be satisfactory to all, from the claims handling teams to the defense oriented and applicant oriented copy services alike.

1. According to Section E. Registration Requirement, it states that copy services "...must carry an identification card issued by the county clerk...". Does this suggest that each copy-operative must register in every county that they perform work in? It is Appleby & Co.'s understanding that the private investigator license that Appleby & Co. currently retains should supersede this requirement. If each copy-operative is required to register in every county, then it becomes extremely cost prohibitive and unrealistic for any copy service to provide adequate statewide service.
2. The data that was utilized by the Berkeley Research Group in performing their "in depth" study of copy services fee schedules on a nationwide basis is faulty and inaccurate. First of all, the cost of living in California is higher than many of the sixteen states mentioned in the draft. Also, it appears that in many of the exhibits shown, the data that is supplied is based on medical claims processing services, the entertainment industry, grocery industry and the insurance industry and not the appropriate copy services industry that should be under review in this draft. Why is there a massive variance between the observations that were cited for defense copy services (1,647) versus applicant copy services (598,342)?
3. Applying the recommended flat fee schedule of \$103.55, does not take into account other services that many defense copy services and applicant copy services offer to their clients. These additional services include: subpoena preparation, subpoena service, x-ray films, x-ray breakdowns, notices to additional counsel, shipping/handling of paper records, additional research for source locations, charting, color photos, EDEX searches, records summaries, file prep work, pagination, rush services, etc.
4. The expectation of payment within 60 days or else the fee increases, is not pragmatic. How will this be enforced by the Department of Insurance, Division of Workers' Compensation and/or The Commission on Health & Safety & Workers' Compensation? If the defense copy services attempt to collect the increased fee after the 60 days, it would just upset the clients that are providing them with the business and most likely push them to utilize another company. If the applicant copy services attempt to collect the increased fee after the 60 days, it would probably prompt the adjuster to pay the initial flat fee of \$103.55 and cause numerous liens to be filed for the late fee portion of the invoice.

Request for consideration to The Commission on Health and Safety and Workers' Compensation (CHSWC)

Considering the fact that SB 863 proposes a new fee schedule for copy services to be adopted by December 31, 2013 and considering that the report by the Berkley Research Group is without any industry specific information or facts, Appleby & Co. believes that, we, as leaders in the California workers' compensation copy service industry and those who are in the trenches securing the records, should take the lead and fashion a realistic and universally acceptable copy service fee schedule that would provide the WCAB with the equivalent of ICD-9 codes used in the medical industry and maximize pricing allowed per service for the defense and applicant copy services. Appleby & Co. further believes that all matters, with some cooperation from insurers and the State of California workers' compensation division, can be completed by the end of the calendar year deadline.

Appleby & Co. believes this can be accomplished in a 3-tiered fashion as follows:

1. A select group of parties that are representative of defense copy services and applicant copy services should establish reasonable maximum pricing for each individual type of service based on experiences throughout the State of California. This would allow for a small, but reasonable profit that will be agreed upon. Of course, copy services may continue to contract based on volume or other considerations at a lower rate with insurance companies, TPA's or self-insured's. It would still not exceed the maximum prices as set forth under the official copy service fee schedule that is to be established by the select group.
2. Once the pricing is established, a group of representatives from the defense copy services and applicant copy services, can meet and discuss the pricing with a selected group of representatives from insurers/TPA's/self-insured's and explain to them why the figures are reasonable and justifiable. An agreement should then be able to take place allowing a settlement as to a fee schedule.
3. Finally, if cooperation is received and the scheduling of the meetings takes place within a reasonable time window, the new copy service fee schedule will be presented to the Division of Workers' Compensation and The Commission on Health & Safety & Workers' Compensation for final approval in time to meet the deadline of December 31, 2013.

This would eliminate the need for the vast majority of lien service hearings involving any copy service, something which, I am sure we all would agree, has turned into a burdensome and onerous task for everyone involved. Thank you for your time. I look forward to the oral comments at the meeting on Thursday, October 17, 2013.

Steven J. Appleby | President

**APPLEBY & CO., INC.**

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I have reviewed the proposals for the copy service fee schedule, and in my experience, this proposal will make injured workers suffer as a result of delayed discovery, and render an entire service industry of copy servicers obsolete. .

Without the records needed in a delayed, denied or litigated claim, we are compelled to deny or perpetuate the denial to protect my rights os the insured parties. Thus, without adequate timely discovery, many injured workers will have direct consequences as a result of this inadequate compensation for services to be rendered.

Law of supply and demand states that if you pay less, less providers will do so. The entire industry will suffer at this low ball rate. Less providers to provide slower results due t const containment.

As a claims professional I cannot endorse this proposed fee schedule.

Respectfully

-Brian Arnold

Sr. Claims Examiner, WCCP - Fireman's Fund Insurance Company

Vice President 2013 / President 2014 - Valley Industrial Claims Association ( Not for Profit Education Provider)

Brian Arnold | Sr. Claims Examiner, Workers' Compensation, WCCP | **Fireman's Fund Insurance Company**

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## NOT EVERYTHING IS BLACK AND WHITE

I am writing this comment because my family was part of the Workers Compensation System.

I work for a Legal Photocopy Service and my husband was injured at work and due to this injury I was able to see how an **unrepresented** person in the system works. I witness for myself as we waited patiently for 2 hours at the specialist office hoping to get some answers to what was causing the pain in my husband's back, we got called in, he was asked to touch his toes and the standard questions, then the doctor informs us he did not get the MEDICAL RECORDS and he would need to come back!

The date of injury was 10-29-10 and settled on 11-18-12, after the settlement I requested the medical records and to our surprise three of the treating doctors recommended additional physical therapy which the claims examiner did not approve, they all agreed he would need possible future surgery. I felt the settlement did not cover the cost of any future specialist or surgery. My husband being, unrepresented was not fully informed of his injuries.

Allowing the patient to get their own records from their doctors is not reasonable, is the patient able to drive, in my husband case he was medicated. Allowing the patient to request their own records could cause patients to become Dr. Oz, having their own ideas how to handle their care.

I know you may think records are just a small part of this industry, I worked for a copy service that our industry would be consider at the higher tier for the services provided and I now work with a Professional Legal Photocopy Services Registered & Bonded and is considered to have reasonable rate for the services provided, with that being said my job with both employers was in the collections department for over 8 years.

Here are my issues as Collector:

No matter the price being charged by both employers the industry had a standard response, your prices are unreasonable, duplicative, unauthorized, claim is accepted, the claim is denied and the best answer "THE CLAIM IS NOT SETTLED" and I cannot settle your invoices, Please file your lien price to file \$150.00 the bill is \$147.00.

Following up on partial payments: response from carrier: My bill review will not allow me to pay anymore on this bill: Example: Bill \$147.00 amount okay could be 10% to 15%.

Closed Cases:

The "CLAIM IS CLOSED IN OUR OFFICE" - file a D.O.R. so we can re-open the cost \$100 and the bill is \$147.00

Correspondence and calls go unanswered, claims are moved from carrier to carrier changing the claim number, NO handling claims examiners assigned, carrier is not represented and the defense have closed their file. The carrier's now has a scan centers in a different address or state. It sometimes takes 20 to 30 days to scan and put the information in the right hands to be reviewed before the hearing and now a new hearing date will need to be assigned.

Case search from EAMS has not been updated by the parties to reflect their correct information.

See you in court, my thought the carriers is the "HERO" in the eyes \$\$ of the WCAB, for each lien claimant they bring to the table at \$100.00 or \$150.00 to attend, what cost do they have to pay to use the same court room to respond to their issues.

Now at court you would think the fee would allow the judges to order penalties and interest from the carrier for lack of payment and using the court's time with issues that did not require their services. I have been contacted by the defense after a lien conferences ready to settle and they would like to resolve without going back to the next hearing, this time forgetting they have asked me to put this on calendar and would like settle for the demand that was given to them 2 years ago with the lien fee excluded from the cost, or my favorite I have a FULL STIPS & I am still unable to collect from the carrier or have WCJ order reimbursement of the activation fee.

BRG has published a price that they feel substantiates the cost of 1000 pages of medical records, but what they fail to include in their cost is the expertise to provide quality and delivery of these records in a timely matter or the manpower to collect for the services provided.



October 14, 2013

State of California Department of Industrial Relations  
Commission of Health and Safety and Workers' Compensation  
1515 Clay Street 17<sup>th</sup> Floor  
Oakland, CA 94612'

Commission Members,

Macro-Pro, as a defense only document retrieval service, has for more than three years educated the insurance community regarding fair pricing for applicant copy services. Macro-Pro performs Applicant Copy Service Bill Review, over 11,500 to date, for our defense clients and we are often called by the defense as expert witnesses in lien trials.

The Formulating a Copy Service Fee Schedule for the California Division of Workers Compensation report submitted by Berkeley Research Group is based on data which is not applicable to the issue and is flawed. The recommendations of this report are shocking to us. We know what it costs to perform the services required of defense firms and what is fair and reasonable for the applicant side.

The basis of the Berkley Group's recommendations is data drawn from 16 states. However, if one reviews the statutes of those states, it soon becomes apparent that every statute from every state speaks to payment made to a hospital or medical facility for pulling their file and making a copy of a patient's records. In California this fee is called a Witness Fee or Custodial Fee.

There is no relationship between this fee, representing the work performed by the medical facility custodian, pulling a file and copying the records, and the services provided by a document retrieval (copy) service. The applicant document retrieval company must perform at least 23 different steps from the time a request is received until it is completed. To compare applicant document retrieval services to the medical facility custodian of records is to compare a horse to a palm tree. There is simply no correlation between the two.

The recommendations, by the Berkeley Group, of a flat fee of \$103.55 for up to 1000 pages(!) does not even come close to covering the costs incurred by a defense or applicant document retrieval service in the performance of their legally-mandated duties.

Additionally, the report simply ignores the per page fee required by the statutes in the 16 states reviewed. The average per page fee to be paid to the custodians in these states ranges from \$0.89 per page for 1-10 pages to \$0.52 per page for 401 pages or more. Interestingly, the Berkeley report goes on to recommend that the total fee for services and up to 1000 copies be a flat fee of \$103.55.

***Macro-Pro*** ♦ P.O. Box 90459 ♦ Long Beach, CA 90909-0459 ♦ (800) 696-2511 ♦ Fax (888) 696-2270

Based on the data used by the report the cost per 1000 pages should be a minimum of \$520.00 (Exhibit 2(d)). Where did the \$103.55 recommendation come from? It certainly did not come from the "data", Sources and Notes, Exhibit 2(d), cited by the Berkeley Research Group. All page fees of California applicant document retrieval services are less than the statute-mandated fees cited by the Berkeley Group in the state data comparison.

The report, which is based on data and assumptions such as using medical claims processing services as "most analogous to workers' compensation copy services", is neither fair nor reasonable to the applicant document retrieval companies. It is not remotely feasible for them to provide all the services, equipment, technology, labor and other services at the rates cited by the report.

Macro-Pro as a Defense Only Document Retrieval Corporation proposes a data-based recommendation for applicant attorney copy service pricing. This pricing has been successfully used by the defense and Macro-Pro defense expert witnesses in lien trials. It is fair and reasonable to the carriers and self-insured companies and the applicant and not detrimental to either.

1. \$40.00 Base or Basic Charge,
2. \$15.00 for a trip to serve and \$15.00 for a trip to copy,
3. \$10.00 for creating the subpoena or other document,
4. \$5.00 for noticing the carrier or defense counsel,
5. \$2.25 (15%) check fee charge,
6. \$15.00 witness fee,
7. \$5.00 pagination for 25 pages or more,
8. \$10.00 for a CD, digital publishing or web upload if it is the only "copy" of records produced,
9. \$0.35 per page total to include printing, scanning and all other page charges,
10. \$5.00 for a Certificate of No Records (CNR) and
11. \$15.00 for a Declaration of Due Diligence

It does not appear that there was any input to the Commission by those who are knowledgeable about the document retrieval services industry. Macro-Pro invites the members of the Commission and those from the DWC to tour the Macro-Pro facilities to experience exactly what must be done to obtain records.

The DIR and DWC have the responsibility for promoting equity to both the defense and applicant side and to codify this schedule would surely cause inequity. The applicant copy services will not be able to survive under pricing constraints that even the defense firms could not meet.

Sincerely,



Patricia L. Waldeck, President  
Macro-Pro, Inc.

The proposed copy service fee schedule is utterly ridiculous and makes zero sense. The research group doesn't take in consideration any actual costs of doing business and will in fact put companies both defense and applicant out of business, leaving thousands unemployed. It's obvious that the research group did zero research and need to do their due diligence before any further recommendations.

Sincerely,

Concerned CAAA supporter.

To: Commission on Health and Safety and Workers' Compensation

I work for BACTES Imaging Solutions, LLC. as the President of BACTES Northern California. BACTES is a medical record Release of Information services company and we support California Hospitals and Clinic facilities that have outsourced their release of information function to BACTES. In many locations that are electronic medical records only, the Facilities hire BACTES as their exclusive ROI service provider and we provide records for the Requesting Copy Services.

When reviewing the Berkeley Research Group report, we believe that to role and benefits that BACTES provides were not factored into the report.

BACTES performs the following functions for the California Facilities that we support:

1. Verify that the Request is valid
2. Verify that the Authorization is valid
3. Complete all steps in the attached QC Checks
4. Process the medical record based on the specific dates of service and sections of the record that are requested
  - a. This is done by scanning in paper records or importing electronic medical records
  - b. In some instances it's a hybrid where portions of the record are paper and portions are electronic
    - i. We merge them into one imaged record
5. Once completed, our local person performs a Quality Control check of every page of every record to check for misfiles, which are removed and given to the Facility to place into the correct record, or records that should not have been included as they are not in the requested dates of service
6. Records are then securely transmitted to our headquarters in San Diego
  - a. See the second attachment which shows the flow from local processing through finishing the effort with either mailing or electronic delivery of the records
7. Records are automatically imported into our San Diego system
8. Our data entry team then enters all of the Requestor information and all of the Patient information
  - a. This is done in San Diego so that field personnel can drive productivity and not be slowed down by the data entry function
  - b. As a part of this Data Entry step, the second quality control step is completed as shown in this screenshot



9. The records then flow electronically to our dedicated Quality Control team who do the following 3<sup>rd</sup> and complete Quality Control checks

- a. Check to make sure that the Request and Authorization are valid
  - b. Review every page again to ensure that there are no misfiles or errors
  - c. They catch errors made in the Field and send email requests to the field Rep who processed the record, to reprocess as required or to check for dates of service that may be missing
10. The records then go to Invoicing as we have a credit and collections department
- a. If the record is for a large frequent requestor like the government that is on payment terms with BACTES, there is no delay in distribution
  - b. If it's for a one off requestor, we hold the record until payment is received
11. The records are then distributed
- a. We're almost at a 50% mailing paper records and 50% electronic delivery
  - b. Before Paper Records are stuffed into the envelop, the 4<sup>th</sup> and final Quality Control check is completed to ensure that only that patient's records are included

**BACTES considers all of the above to provide significant benefit to the release of any Worker's Compensation requests, there are substantial resources involved in this effort and we respectfully request that these efforts be factored into the Copy Service Fee Structure that is being developed.**

Sincerely, William Farrant

**William Farrant | President Northern & Central California**

Ph - 925-667-7820 - - - Fax - 925-605-3968 - - - Email - [bfarrant@bactes.com](mailto:bfarrant@bactes.com)

**BACTES Imaging Solutions, LLC**

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If not and you'd like to know your Real Age versus your Date of Birth Age, here's the link - <http://www.realage.com/>

## “Formulating a Copy Service Fee Schedule for the California Division of Workers Compensation”

October 11, 2013

It's possible I misunderstood the focus and purpose of the research. I was under the impression the idea of a fee schedule was to establish a more realistic and reasonable pricing structure for photocopy/subpoena services within the workers' compensation system. SB 863 clearly states the research is not to take into account what “defense” photocopy services charge. However, this research seems to have disregarded this point. It seems this research and its conclusion attempts to seek reconciliation between two distinct and different players within the worker's compensation industry by applying a one-size-fits-all approach. This approach does not work in any other industry and leaves me baffled as to how a reputable research firm can ignore such a simple reality. It appears the target of the research firm was to act as referee in settling a feud between two opposing parties as opposed to providing coherent data to assist in recognizing and establishing a more efficient pricing structure for the applicant photocopy service models.

It is my sincere desire the BRG group do a little more research, perhaps visit a few reputable Applicant Copy Service businesses for a more real life understanding of what it takes to operate a legitimate and real life business. In this overreaching and technical analysis provided by this research, I'm left with the sense it lacks real on the ground understanding of the processes required in fulfilling a copy job, although it seems to mention many of them. Yet, the researchers in their conclusion clearly contradict their apparent acknowledgment and arrive at a clearly unreasonable flat fee model, in this model they ignore points such as:

- **Office** - living wage salaries of real employees who process the orders from start to finish. They seem to mention they've been informed of them, but only as a point of knowledge, with no real understanding of the true cost required in providing this service for applicant.
- **Mileage consideration** – the ever increasing gasoline prices alone as well as the actual real miles accumulated in the process of performing hundreds of individual jobs monthly prohibits this flat fee model.
- **Field** - living wage salaries of employees, who drive, transport copy machines, adhere to each medical facility's procedure in copying records, and who copy the records in compliance with current laws are compensated accordingly. These employees require real living wages, at least in the applicant photocopy business model.
- **The increasing cost of witness or advance fees** from \$15.00 to as large as \$147.00 per job (and more) required by medical facilities before ever handing over the records to be copied. Imagine having to pay a \$45.00 advance fee for a job of 1000 pages that has taken two trips traveling 30 miles one way, along with providing our own paper and the

copy machine. A job at kinko's for this same number of pages where you go to them, and who charge an average cost of .25 per page will cost at least \$250.00. Subtract the advance fee, the mileage, the paper cost, and the copy person's salary, not to mention the secretarial portion in providing an Applicant photocopy job and there is simply no way this flat fee even remotely resembles reasonableness.

- **Hearing representatives** – a built in component of the system will persist even if a flat fee rate was instituted because of the inherent adversarial nature of the workers' compensation model of achieving its end. That's of course, unless this fee schedule proposes to accomplish something all the other fee schedules implemented for other segments, such as medical treatment, chiropractic and interpreters have not. The idea here, in implementing a fee schedule should be realistic in relationship to what has worked over the last 28 years, at least in practice, and not one designed to put the entire photocopy segment of the industry out of business. This research seems to lack the recognition of how fee schedules have impacted other segments and will do more harm in this instance than good. By ignoring the real and practical processes inherent in this system, and while relating to hearing representatives as merely low-paid representatives, the researchers reveal an inconsistency and lack of knowledge in their approach. Particularly in light of the recent changes through SB863 which now has insurance carriers and the law firms who represent them literally hiring these so-called low level hearing representatives to head-up and/or work their lien divisions.
- **Base rate** – which both distinctly different copy service models acknowledge are necessary, seems to be ignored, unless this \$103.55 is actually the base rate and they forgot to include the per page fees that should be allowed. It seems again, this research is attempting to institute a defense structure as it refuses to acknowledge the Applicant model of business. The separate and needed base rate should be recognized as fundamental, if for no other reason than the idea a real and viable business must keep its doors open and turn on the lights daily in order to process requests for service.
- **The new lien filing fee** – a \$100.00 to \$150.00 filing is now required on every lien. Although it appears this flat fee is supposed to do away with the lien process, it will not, as with every other fee schedule implemented prior for other segments. And in light of that, the implementation of these fees alone by SB863 does away with any supposed reasonableness of this new flat fee.
- **Finally, page fee** – it seems unrealistic to suggest operating a copy service with no "per page" fee. It is akin to suggesting operating any business by generating revenue from everything leading up to, but not including the actual products or services it produces. There is simply no other business in existence that can collect less than its operating cost, ignore any resemblance of revenue and remain in business.

At face value and on the surface it seems the research took these distinctions, practical realities, and the workers' compensation system, into consideration when processing their data. However, a more in-depth look seems to reveal a tone of research designed to fix something that is not

broken, although admittedly a mid-course correction could certainly better serve all involved. What is being proposed with these new suggestions however is more likely to eliminate any real photocopy business from the system. Thus, the current recommendations would probably work if they were applied across the board in the process of revamping an entire industry. Otherwise, they are far reaching, overbroad, and clearly lacking an understanding of the business model. A business model needed due to the adversarial nature of an applicant against an employer and their carrier through a claim for work injury and the right of equal justice. Applicants should have as much chance to their own discovery processes with recognition of this by the worker's compensation system, as the employers and their behemoth carriers do.

Thus, if the researchers found this sort of approach worked in other instances, providing examples would certainly aide in understanding their conclusion. Otherwise, the tone, approach and outcome of this research appears more a targeted to eliminating an entire segment of the system through an idea of what the researcher seem to think is the best way to enhance the system. It seems to suggest putting a halt to normal business competition and the inherent adversarial nature of the workers' compensation system and placing all the cards into the hands of those who have the money, is the answer. I would hope there is more to this research than what could be implied.

**My recommendation:**

While I do not agree \$103.55 is worthy of the base rate itself. My recommendation; in taking into account the research performed, would simply be to use the \$103.55 as the base rate, with the exception of the "witness or advance" fee and add a per page fee of \$1.00.

Bruce Taylor  
Associated Reproduction Services  
Hearing Representative

Response to Formulating a Copy Service Fee Schedule for the  
California Division of Workers' Compensation

Based upon the proposal by Berkeley Research Group of \$103.55 with additional sets at .10 per page if paper and for a nominal lump sum fee of \$5.00 if electronic, it appears that the true goal of this research was to find a way to put copy services out of business.

This is not a rate that any copy service could provide services at, even if they were paid promptly.

The true challenge at risk here is the validity of the justice system in America. It is a cornerstone of our justice system that both sides of any dispute have equal access to representation. To force any one side to rely on the records provided by another or to force copy services to perform so inexpensively that the applicant is not adequately able to present their case puts the injured worker (in this case) at risk.

The research states that "we began our assignment by speaking to a number of different stakeholders". It never states that we went out and observed the process at a number of different stakeholders, and considered what is required in order to complete applicant copy work. It is not possible to obtain any substantial insight into what processes are involved until you see them. The Berkeley Research Group clearly could not do their due diligence without going on site and gaining an understanding of this industry.

While a flat rate may be a reasonable approach, the dollar value of the services recommended clearly is not. The report states that "defense services exemplify the fair market value because both the copy service and the payer are voluntarily doing business with one another". However, the rates proposed are lower than what the defense currently charges.

Allowing 13% for profit (before interest and tax) and 14.4% for rent and utilities is also interesting. All business entities must include all expenses of doing business. These include not only rent and utilities, but workers' comp insurance, health insurance, liability insurance, computer hardware and software, and telephone expenses, which are all substantial.

Additionally, the data submitted for various states is highly suspect. There is no documentation on the exact data used or that the process required is the same. Knowing the time and effort expended for us to perform these processes makes it appear that we are comparing apples to oranges. These prices must be taken from the internet for copy services that do work in house for hospitals. This cannot even begin to be compared with a copy service that has to physically go to a location to copy.

An average job requires that we intake the order and enter it into our computer system. We then serve an authorization and/or a subpoena to all parties of our intent to obtain the records; next we must call the location and arrange a time to get the records. We then send an employee to the location (with

expensive hardware and software) to copy the records. The field representative must drive, often in heavy traffic, park, enter the facility, request to copy the records, wait for the correct individual to give us the records, set up the equipment, unstaple, scan, re-staple and return the records in the order given back to the facility. These records must then come back in house, be processed and reviewed, billed and delivered to the correct parties. On face value alone, it is obvious that these processes cannot be done for \$103.55.

Applicant copy service employees should have the same advantages of employees for the insurance company. They should be paid a similar amount in wages, have the same type of benefits for vacation, sick and holiday pay, have access to health care insurance, and matching 401k accounts. These are not unreasonable things for any ethical company to provide to their employees. Stating that our fees are unreasonable when we are not able to provide these benefits at the same level that the insurance companies do is inequitable.

My recommendation would be that Berkeley Research Group go out and visit both Applicant and Defense copy services, and that they perform the due diligence needed to truly assess the reasonable cost and value of the services provided. At a minimum a \$250 base rate, a per page copy reimbursement, complete reimbursement of advance fees and sales tax are needed. We cannot copy 1,000 pages for the same price we can copy 1 page. I would recommend a per page rate of .50 under 500 pages and possibly a lower page rate of .25 from 500 – 1000 pages.

Sincerely,

Cynthia Lomax

Controller

For Associated Reproduction Services

On the face of it, it looks reasonable, however it is not. At 1000 pages, it's about .10 cent per page. At 250 pages, it's .40 per page. Somehow, copy services will have to take that amount and pay employees, benefits, phones, lights, equipment, supplies, gas, insurance, etc.

**Here are the facts:**

The report was created using non-applicable information. Out of state laws BRG is using to base their recommendation on are, for lack of a better term, patient rights laws. They allow patients to walk up to a window at their doctor's office or hospital and get a copy of their records at a reasonable rate. There is no mention of getting records from any other custodian of records in their analysis or records for the purpose of a claim. **California worker's compensation copy services provide unique services for a time sensitive and heavily litigated workers' compensation system.** The services we perform are far more intensive and regulated than walking up to a window. In addition, we must remain HIPAA compliant and provide such services as bate stamping both of which are very important but, neither were addressed in the study. It is evident that the BRG does not understand the workers' compensation system in California, nor did they do their research by doing site visits at copy services to understand the scope of work provided. Both Applicant and defense services would have open their doors gladly.

After review, here are some of the things, I believe you can expect:

- Liens will be filed for disputed dates of payment and liens will be filed sooner for any payments not made in 60 days or not paid in 90 days.
  - Liens will also be filed for any additional services not mentioned in the reform regulations. This completely defeats the purpose of the reforms.
- The requesting party will not get records timely, as the document retrieval company will only be able afford a skeleton crew.
- Records will not be available on time to accept or deny a claim. *Denials based on not getting records will increase litigation cost.*
- Certificate of no records will not be reviewed and investigated to find out where the records are, resulting in lost evidence.
- Litigation costs will go up if lawyers have to prepare subpoenas and track records in the future.
- No company will want to get records outside of a metropolitan area, creating more work for already over worked examiner to pursue the records themselves, which is a time consuming process.
- Ultimately the system will over pay on claims because there will be many unforeseen and unintended consequences to this reform as it stands.
- TPA, self-insurers, law firms and carriers will be in a bind, as customer services, as well as extra services will disappear.
- Additional services that examiners and attorneys are use getting to will no longer be provided, for example, bate stamping, tabbing, online tools and special reports ( non of which are paralegal duties).

The system had a crack and their recommendation to fix it is to demolish it entirely.

**Food for thought:**

The proposed fee schedule is not fair to any copy service company regardless of who they are servicing. Even if there could be contracted rates why would anyone pay more if the law says they don't have too?

Warmest Regards,

D. Diann Cohen

Director of Marketing and Training

Macro-Pro, Inc.

Phone: **916-705-1618**

[www.macropro.com](http://www.macropro.com)

Who's Who (Cambridge 2012)

LexisNexis Notable People 2009

Founder: Professionals in Workers' Comp.

and Association of W.C. Professionals

My name is Dan Jakle and I represent one the largest applicant copy services in California - ARS.

The subject report has many inaccuracies and incorrect data so I would like to identify the problem with the data and the report and then propose a solution to correct that particular problem.

Page 3 – second sentence – “Senate Bill 863 requires the DWC to implement a schedule of reasonable maximum fees for copying and related services.” The labor code that prescribes the copy service fee schedule LC 5307.9 specifically excludes contract copy services which the report totally disregards. **SOLUTION – Throw out all the defense related data as not applicable (it’s inaccurate anyway).**

Page 3 – second paragraph – “... single price for copy sets, regardless of the number of pages involved (up to 1,000 pages).” Including 1000 pages in the fixed fee is a problem in that it provides a disincentive to applicant copy services to copy and obtain all relevant records and this would compromise or deny the injured worker his rights to complete discovery. **SOLUTION – Why include any pages with the fixed fee? There should only be two standard fees – the fixed fee and the per page fee.**

Page 4 – first sentence – “Based on our analysis, we have concluded that the cost of each initial copy set should be \$103.55.” This fixed fee cannot be justified as it does not take into consideration travel to the facility to copy, setup of equipment, disassembling the files (staple, paperclip, and sticky note removal) and reassembly, then scanning the file and producing it. There is no data to support all of this activity for the price of \$103.55. **SOLUTION – change the fixed fee to \$175.00. This is a much more supportable cost.**

Page 4 – first paragraph – “we recommend the implementation of a tiered price to reflect the average estimated business expense for collection and uncertainty when payment is not made promptly.” There definitely should be a tiered price to exact timely payment, but as we have seen in the past penalties of 10% or 20% don’t get the carrier’s attention. **SOLUTION - The penalty needs to be something substantial like \$100/week after 60 days of nonpayment.**

Page 6 – last sentence on the page – “... we consider the effective rates of other states as an indicator of the fair market value of copy service when the bills are paid promptly and without disputes.” The data from other states is clearly erroneous. The prices quoted appear to be the price to obtain records if you go to a hospital and pay a fee for their records. These fees clearly do not include the trip to the location to get the records. **SOLUTION - As pointed out above, the price to prepare the order, go to the facility, disassemble and reassemble the files to scan them should be \$175.**

Page 7 – last paragraph – “...relating to medical claims processing services, the industry most analogous to workers’ compensation copy services, to obtain the following percentages: 13.0% profit (earnings before interest and tax) and 14.4% for rent and utilities. 27.4% is the sum of these and reflects the need to compensate copy firms for both reasonable profit...” Have you ever been to a medical billing service? It is a hole in the wall and maybe they can exist on 13% profit and rent and utilities of 14.4%, but I’ll bet BRG can’t and either can we. I personally invited Greg Nachtwey to come to southern California and told him I would pick him up at the airport to come see our facility and understand how an applicant copy service does business. He never had time. **SOLUTION – So that you can understand how applicant copy services work visit an applicant copy service firm like ARS. I think it will change your perspective actually knowing how we do business instead of trying to compare it to something totally unlike our process. Then as long as you are trying to price out a copy job ride along with one of our drivers to do a copy job so you understand how that works.**

Page 8 – last paragraph – “... the average payment on the 592,927 applicant copy service transactions (with less than or equal to 1,000 pages) is the best available indicator of the fair cost of the service including all associated business expenses.” This is right, so why is BRG disregarding all this data. The 592,927 paid invoices are not what was demanded, it is what was paid or not paid. Everything from 2006 paid or not paid to 2012 was included and from ARS (about 40% of this data sample) the average record size was 110 records and the average price of the bill was over \$251.20. I re-emphasize that this is what was paid, not what was demanded. **SOLUTION – Since, by the reports admission (on page 8), this data of paid invoices “is the best available indicator of the fair cost of the service...” it should be considered in setting the fee schedule for a fixed or base fee and a per page rate.**

Page 11 – second paragraph (subpoena or other fee) – “...we recommend adopting the single fee described previously for each document request or subpoena (with copies to non-requesting parties at \$ .10 per page assuming standard paper copies....”

In addition to the fixed fee and per page fee, there needs to be an allowance for the subpoena preparation and service fee. There is evidence from other process servers that the process serving of the subpoena should be approximately \$60 to \$70.

**SOLUTION – Allow \$75 for the subpoena preparation and service fee. In addition, the actual advance or witness fee should also be paid without objection. Employers and carriers have to stop charging witness fees as they currently do because they are a party to the case. In addition, ROI (release of information providers) fees have to be paid. They are sometimes over \$100.**

Page 12 – Splitting 1 job into 2 or 3 – The only case where this occurs is where a medical facility requires separate subpoenas for separate departments like radiology and possibly a separate subpoena for other medical records. **SOLUTION – Allow for the possibility that medical facilities may require separate subpoenas for different departments.**

Exhibit 1 – Multiple Problems with this data – First, there is no applicant copy service in California that would charge \$98.13 for a 98 page order. The author is certainly not referring to the 592,927 PAID invoices as they average well over \$250 each for an average copy job of slightly over 100 pages. Second, even if this price were correct for applicant and defense, it is for a far fewer number of pages than the 1000 pages for which the author is suggesting we set this \$103.55 average price. The average number of pages for this average price is 132 pages not 1000. **SOLUTION – As indicated above, if the author is to rewrite this proposed fee schedule it would be helpful if he actually knew how applicant copy services actually worked.**

Exhibit 2(a)(b)(c) – Comparing real applicant data with supposition – The data that is listed at the bottom of the page came from paid invoices, the data from the various states absolutely did not include a labor charge to go get the information or pay mileage. I called legal copy services in Florida to try to verify the data. Those services are used to the documents coming to them to copy. The \$120 listed as an average on the exhibit is way low in comparison to actual data I received from the phone calls I made where the copy service, as in California, has to travel to the site to do the copying. **SOLUTION – Use the applicant data we provided that can be validated.**

Exhibit 2(d) – Several of the URL links as references in the fee schedule proposal are broken and do not work. This makes one wonder how the author was able to get the information he uses when the link to the state site does not work. **SOLUTION - Instead of using Internet data which is suspect and can't be verified, first find out how the typical applicant copy service does business, then if you are going to use other state's data that has a comparable cost of living to that of California, at least ask them what they charge for all the steps that applicant copy services go through to process an order.**

Regards,

A handwritten signature in black ink that reads "Dan R. Jakle". The signature is written in a cursive, flowing style.

Dan R. Jakle

Associated Reproduction Services, Inc.

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A PROFESSIONAL PHOTOCOPY & PROCESS SERVICE COMPANY

October 13, 2013

Commission on Health and Safety and Workers' Compensation  
1515 Clay Street, 17<sup>th</sup> Floor  
Oakland, CA 94612

**RE: BERKELEY RESEARCH GROUP'S PROPOSAL ON FORMULATING A  
COPY SERVICE FEE SCHEDULE**

To: CHSWC Commissioners

As a father who is deeply involved in raising several children, including those of others less fortunate, and also as an employer who has established and managed several businesses, I have learned one key point. Once a child, employee, friend or companion has made up their mind, it is almost impossible to change it. Yes, I said *almost*.

For this same reason, although many believe the Commission on Health and Safety and Workers' Compensation (CHSWC) and the Department of Industrial Relations (DIR) have already made up their minds on the Berkeley Research Group's (BRG) report, I believe there is still hope that they will not accept the recommendations of the BRG report and instead that the CHSWC will require BRG to re-examine the data for a better understanding of discovery issues. My plea is based on 25 years of personal experience as a Professional Photocopy Service, Registered Process Server and investigator.

As an employer, I am also very concerned about the rising costs all employers are facing. BRG has accepted a monumental responsibility by attempting to understand an industry and put together a fee schedule for Professional Photocopy Services, which is something that to date has never been done before.

BRG's recommendation is aimed at reducing friction between applicant and defense requests for records and generating prompt payment by payers at a recommended flat rate of \$103.55 for a copy set of up to 1000 pages. The data used to support this include 598,342 transactions provided by applicant copy services and 1,647 transactions from defense copy services. BRG's report notes that 470, or 28%, of the defense transactions were for Certificates of No Records (CNR) where zero (0) pages were produced as "substantial evidence," and the referenced links (of which 7 out of 16 are broken) are for per page rates used by other states for copies of records that can be charged by state agencies and medical providers. BRG's recommendation of a flat fee for copy sets of up to 1,000 pages does not correlate to the discovery work and related services done by applicant copy services.

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10400 NORWALK BLVD SUITE 300, SANTA FE SPRINGS, CALIFORNIA 90670  
PHONE: (877) 567-3990 • FAX: (877) 567-3993

Although BRG's intent in suggesting a world without friction between applicant and defense requests for records is noble, it is impractical. BRG suggests pre-litigation or "pre-lawsuit production of documents" to require a custodian to draft a declaration that all responsive documents have been produced. This pre-lawsuit discovery as defined by California Evidence Code (CEC) Section 1158 in workers' compensation only applies to insurance companies' requests for records in non-represented claims. Applicant Attorneys and Applicant copy service requests are not applicable during a pre-lawsuit/non-represented claim. The only dispute at this point is between the injured worker and the claims examiner.

The CEC clearly states that the presentation of an authorization by an agent on behalf of an attorney shall be sufficient proof that the agent is the attorney's representative. This is representation of civil claims prior to litigation and insurance request for records in pre-lawsuit/non-represented claims for a work injury.

CEC §1158: "No copying may be performed by any medical provider or employer enumerated above, or by an agent thereof, when the requesting attorney has employed a professional photocopier or anyone identified in Section 22451 of the Business and Professions Code as his or her representative to obtain or review the records on his or her behalf.

**The presentation of the authorization by the agent on behalf of the attorney shall be sufficient proof that the agent is the attorney's representative."**

Once an injured worker seeks legal representation and a request for records is made by an applicant attorney, the process of preparing a request for records through the use of a Workers' Compensation Appeals Board (WCAB) approved Subpoena Duces Tecum (SDT) currently substantiates authorization for work performed on behalf of a Professional Photocopy Service as defined in the Business and Professions Code Section 22450. Similar to the presentation of an authorization upon a custodian of record, copies of subpoena requests for records are sent to all known insurance carriers, third-party administrators (TPA), and defense counsel if known or assigned in the form of a "Party Notice."

There are several key deficiencies and differences between defense and applicant requests for records. Once an Application of Adjudication of Claim has been filed with the WCAB, defense copy request are initiated directly from the party paying the bill. This can include different carriers making their own request for records to defend their position of the claim for benefits. This is a simple process as a defense copy service takes an order prepares and issues subpoenas to a custodian of record, and whether or not records are produced, payment is made without a bill review of any invoicing by defense copy services.

BRG's review of only 1,647 transactions by defense copy services, as compared to the almost 600,000 by the applicant copy services, suggests a poor sample and may indicate hand-picked transactions. BRG fails to reflect the additional charges by defense copy services that go without bill review. These additional charges include, but are not limited to: check fees of 15% of the amount of the actual witness fee check paid, additional trip charges billed, indexing and record

reviews are performed and paid without objection or bill review. Additional work is done as an internal "Custodian of Records" by contracted defense copy service for insurance companies and TPA's for subpoenaed record requests by applicant copy services. Additional charges are demanded prior to the release of records to applicant copy services, then billed back to the claim or employer for these additional charges. Employers are faced with creative charges by defense copy services, insurance carriers, and TPA's of which they are unaware.

BRG recommends uncontested payments to include all witness fees advanced. This can be no less than actual fees paid, plus a reasonable check fee for the issuance and preparation of the witness fee check, and not necessarily the 15% of the check amount as currently being billed by defense copy services. This reimbursement addresses another point besides the witness fee and that pertains to the further opportunity of the splitting of jobs.

I am not clear on how splitting of jobs is defined by BRG and believe it needs further clarification. My interpretation is when a request for employment and wage, medical records and films is made, or when multiple claim files are separated into individual subpoenas for the purpose of securing requested records. To begin, employment and wage records are often handled by two different custodians and many times wage information is handled by a separate entity all together, requiring a separate SDT to properly secure and acquire an affidavit of the custodian of records in accordance to Evidence Code (EC) Section 1561. The same is true with medical departments. If a custodian for a medical group is overseeing multiple doctors who have treated an injured worker, the custodian of records is often requiring separate SDT's addressed to each doctor by name in order to release medical records.

Problems in how claim files are managed differ. It could be related to a fact that different adjusters handle different claims and depending on the current status of the claim file at the time of the request. I know that there are numerous carriers who not only require a separate SDT for each claim file being requested, they also require a separate witness fee to be paid at time of service. A problem that has never been addressed is that if in fact insurance carriers, TPA's, defense attorneys are parties to a given case, then witness fees should not be required upon service of a SDT for a claim file according to EC Section 1563 (b):

EC §1563(b) 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 the production of which is requested pursuant to a subpoena duces tecum may be charged against the party serving the subpoena duces tecum.

In addition to the up-front witness fee collected, there are additional charges as much as \$50 and up for a CD of records that can have a handful of pages. In reviewing of these digital records, we frequently find that the CD's are damaged, passwords are not provided or are incorrect and more follow up with the custodian to access the files is necessary and we find records that are wrong and do not pertain to the injured worker included on the CD. Many carriers and TPA's are utilizing in-house defense copy services that bill for services, some under a DBA name to copy records refusing to make records available as required by Evidence Code Section 1560 (e):

As an alternative to the procedures described in subdivisions (b), (c), and (d), the subpoenaing party in a civil action may

direct the witness to make the records available for inspection or copying by the party's attorney, the attorney's representative, or deposition officer as described in Section 2020.420 of the Code of Civil Procedure, at the witness' business address under reasonable conditions during normal business hours. Normal business hours, as used in this subdivision, means those hours that the business of the witness is normally open for business to the public. When provided with at least five business days' advance notice by the party's attorney, attorney's representative, or deposition officer, the witness shall designate a time period of not less than six continuous hours on a date certain for copying of records subject to the subpoena by the party's attorney, attorney's representative, or deposition officer. It shall be the responsibility of the attorney's representative to deliver any copy of the records as directed in the subpoena. Disobedience to the deposition subpoena issued pursuant to this subdivision is punishable as provided in Section 2020.240 of the Code of Civil Procedure.

When a request for record is received by an applicant attorney for records with the best possible information, it still falls short the majority of the time. Details such as the insurance carrier, although confirmed through the Workers' Compensation Insurance Rating Bureau's (WCIRB) online services for having coverage at the time of the injury, has become a challenge. First, the listed carrier is often a broker and additional research is necessary to locate the actual carrier that had the coverage at the time of the injury. The coverage information provided by the WCIRB's online services is only good for a five year period, and if the name of the company or address used in the policy does not match, the only way to confirm is to submit a request in writing with as much detail to the WCIRB in San Francisco to verify whether or not there was actual coverage at the time of the injury.

Many times, the employers not only fail to notify their insurance carrier of the injury, there are still many uninsured employers that have not been addressed at all in SB863. When claim examiners are notified by employers, it can take 30 days or more before a claims examiner is aware of any claim simply due to costly scanning centers which have been put in place.

The BRG report recommends disregarding the number pages in relation to the flat fee proposal in the hope to reduce friction and delays. This is unfair and inequitable not only to all copy services, but also to employers. BRG's report doesn't address the potential adverse effects it will have on injured workers' and their attorneys trying to establish substantial evidence, especially as it pertains to UR and IMR issues that need to be addressed.

Data used by BRG referencing 16 other states for charges for the release of information is only applicable to the custodian for making records available. One commonality is that all referenced states have a tiered per page rate, and most have a base fee.

Keep in mind that the custodian is *only* making those records available which are already in their possession. The custodian is either making a copy from a paper chart, or printing records out from a digital copy, or handing a physical chart to a copy service for scanning and reproduction. The custodian does not have to travel multiple times to serve and then copy the records. The custodian receives payment immediately for the production of their records. The Custodian has

no third party charges, including their own, that will not be reimbursed prior to the release of records. The Custodians have no research as to notify any other party, other than the patient under certain circumstances, of the work they are doing. The Custodians do not have to do research to locate the facility, verify addresses, and the actual days and hours that records will be available to copy. The Custodians do not have to come back multiple trips because the file is in the doctor's office or a report has not been dictated. The Custodians do not have to make multiple trips because the person who handles the records is out to lunch, sick or went home early.

BRG's recommendation not to consider the difficulty in retrieval of documents is clearly unsubstantiated. At the same time, making a recommendation for "strict regulations" to govern is "required". This only substantiates that there will continue to be disputes not only about price, but the reasonableness and necessity of making a request by the applicant's attorney. Not to mention a somewhat knowledgeable non-represented individual who make their own request for records.

BRG's report further states that "payers contend that defense copy services exemplify fair market value because both the copy service and the payer are voluntarily doing business together." There is little truth to this statement, as I am finding more often than not, the insurance carriers and/or TPA's have contracted with copy services requiring defense attorneys and claims examiners to use specified contracted copy services that have agreed to an initial reduced rate for guaranteed work.

There are accusations in BRG's report of applicant attorneys "benefiting" from copy service and other related industries who provide services on behalf of the injured worker. Rules and Regulations have been established for abuses in the system and only need the authoritative powers to be enforced.

DWC's Guidebook for Injured Workers – Revised July 2013

<http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.pdf>

Fraud is a felony. This law applies to everyone in the workers' compensation system, including injured workers, employers, claims administrators, doctors, and attorneys. To report fraud, contact a local district attorney's office or the California Department of Insurance (DOI). You can call the DOI toll-free at 1-800-927-4357, and ask for the phone number of the nearest office of their Fraud Division.

See also the DOI website: [www.insurance.ca.gov](http://www.insurance.ca.gov) (link to Fraud).

Electronic Records as addressed by BRG is becoming the norm, but it will be a long long time before we are without paper copies. It is true that technology enables us to capture, store, process, send and transfer records electronically. But BRG fails to make the connection between Electronic Records and all the manual labor and associated costs it takes to generate and store electronic records. Many paper records are of various quality, color, size, and contrast consisting of numerous staples, paperclips, and the good old sticky notes.

The WCAB is a prime example of the difficulty converting to Electronic Records. EAMS was introduced in 2008, resulting in a backlog then in 2008. There are still efforts to get all paper files and liens into the EAMS system five years later. One may recall that the DWC needed so much help, it opened the opportunity for services to help process liens and a handful of other documents electronically through the JetFile system. Note that many of the companies that invested their own profits into JetFiling are the copy services that provide services to applicant law firms.

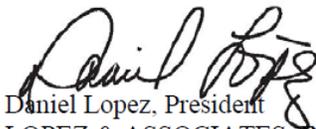
Although electronic documents are part of how we do business, BRG must realize that it takes tremendous effort to convert paper copies to digital, and to maintain HIPAA compliance once it is in electronic form. Digital records should not be redistributed on a third party service like "Drop Box" or "You Send It." The information copy services have should not be entrusted to companies where there is no guarantee of whom has access.

BRG's recommendation of being Registered should go without saying as this industry has been defined in the Business & Professions Code Section 22450 for many years.

There is still much work needed, and I believe detailed information regarding professional photocopy services has been provided to both BRG and to the Administration and should be seriously considered as disputes will always be ongoing, collection issues will remain, and abuses within the system should be confronted head on through appropriate channels currently in place.

My prayer is for CHSWC to send BRG's draft report back to BRG for further review with the understanding that there are currently many long standing fee schedules for various industries and there have always been and will most likely always be disputed issues.

Respectfully Submitted,



Daniel Lopez, President  
LOPEZ & ASSOCIATES, INC.

Vice President  
California Workers' Compensation Services Association

Cc:  
Berkeley Research Group, LLC  
Office of the Governor State of California  
Assembly Insurance Committee  
Senate Labor and Industrial Relations Committee

*We have recently become aware of SB863 and research conducted by the Berkeley Group.*

*Before final recommendations are implemented by the Commission of Health & Safety & Workers' Compensation regarding fee schedules for processing medical records, we kindly request that Covered Entities and their Business Associates (Release of Information Companies, like ours) be polled regarding the amount of work required to provide records to Legal Copy Services.*

*On a daily basis, our staff handles authorizations and subpoenas delivered to medical facilities by Legal Copy Services....for both Applicant Copy Services and Defense Copy Services.*

*We are greatly concerned that the medical records supplied by providers and ROI companies could be undervalued, especially in light of the electronic record and the misunderstanding that providing the electronic record "will greatly decrease the cost of records retrieval and transmission" (as stated in the Berkeley report).*

*In summary, we ask that you reach out to the ROI industry so that your final decision and calculations will be fair and equitable, taking into consideration all the parties involved in producing records required by Workers' Compensation.*

*Cordially,*

*Donna & Richard Paine*

*Owners*

*Trackstar Release of Information Services*

*[www.trackstarinc.com](http://www.trackstarinc.com)*

**Objection to the Copy Service Fee Schedule Draft Analysis Report  
prepared by Berkeley Research Group Dated October 2, 2013**

**October 14, 2013**

Submitted to: State of California  
Department of Industrial Relations

Submitted by: CD Photocopy Service, Inc.  
Jason C. Chapanar, General Manager  
1-714-544-0730, [jason@cdphotocopy.com](mailto:jason@cdphotocopy.com)

**Introduction**

As we are all aware, there are issues within the current Workers' Compensation Industry with regard to Photocopy charges and the amount of liens filed that are causing skyrocketing costs for the insurance companies and TPA's and bottom line, the employers. In an effort to control these issues, SB 863 was passed requiring a fee schedule be made for copy services. In reviewing the draft research completed by Berkeley Research Group, they are correct in their overall assessment of the issues at hand:

1. "Applicant Copy Service accuse payers of unreasonable delay or refusal, and they build the cost of collections and bad debts into their fees" (BRG, p. 5).
2. "Payers accuse the applicant copy services of puffing the bills, and they reject the bills or offer only discounted payments" (BRG, p. 5).

Utilizing these issues as rationale to change the current per page criteria to a "lump sum payment system" is extremely unwarranted and completely out of touch with regard to industry standards both on a state level as well as nationally. Further, a "lump sum payment system" is erroneous

by nature, does not coincide with current Evidence Code regulations for the State of California, and will ultimately increase, not decrease, the overall cost and efficiency in the industry.

Additionally, this “lump sum payment system” does not take into account additional Copy Service activities that are performed including, but not limited to, a basic set up fee, Subpoena Preparation, Subpoena Service (the majority of which must be served in person and NOT by mail), witness fees, additional fees charged by the facility, Medical Films and X-rays, and Shipping costs. It is assumed that these will be addressed on a later day, therefore no further comments can or will be made to this regard until a schedule for these fees have been released.

### **Problems with the proposed “Lump Sum Payment System”**

The first initial problem that arises out of a “lump sum payment system” is that it neither coincides with the industry standard, both state and nationally, nor the current Evidence Code for the State of California.

In instances regarding copy services, the industry standard for both state and national medical records is calculated at a per page basis. Berkeley Research Group establishes this to be the case in other states by citing, “We were able to obtain per page pricing data from 16 states and we used these as our ‘comparables’ for pricing” (BRG p. 7). There is a reason for this standard of per page that Berkeley Research Group either does not account for or is flawed in their conclusion.

Berkeley Research Group states, “we concluded that the major costs of providing documents copies were the costs of retrieving the documents, rather than the actual per page copy costs” (BRG p. 8). This statement is partially true. The major cost is in retrieving the documents, however the per page copy costs are a product of that retrieval, not something to be

in lieu of. Retrieving documents is process. It is not a singular moment in time, nor is it a singular act. The majority of the time, the Copy Service must bring scanning equipment in, set up, scan each individual document and put the file back together again. Therefore retrieving documents is a process that takes time which is compensable.

The second problem with a “lump sum payment system” is that it is not consistent with the current Evidence Code for the State of California. California Evidence Code 1563(1) defines a “reasonable cost” to be that of \$6 every quarter hour and .10 cents a page for documents of a standard size. The State of California deemed this to be “reasonable” because there is time involved that is compensable. This same instance of reasonableness should also then apply to copy services with regard to retrieving documents.

#### **Other Foreseeable Issues**

Upon a brief analysis of the “lump sum payment system”, should this system be adopted, there are still additional issues that are problematic. For example, the current process is that once an Applicant Attorney is retained; they are supposed to file a Notice of Representation with the examiner and an Application for Adjudication with the board. The examiner then provides copies of all the medical records they have on file to the Attorney. However, because of the distrust between sides, the Applicant Attorney has their copy service immediately go out to retrieve records, most of the time within days or less, without reviewing medical records that have already been obtained. This can causes multiple charges for the same record. This is a current ongoing problem that will continue even should this “lump sum” schedule be adopted.

Another current issue not addressed is a matter of storage. There is no set procedure of storage once a record is obtained and the records have been provided to the parties initially requested. It is common that months later, for unknown reasons, the copy service is contacted

and requested to provide an additional copy to more parties. Should this “lump sum payment system” be adopted, there is no current standard in place forcing the Copy Service to maintain the record indefinitely and therefore should an additional set of records be required, the Copy Service can easily charge to re-obtain the record causing duplicate payments on the same record. In fact, some Copy Services could easily argue that in order to maintain the current strict HIPAA Laws, they do not maintain records past the point of providing the sets as requested initially.

Further, another current issue is the matter of a Certificate of No Record. A Copy Service is requested to obtain records from a particular location however for whatever reason; the location provides a Certificate of No Records. This is a common occurrence. However, which is also not uncommon, the location may be confused or did not fully search for the records and the Copy Service must then follow up with the location after receiving the Certificate of No Records. Often times, upon further pressure, the location provides records. Again, should this “lump sum payment system” be adopted, a Copy Service can easily just accept the Certificate of No Record and collect payment rather than exhausting further time and resources to obtain the records because in either situation, the payment to the Copy Service would be the same. In addition, there would be no way to determine if the Copy Service did or did not make further efforts to obtain records.

Yet another current issue is that of the Copy Service that has an agreement with a medical facility. For instance, St. Jude Hospital, St. Joseph Hospital, and San Antonio Community Hospital are just a small portion of locations where a Copy Service named Bactes has a contract with and charges prices outside of the “reasonable fee” set forth in the Evidence Code. These would normally be an expense that the Copy Service would get reimbursed for, however under

this “lump sum payment system”, this is unaccounted for along with the numerous other copy service related actions not addressed, such as subpoena preparation, field service, ect.

These are only some of the “Loop Hole” issues that arise or are already in place that will not be affected by this “lump sum payment system”. It is suggested that you put together a group of people that know how the system works if there is a true desire to fix the current problems within the system.

California Chamber of Commerce  
California Coalition on Workers' Compensation  
California Association of Joint Powers Authorities  
ALPHA Fund  
California State Association of Counties  
Comppartners  
Employers Group  
Grimmway Farms  
League of California Cities  
Marriott Corporation  
Matian Law Group  
Nordstrom  
Safeway  
Schools Insurance Authority  
Sedgwick Claims Management Services  
Seyfarth Shaw, LLP

October 15, 2013

State of California  
Department of Industrial Relations  
Commission on Health and Safety and Workers' Compensation  
1515 Clay Street, 17th Floor  
Oakland, CA 94612

**SUBJECT: BERKELEY RESEARCH GROUP REPORT: COPY SERVICE FEES  
SET FOR HEARING: OCTOBER 17, 2013**

Dear Commissioners:

The above-listed organizations (hereafter the Coalition) appreciate the opportunity to provide comments and feedback on the October 2, 2013 report prepared by the Berkeley Research Group (BRG) on *Formulating a Copy Service Fee Schedule for the California Division of Workers' Compensation*. Combined, our organizations represent tens of thousands of insured and self-insured public and private sector California employers and insurance companies.

The Coalition appreciates the time and effort that went into researching this issue by BRG. The Coalition believes the data and methodology used to reach the conclusions contained within the report are sound and science-based. The report based its conclusions on more than half a million bills – a very significant statistical sampling universe.

Our members would like to make the following specific comments on the draft BRG report:

1. Copy service fees have risen sharply in recent years to become a significant source of friction and a notable cost factor in workers' compensation claims handling. Fees also vary widely from company to company and claim to claim for the same service. The BRG report provides a reasonable path to addressing this continuing problem.

2. Employers support the BRG report's recommendation to have a single copy service fee of \$103.55 for single location copies. The Coalition believes providing certainty and stability in copy service fees will help reduce billing disputes and unnecessary litigation in both the short- and long-term.
3. The Coalition is also supportive of the report's recommendation that the \$103.55 be payable within 60 days or employers and claims administrators will face higher copy fees. We believe this is fair to copy companies and will promote prompt payment by employers and claims administrators.
4. The Coalition would like to note that the report does prompt some questions. The first point for clarification is on the definitions of "location" and the "splitting" of jobs. The Coalition supports the BRG's recommendation that any future regulations on this issue be very specific on what constitutes a single location and what would constitute job splitting to deter potential abuse.
5. We would also recommend that in any future regulations on the copy service issue there be a declaration that includes a list of all facilities subpoenaed by an applicant's attorney.
6. The Coalition would also like to recommend that any future regulations on this issue clarify when the ten cent per page cost begins. Additional clarification is likely needed for any contemplated regulations on the specifics of how a copy company certifies the need to go beyond one thousand pages, because clear instructions will deter future errors and/or abuse.
7. Another specific recommendation is to include clarifying language on page eight of the draft report that refers to where a copy company incurs additional business expenses. The Coalition believes that instead of permitting "up charging" when there is a "risk" of non-payment, the report should be specific that additional charges by any copy company should only be permissible when there is a showing of "actual" non-payment.
8. The Coalition believes that any future regulatory action in this area must include definitions of exactly what services the defendants are required to pay for. The reason the Coalition believes this is important is that the issue is not just fees – it is that applicant copy services bill for hard copies and CDs, plus page numbering, indexing, sorting, record review and all sorts of other pseudo-legal services that are not the responsibility of defendants. The Coalition believes that if the decision is to go with a flat fee copy service fee recommendation for copies up to one thousand pages, any future regulations need to clearly set out that the fee is all-inclusive.

Our Coalition is pleased to offer these comments for consideration as you review the BRG report. If you have any questions regarding these comments, please feel free to contact Julianne Broyles with the California Association of Joint Powers Authorities (916-441-5050), Jeremy Merz with the California Chamber of Commerce (916-930-1227), or Jason Schmelzer with the California Coalition on Workers' Compensation (916-441-4111).

Sincerely,



Julianne Broyles  
CAJPA



Jeremy Merz  
CalChamber



Jason Schmelzer  
CCWC

October 15, 2013

Commission on Health and Safety and Workers' Compensation (CHSWC)  
1515 Clay Street, 17th Floor  
Oakland, CA 94612

RE: Comments on BRG Study for Formulating a Copy Services Fee Schedule

The California Applicant's Attorney's Association("CAAA") offers the following comments with regard to the study submitted by the Berkeley Research Group (BRG) entitled, *Formulating a Copy Service Fee Schedule for the California Division of Workers' Compensation*.

While we appreciate that BRG reached out to some stakeholders in the California workers' compensation system and conducted some limited research of other jurisdictions to develop a proposed copy services fee schedule, we regret that BRG did not contact CAAA. We believe BRG's analysis and recommendations in this study completely fail to recognize the unique challenges and roadblocks encountered by applicant's copy service firms in California and the role they serve in helping to develop the necessary evidentiary record for the injured worker to prove their case.

First, it is critically important to understand that under Labor Code section 5705, which provides that "the burden of proof rests upon the party ... holding the affirmative of the issue," an employee who experiences a workplace injury has the legal burden to prove his or her case. The employee has a fundamental due process right to conduct appropriate discovery in order to obtain the necessary evidence to meet that burden of proof.

The legislative reforms of 2004 (SB 899) and 2012 (SB 863) fundamentally altered discovery in workers' compensation cases, changing how subpoenaed records and medical reports are used as evidence in workers' compensation proceedings. Litigation has become more complex in the last ten years with cases such as Ogilvie (requiring the use of vocational experts), Alvarez/Guzman, and Benson (requiring a more extensive medical record for apportionment findings on multiple body parts and injuries). 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. As recognized in the study, 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. Unfortunately, it is often the case that given the adversarial nature of contested workers' compensation cases, applicant copy firms encounter much greater difficulty in locating and acquiring subpoenaed records. Because of this, the study shows that their costs are frequently higher. However, the BRG study for the most part ignores these findings when proposing their flat fee approach. In trying to address these problems by formulating a Copy Services Fee Schedule, a careful eye must be given 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.

It is our concern that the recommendations in the BRG study have focused so much on reducing the costs paid to copy service firms that it has ignored the due process rights of injured workers to obtain their own records to prove their case independent of what the defendant obtains. The flat-fee proposal in the study creates an inherent conflict of interest between the injured worker and the copy service who works for him or her. The proposal to include within the \$103.55 flat fee the first 1,000 pages retrieved and copied creates a disincentive to applicants' copy services to obtain all the relevant requested records, when they get paid the same whether they copy 20 or 1,000 pages.

We see no need for the recommendation that an attorney who requests issuance of a subpoena must file a declaration that the subpoena is issued in good faith, is not duplicative and the records sought are necessary to the litigation of the applicant's claim. This recommendation was offered because BRG had "been informed that some applicant copy services will issue document subpoenas without attorney approval or even knowledge." We frankly find it surprising that BRG felt it appropriate to make this recommendation based upon this unsubstantiated allegation. We are not aware that this is a problem, and furthermore believe that adoption of the recommendation that all copy services be registered would assure the professional conduct of the copy services.

We are also concerned over the proposal that the subpoena "is not duplicative...." It is not clear what is meant by this phrase, but we strongly oppose any restrictions on an applicant's right to obtain appropriate records and documents necessary to prove his or her case. The BRG report comments that, "some problems could be solved if the pre-lawsuit production of documents also required the custodian of records to issue a declaration that all responsive documents have been produced. Then there would be no apparent basis for a second request via subpoena after the suit is filed." Unfortunately, it is quite common for an applicant's subpoena to produce more records than a defense subpoena served on the same custodian. Also, often the custodian of records is either the defendant or an agent of the defendant, when employment or claims records are being sought. The injured worker should not be forced to accept a declaration in lieu of obtaining their own records under any circumstances.

In addition, the copy service fee schedule adopted pursuant to Labor Code section 5307.9 must be adequate to compensate for the costs involved so that it does not threaten the ability of a small copy service firm or an applicants' copy service firm with higher costs to stay in business. As such, we believe the \$103.55 flat fee for "each initial copy set" is woefully inadequate to compensate for the costs involved in obtaining records in California. The average defense copy service bill reviewed in the study was \$108.98, whereas the average applicant copy service bill was \$251.20. BRG looked at copy service fee schedules in other states and concluded that the average applicant copy service billing would be \$98.13 based on that research, and therefore a "fair market value " would be the difference between the recalculated \$98.13 and the \$108.98, for the flat fee of \$103.55. However, many of the flat fee rates that were uncovered in other states were fees paid to the custodian of records, not to the copy service who obtained the records. These flat fee rates did not include any costs for retrieving and reproducing the records, which includes preparing the order, going to the facility, dealing with the custodian, copying the records, then printing them and providing them to the attorney who ordered them. Although self-service copy costs are often low at commercial copy centers like Kinko's, the non-self-service charge can be up to \$.25 cents per page and that cost does not consider the travel costs or associated time with the copy service firm's activities described above. This would equal \$250 for 1000 pages.

The fee schedule recommended in the BRG study lacks any realistic connection with the complicated terrain of the California Workers' Compensation system and clearly did not consider input from the copy service firms. The climate of workers' compensation is not going to change with a new copy services fee schedule. The roadblocks and obstacles for obtaining records for the injured worker will continue. The costs will be higher because of this for the applicant's copy services firm. It is our belief that adoption of the proposed single fee would put applicant's copy services out of business, and deny the injured workers' rights to obtain evidence to prove their case and therefore due process.

In conclusion, although BRG's efforts to provide guidance to the DWC to create a copy service fee schedule are acknowledged, we believe this study does not adequately appreciate and understand the numerous and complex aspects of the California workers' compensation system and the copy service companies role in that system to protect all parties' rights to conduct full discovery. The adopted fee schedule must protect injured employees' due process rights to full discovery by providing fees that adequately compensate both applicants' and defendants' copy service firms.

Respectfully submitted,

Jim Butler, President

California Applicants' Attorneys Association

To Whom It May Concern:

In formulating a copy service fee schedule for the California Division of Workers' Compensation, the Berkeley Research Group (BRG) completely missed the mark. The fee schedule it proposes completely ignores several aspects of the industry which are vital in developing a reasonable fee schedule. It also goes above and beyond its mandate and decides, all by itself, that its duty is to completely revamp the way discovery and evidence is to be 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. However, in its wisdom, the Workers' Compensation Appeals Board decided to allow discovery and its rules to be dictated by the Evidence Code and the Civil Code of procedure. Here, BRG takes it upon itself to dictate 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. And by recommending such an archaic penalty (of almost doubling the allowed fee) it completely disregards the penalty and interest clauses of the labor code designed to protect the employers from unreasonable and unrealistic penalties.

Equality in the law allows either party to obtain medical records by its most reliable means possible. It appears BRG attempts to limit discovery by implementing new rules on who, when and how discovery can be obtained and then attaches a computer generated low-rate, discounted, unrealistic base fee to allow this discovery. 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 BRG 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) BRG uses them as the litmus to develop a fee schedule that is even opposed by that same sector of the industry.

According to the BRG study, we are to assume:

- The cost of locating, retrieving, manipulating, copying, storing, transmitting, reviewing, binding, mailing and reproducing 1000 sheets of paper is the same as those for reproducing 1 sheet of paper.

- That the cost of handling and shipping two reams (500 sheets each) of 20 lb. paper, which weigh approximately 10 pounds, is the same as mailing a single sheet of paper.
- That the man power and time needed to handle and reproduce 1000 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 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.
- That litigation by definition is adversarial and current laws have been implemented 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.

Given that the BRG was given 9 months to procure its report, one would expect a more detailed, more intelligent and better explained report. Instead, it appears the report itself was rushed and produced in haste.

In this report, BRG clearly demonstrates its lack of understanding of current and prevailing law, business management and accounting principles. It appears these figures were pulled from a computer program and no one at BRG 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 BRG 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 \$200.00 as a base rate, \$1.00 per page (at par with actual charges for certified document retrieval charged at most California municipalities), a witness 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).

I present this for your consideration.

A handwritten signature in black ink, appearing to read "Joe Peña". The signature is written in a cursive, slightly slanted style.

**Joe Peña**

*Hearing Representative*



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[jpena@arslegal.com](mailto:jpena@arslegal.com)

## RESPONSE TO COPY SERVICE FEE SCHEDULE:

Let me share a text with you of where (my) Standards & Values come from, and I don't mean to offend anyone.

*Titus 2:7-8*

*7 In all things shewing thyself a pattern of good works: in doctrine shewing uncorruptness, gravity, sincerity, <sup>8</sup> Sound speech, that cannot be condemned; that he that is of the contrary part may be ashamed, having no evil thing to say of you.*

Let me show you where I stand as an employee of a company who holds high values and standards.

My question to you is; can you truly base & compare your information of the Berkley Research Group (BRG) to all companies in this industry?

1. How much was Berkley Research Group (BRG) paid for this recommendation? Do they really know what type of work & research goes into a copy services business?

Let me walk you through a day of my job, one of many within the company and remember this is from my PERSONAL Experience....and my portion of the job, this does not include processing or delivery or expediting of records.

1. Receive request from Client to obtain records: Medical, Employment, Claim File, Attorney File, EDD, etc..., along with Serves for Personnel Appearance.
2. Research to make sure that the information is correct - Especially the carrier information and where to serve the locations.
  - a. PROBLEM - Carriers change their information so much that you can't keep up with them. Such as PO Boxes, Address, move information to another carrier or a sub-division with-in their company. It will get rejected if not done properly.
  - b. Employers & Medical facilities same thing...they have been sold, they move, they now have an in-house copy service. Agent for service and the Secretary of State is not updated and the Agent no longer represents it's client. Employers not allowed to give out any information they will have the contact call back. They never do.
3. EMPLOYER RECORDS: Served the subpoena or authorization...a lot of them want a \$ 15.00 check (WHEN THEY ARE A PARTY TO THE CASE, EC 1563(b))?? When I inform them "They are not entitled to a check" they ask why?? I have to explain they said they usually receive a \$15.00 (From other copy services)- Don't the other copy services understand the process of a subpoena and the fees.
4. Call a week later to follow up to see who the contact is and to make sure that the correct contact person was given the copy. (A lot of times we have to mail, e-mail or fax another copy to the proper contact

person, because within the company/facility the proper contact has not been provided the subpoena or authorization)

5. Need to follow up with their corporate office, and then the next time you call it is someone different. As it gets closer to the depo due date then you have to follow up with their legal dept. If they are out of state then they finally give you to an attorney here in California at the very date the subpoena is due. (Plus send another copy of the request to the new contact).
6. Or we will have to follow up the carrier and for some reason these adjustors don't respond in a timely manner. Numerous calls to them and some will have the paperwork and then some will say that the employer will have to comply.
7. May have to research for a new phone number, address, contact and this happens many times.
8. Then you contact the defense attorney, they either need more time, and then send an objection and some times they just send the objection and NEVER file with the board. They are irritated that you follow up with them for doing your job. They will say that they have sent the records to the Applicant attorney. You ask them to send you a proof of service or the affidavit stating this and it takes them time or they never do and say to follow up with the Applicant attorney.
9. Follow-up with AA and they state the they have NEVER RECEIVED the record go back and follow up with defense and then they either send you the records, have you copy or pick up the records from their office. Or they actually send the records directly to the attorney with a POS. (Finally)
10. My employer has to pay not only for my time working but also has to cover the overhead that it takes to run a business:
  - a. Rent
  - b. Payroll
  - c. Payroll Taxes
  - d. Workers' Comp Insurance - Crazy Rates for being classified for the type of work that goes on.
  - e. Healthcare Expenses
  - f. Mileage & Expense from Sales People
  - g. Electric, Phone and other expenses it takes to run a business
  - h. CARRIERS that do not pay their bills for months or years and then they want to deduct from the invoice to their CRAZY RATES. (WHERE DO THEY COME UP WITH THEIR FOMULATIONS). Now they want \$150 activation fee so we can FIGHT TO GET WHAT IS OWED TO US.
  - i. HOW does a business stay in business when people think that they can do as they please.
11. When it comes to medical records: A lot of facilities want to wait until the DEPO DATE to release records. Now they want extra fee's not just \$15.00 as stated in the California Evidence Code. (Some facilities don't even know what the California Evidence Code is. They want anywhere \$25.00 - \$50.00 for records then storage fee's. It is really getting crazy out there. In house copy services rates are crazy at times, they figure they are in house and they can do as they please.

MY QUESTION IS:

Are these copy services licensed and bonded? Do they understand the laws and are they complying with them or doing as they please?

***How can you say that the RECOMMENDATION OF A FLAT RATE IS:  
\$103.55 for the 1<sup>st</sup> 1000 pages?***

Does this include the following:

Time spent in preparing the subpoena / Autho / Personal Appearance?

Time spent to serve a subpoena / Autho / Personal Appearance?

Mileage to serve?

Time to scan

Time to process

Index to make life easy on Judge, Defense Attorney, Applicant Attorney,  
Doctors

Mailing Cost

This price is ludicrous, how can a company survive? My recommendation is to review how much money and time was wasted in to have someone come up with a recommendation for copy service fees.

Have you looked to see the fees of out of state locations charge for MEDICAL RECORDS ONLY? This is only for the medical facilities that DON'T HAVE TO DO ANY RESEARCH, since they already have the records in their possession.

Who do I charge the extra fee's to for not complying with an authorization ON TIME from the facilities regarding an authorization?

This is taken from CA CODES:

**CALIFORNIA EVIDENCE CODE:**

1158. Whenever, prior to the filing of any action or the appearance of a defendant in an action, an attorney at law or his or her representative presents a written authorization therefore signed by an adult patient, by the guardian or conservator of his or her person or estate, or, in the case of a minor, by a parent or guardian of the minor, or by the personal representative or an heir of a deceased patient, or a copy thereof, a physician and surgeon, dentist, registered nurse, dispensing optician, registered physical therapist, podiatrist, licensed psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, or pharmacist or pharmacy, duly licensed as such under the laws of the state, or a licensed hospital, shall make all of the patient's records under his, hers or its custody or control available for inspection and copying by the attorney at law or his, or her, representative, promptly upon the presentation of the written authorization.

No copying may be performed by any medical provider or employer enumerated above, or by an agent thereof, **when the requesting attorney has employed a professional photocopier or anyone identified in Section 22451 of the Business and Professions Code as his or her representative to obtain or review the records on his or her behalf.** The presentation of the authorization by the agent on behalf of the attorney shall be sufficient proof that the agent is the attorney's representative.

**Failure to make the records available, during business hours, within five days after the presentation of the written authorization, may subject the person or entity having custody or control of the records to liability for all reasonable expenses, including attorney's fees, incurred in any proceeding to enforce this section.**

All reasonable costs incurred by any person or entity enumerated above in making patient records available pursuant to this section may be charged against the person whose written authorization required the availability of the records.

Many facilities do not adhere to the above 5 days. How do we move on this?

I truly believe I work for a company that holds high values, morals and standards. Mr. Lopez knows what he is talking about and has knowledge of the laws that are out there. Compare the invoices to other invoices, they are fair in pricing for the amount of work that goes on behind the scenes. I believe that you should speak with Mr. Lopez and then other copy services and compare apples to apples and see who knows the industry.

***I have provided a couple web-sites that should be looked at to back up my DISAGREEMENT about the flat fee of \$103.55 for the 1<sup>st</sup> 1000 pages!!! REMEMBER the Medical facility already has the patient's paperwork and does not have to serve a subpoena or authorization and take time to process this information.***

***This is for out of state fees that apply, and all states do adhere to these standards for HOSPITAL & MEDICAL RECORDS FROM THE MEDICAL/HOSPITAL FACILITY ONLY. I was informed of this site from a location that I was obtaining records from and I thought that there fee was high, but it was in line with this fee guideline. Since then other out of state facilities have sent records and there fees correspond with this. This does not include any research, serves or anything like that. This pertains to ONLY records that they have in house since they are the facility and not an outside company that has to do additional work.***

Thank you for giving me the opportunity to respond.

Karen Green

See Attachements:

<http://www.lamblawoffice.com/medical-records-copying-charges.html>

<http://www.pjwa.com/medical-records-copying-charges-by-state.html#California>



VIA EMAIL ONLY  
[chswc@dir.ca.gov](mailto:chswc@dir.ca.gov)

October 15, 2013

Commission on Health & Safety and Workers' Compensation  
1515 Clay Street, 17<sup>th</sup> Floor  
Oakland, CA 94612

**Re: Comments regarding the Berkeley Research Group “Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation”.**

Dear Members of the Commission on Health & Safety and Workers’ Compensation:

I am Counsel and Director of Government Relations for HealthPort Technologies, LLC and I write to express HealthPort’s **COMMENTS** to the report titled “Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation”. HealthPort is a national leader in the release of medical information (ROI) and Health Insurance Portability and Accountability Act (HIPAA) compliance. HealthPort currently has over 200 contracts to perform ROI work for California hospitals and over 250 contracts to perform ROI work for California clinics and practice groups and we continue to grow.

**In reviewing the report it appears a fundamental part of the workers’ compensation record request process was omitted.**

Medical providers own the medical records and must release them to authorized requesters. However, before a medical provider can release medical records to anyone the record must be retrieved, reviewed and certain information redacted for patient privacy. This review is required under HIPAA to protect all patients’ privacy. HIPAA specifically permits a fee to be charged to patients and their personal representatives for this review and production. HIPAA acknowledges that third parties (including a patient’s attorney) requesting records may be charged a fee as well but HIPAA leaves regulation of these fees to the states. This is the fee that we believe has been neglected from the report.

The fee for worker’s compensation related records is currently not regulated in California other than through the subpoena statute (Section 1563) or Section 1158. The Berkeley Research Group report focuses on the rate to transfer records from claimant to payer, or vice versa, while neglecting to discuss the rates that medical providers should charge for protecting patient privacy and producing the records to photocopiers for workers’ compensation matters. It should be noted at this time that the photocopy companies do not perform the necessary HIPAA compliance work to protect patient privacy nor could they unless they are a HIPAA “business associate” of the medical provider.

Of the 16 states listed in the report 10 have special rates medical providers can charge for medical records related to workers’ compensation matters. See attached. In fact, the great majority of states in the country have special rates for workers’ compensation requests. For some reason these fees were not part



of the report. The report focused on subpoena rates, which are superceded by workers' compensation rates in the ten states in the study.

As mentioned briefly above, the fee for processing a medical record request generally compensates the provider for **protecting the patient's privacy, not just making a copy**. Every page of every record must be reviewed before the record is disclosed to make sure only the records requested are released. The most common examples of protecting patient privacy are: (1) removal of unauthorized sensitive records and (2) removal of comingled records. Sensitive records, such as mental health records, HIV/AIDS records, drug and alcohol treatment records, require specific authorization before release. Many providers do not separate these sensitive records in paper files or flag them in an electronic health record (EHR). Therefore it is the responsibility of the ROI specialist to remove these records.

The second somewhat surprising common privacy issue is when one patient's record appears in another patient's file. This occurs less frequently with pure electronic records but in an EHR that sorts scanned paper files this is very common. Both of these scenarios are considered HIPAA breaches that could result in fines from the Office of Civil Rights or civil liability in court.

HealthPort encourages the commission to consider the data in the report but to also consider that ten of the states cited in the report have special rates that medical providers can charge to the requestors of medical records for retrieval, review (for patient privacy) and reproduction of medical records. HealthPort believes that the commission should review the record rates medical providers can charge for reviewing the records to protect patient privacy and reproducing them, be it in paper or electronic format. Lastly, HealthPort gladly volunteers to play an active part in supplying the commission with whatever data, facts or general assistance it requests in establishing a final rule establishing medical record copy rates.

I can be contacted directly at 770-360-1820 or [kyle.probst@healthport.com](mailto:kyle.probst@healthport.com).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kyle D. Probst".

Kyle D. Probst  
Counsel and Director of Government Relations

Encs.

| ST | Requestor Type                             | Basic or Regulated Search Fee                      | Per Page Fee  | Legal Reference  | CPI adjusted |
|----|--|--|---|--|--------------|
| MI | All Workers Comp                           | \$2.50 Retrieval fee for each 15 minute increment. | \$.45PP; Actual postage for records on a current WC claim; for records not pertaining to date of injury, charge requestor rates | MI Worker's Comp Rules; WC Rule 418.10118                    | No           |
| MN | Workers Comp - Insurance                   | No charge  | \$.75 + actual postage  | Dept of Labor & Industry §5219.0300                          | No           |
| MN | Workers Comp - Attorney / Patient          | \$10.00  | \$.75 + actual postage  | Dept of Labor & Industry §5219.0300                          | No           |
| MO | All Workers Comp                           | \$22.82  | \$0.53 + Actual Postage   | Missouri RS MO §191.227                                      | Yes          |
| PA | Workers Comp - Insurance                   | No charge for reports on prescribed forms          | No charge for required reports on prescribed forms  | PA WC Rules & Regulations §127.203                           | No           |
| PA | Workers Comp - UR                          | No charge (Medicare Rate)                          | \$.12 (Medicare Rate) + actual postage  | PA WC Rules & Regulations §127.463                           | No           |
| OH | Workers Comp- Bureau/Self Insured Employer | No charge  | No charge   |  | No           |
| OH | Attorney/Insurance/Subpoena /Workers Comp  | \$18.34  | \$1.20 (1-10 pgs)<br>\$.62 (11-50 pgs.)<br>\$.26 (51+ pgs.) + actual shipping   | Ohio Revised Code 3701.741                                   | Yes          |
| IL | Workers Comp - Subpoena                    | \$20.00 (Witness Fee)                              | None  | Clayton v. Ingalls Memorial Hospital                         | No           |
| IL | Workers Comp – All others                  | Per Requestor Type                                 | Per Requestor Type  | §16 WC Act, 820 ILCS 305/16                                  | No           |
| NY | All Workers Comp                           | No charge  | \$.75 + actual postage  | NY WC Law Rules & Regs, §§325-1.11 & 1.19 – “Customary Fees” | No           |
| NY | Work Comp Clinic                           | No charge  | No charge   | W/Comp Bureau Policy   | No           |

|    |   |  |  |   |     |
|----|---|--|--|---|-----|
| MD | Workers Comp - Attorney/Insurer/Employer  | \$22.88  | \$.76 + actual postage + \$1.00 handling                                 | Ann. Code of Md. §4-304(c)                                  | Yes |
| TX | Workers Comp Board                        | No charge  | No Charge  | No charge to Tx Work Comp Commission Rule 28 TAC 134.120    | No  |
| TX | All Workers Comp-Hospital                 | \$5.00   | \$.50 1-20; \$.30 21+ + actual postage.                                  | Texas Work Comp Comm; Rule TX H&S Code 408.025 (d)          | No  |
| TX | All Workers Comp- Clinic                  | No charge  | First Copy No Charge - all subsequent requests \$.50 + actual postage    | Texas Work Comp Comm,Rule 28 TAC 134.120                    | No  |
| GA | Workers Comp - Attorney / Insurance       | \$30.00  | \$0.00 per page 1-150<br>\$0.20 per page 151+                            | Ga Worker Compensation Medical Fee Schedule, Section IV     | No  |
| GA | Workers Comp - Insurance                  | No charge for required forms with supporting docs. | No charge for required forms WC18 & WC20A with supporting documents      | Ga Worker Compensation Medical Fee Schedule, Section IV     | No  |
| AL | All Workers Comp                          | \$5.00   | \$1.00 1-25; \$.50 26+ + actual postage                                  | Alabama Code §12-21-6.1                                     | No  |
| FL | Workers Comp -Atty / Patient              | No charge  | \$.50 + actual postage   | FL Workers' Comp Provider Reimb. Manual 2004. Pg. 3, Sec.II | No  |
| FL | Workers Comp - Insurance                  | No charge  | No charge for required physicians reports.                               | FL Workers' Comp Provider Reimb. Manual 2005. Pg. 2         | No  |
| FL | Workers Comp-Insurance (Employer/Insurer) | No charge  | \$1.00 (1-25 pgs); \$.025 (26+ pgs) + actual postage for medical records | FL Workers' Comp Provider Reimb. Manual 2005. Pg. 2         | No  |
| LA | Workers Comp - Attorney                   | No charge  | \$.50 + actual postage   | WC Section 5123(C)  | No  |

|    |   |  |   |   |    |
|----|---|--|---|---|----|
| LA | Workers Comp - Patient  | No charge                              | Must be provided free to patient at the same time records are sent to carrier; additional copies at \$.50 per page + actual postage   | WC Section 5123(C)  | No |
| LA | Workers Comp - Insurance  | No charge                              | No charge for required records and reports when submitted with claim form; additional copies at \$1.00 per page + actual postage  | WC Section 5123(B)(1)   | No |
| KS | Workers' Comp - Attorney / Insurance / Patient  | \$16.00 (1-10 pgs) \$28.00 (11-50 pgs) | + \$.35 51+ pgs. (no postage or sales tax)  | Kansas Dept of HR-Workers Comp-Schedule of Medical Fees                         | No |
| KS | Workers' Comp - Insurance   | No charge                              | No Charge for supporting documentation necessary to process payment.<br><b>Exception:</b> If routinely requests entire record to process claim, use Workers' Comp Atty/Patient rates. | Kansas Dept of Human Resources- Workers' Compensation Schedule of Medical Fees. | No |
| WV | Workers Comp Commission - Insurance Commissioner, private WC carrier, and self-insured employer | No charge                              | No charge   | 85 CSR Series 20, Sec.85-20-19.3  | No |
| WV | Workers Comp – Attorney   | \$10.00                                | \$.75 + actual postage  | Code of West Virginia §16-29-1, 2 Litigation Settlement                         | No |
| OR | All Workers Comp  | \$10.00 (1st pg)                       | \$.50 2+ (no charge for reports) No postage.  | OR Admin Rules §436-009-0070 O.A.R.   | No |



October 14, 2013

Commission on Health and Safety and Workers' Compensation (CHSWC)  
1515 Clay Street, 17<sup>th</sup> Floor  
Oakland, CA 94612

Re: Formulating a Copy Services Fee Schedule

Scandoc Imaging Inc. is a corporation doing business in California 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 proposal submitted by the Berkeley Research Group (BRG).

We believe BRG did not sufficiently consider the very important aspects of an applicant's copy service business and failed to recognize the differences in the cost components of securing records by applicants copy services versus defense copy services. The report was based on faulty information making it apparent that BRG does not understand the essential role applicant copy services play to ensure injured workers receive their rights to independent discovery.

The practice for securing records on behalf of the applicant has proven to be challenging due to many difficulties retrieving pertinent documents. In addition, collection challenges will be even more burdensome and put the injured workers at risk of their rights to due process.

The cost of living and doing business varies considerably from state to state with California being one of the mostly regulated and expensive states. Although we appreciate the efforts of BRG, the fee schedule should be based on an actual cost review analysis of companies doing business in the State of California with a reasonable profit component. There are several methods this can be accomplished and BRG should establish a more reliable method to obtain accurate data.

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PHONE: (714) 424-9595 • FAX: (714) 424-9594

[scandocimaging.com](http://scandocimaging.com)

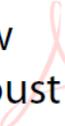
Establishing an equitable fee schedule for copy services should lead to a significant decrease in lien filings and litigation at the board. The idea of a flat rate can be beneficial up to 100 pages, with a reasonable cost per page for anything thereafter. The flat rate encompasses many services; however when securing records distances traveled can fluctuate with the possibility of multiple trips which is not being recognized by BRG. Furthermore, BRG should expand on what constitutes related services.

Mandating that copy services must be registered pursuant to the Business & Professionals Code in order to secure payment will provide relief to the abuse within the system.

Scandoc Imaging asserts injured workers' rights to independent discovery will be compromised if the BRG proposed fee schedule is taken into consideration. In recognizing the page count necessity charges, varying distances traveled, and emphasizing the related services, BRG can amend their proposed fee schedule and formulate one that embraces all aspects of the services related to the injured workers' due process rights.

Respectfully Submitted,

**Matthew  
Vatandoust**



Digitally signed by Matthew  
Vatandoust  
DN: cn=Matthew Vatandoust,  
o=Scandoc Imaging, Inc., ou,  
email=matthew@scandocimaging.  
com, c=US  
Date: 2013.10.14 13:29:36 -07'00'

Matthew Vatandoust, President  
Scandoc Imaging Inc.  
1535 Scenic Ave. Suite 150  
Costa Mesa, CA 92626-1102

Dear Committee members,

My name is Robert Santoyo and I the owner of United Document Imaging. I have read over the report that was completed by BRG and I am very disappointed and surprised as to the how inaccurate the report is. Here are a few areas in which I found to be inaccurate or just flat out wrong:

- 1) First area I would need to point out is that by Statute BRG was not to use contracted work pricing to develop the report which was used.
- 2) Next there was 598,342 paid invoices submitted by Med Legal Copy, Gemini, and ARS and they were essentially thrown out with no **VALID** reason cited. The invoices that were submitted were not billed invoices they were invoices that were actually paid thus being considered fair market value.
- 3) There was 1,647 invoices submitted by defense copy services and they were used to develop this report. Defense copy services have contracts with carriers and self insured entities which brings me back to my first point they cannot be used by statute.
- 4) On page 19 of the report Exhibit 2(d) the links that were used as a reference approximately 6 of the sixteen links are broken /do not work or takes you to a page of no relevance to copy fee's.
- 5) Finally there is no reference on how to deal with the extra fee's that the carriers and medical facilities are charging copy services to obtain records. These facilities (including carriers) are using the following Evidence codes:

### **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

As you can see this is not addressed in the report and with only allowing \$103.55 flat fee a copy service will not be able to conduct business.

I do agree that there is some change that need to take place , however; the workers compensation system should be set up to protect the injured worker not impede their right to due process. An attorney without the ability to conduct proper discovery to prove or disprove a claim , in my opinion impedes due process. I pray that the committee please take a closer look at the flat rate fee and try to better understand what it takes to obtain a complete set of records, and please consider the addition of language to allow for reimbursement of these extra carrier and facility fee's. If the committee truly wants to fix the system it should start with the carriers and doctors facilities themselves and address these extra fee's that they are charging then being passed back to the carriers.

Thank You for your consideration,

*Robert M Santoyo Jr*

(562)556-1447

Hello Commissioners,

I would like to share a list of my questions and comments related to the report "Formulating a Copy Services Fee Schedule" posted this month. I hope this outline format is acceptable and that this helps to identify and resolve outstanding issues related to the proposed fee schedule.

## II. SUMMARY...

- "communicated with stakeholders" Who? I volunteered information and still was not contacted at any point.
- "most cost effective and fair method" A flat rate builds in an incentive for copy services to do lousy work. If we are paid the same rate regardless of the value we provide and the amount of effort spent on a job, performance will suffer.
- How much is allowed per page over 1,000 pages?
- Which services are included in the \$103.55? Which are not?
- How many issues related to unidentified and misidentified duplicate payments will be created due to having a flat rate? Some insurance companies already have a terrible problem with this. While the flat rate is supposed to "simplify" the billing and therefore result in less conflict over rates, I can see a constant battle with insurance companies over whether an invoice is a duplicate or not.
- Is the newly suggested declaration from the attorney required for both defense attorneys and applicant attorneys?

## III. SOURCES...

- Did they analyze line items or bill totals? How many firms were represented? Does their data really reflect an accurate cross section of the industry?
- What other systems within CA were analyzed and how do they relate? How does the published data from other states correlate to the specific requirements in CA?

## IV. METHODOLOGY...

- "system was riven with distrust...it had essentially broken down" That is a bold statement. What do they mean by broken down? Last time I checked (today) we have a very competitive market where you had better perform ("NOT break down") or you will find yourself without customers fairly quickly.
- "Reduce the number of areas of potential disagreement" The proposal only simplifies one piece (sets of copies produced) and leaves ambiguous what, if anything, is allowed to be charged for the other services rendered. I don't see this doing much to limit the volume of liens/conflicts over billing, even if it does address the cost for production of records.
- There seems to be a misconception that defense copy services typically have contracts in place with payers and enjoy "hassle-free payment". I can't speak for everyone, but my opinion is that timely payment eludes many of us regardless of relationships, etc. The fact is that several payers/insurance companies are under staffed, have inadequate systems, and will not make timely payment a priority unless they are on the hook for penalties.
- "In addition, we consider the effective rates of other states as an indicator of the fair market value of copy service when the bills are paid promptly and without disputes." WHY? This is a blatant "apples to oranges" comparison that ignores the complexity and differences between laws and processes in CA versus other states.
- The report states that the defense is already paying the fair market value, and yet they set the MAXIMUM allowable rate to LESS than the questionable number they came up with for defense

copy services. Also, why are they using the mean to calculate averages related to other states, but median to calculate the average defense payment in CA?

## V. POLICY ISSUES...

### Section D.

- “applicant copy services perform many tasks that would be performed by attorneys or paralegals in analogous civil litigation” I assume they are referring to the preparation and service of subpoenas, since that is what follows in the paragraph. If so, a) defense copy services perform these same tasks so I’m not sure why they specified “applicant” and b) we handle a large volume of civil litigation and I can tell you from experience that most attorney and paralegals do NOT perform this function.
- If “an additional allowance for document preparation and service may be added to our recommended fee”, what exactly is allowed? By leaving this ambiguous, the fee schedule is incomplete and will do nothing to accomplish the objectives the DIR/DWC seems to be aiming for.

Some valuable research has been performed and issues identified. However, if many of these questions go unanswered I don’t believe we will see a reduction in liens/billing disputes, and we may see new problems in the delivery of crucial services to the workers’ compensation community.

Submitted respectfully,

**SAM BRAGG** | Vice President & General Manager

office (800) 794-3006 | direct (916) 742-5711 | fax (800) 797-4749

[sam@castlecopy.com](mailto:sam@castlecopy.com) | **CASTLE COPY SERVICE, INC.** ►► [register now](#)

October 15, 2013

Lachlan Taylor  
Department of Industrial Relations  
[chswc@dir.ca.gov](mailto:chswc@dir.ca.gov)  
Commission on Health and Safety and Workers' Compensation  
1515 Clay Street, 17<sup>th</sup> Floor  
Oakland, CA 94162

Sent via email:

Subject: "Formulating a Copy Services Fee Schedule" Report of October 2, 2013 by Berkeley Research Group

State Compensation Insurance Fund appreciates the time and effort the Commission on Health and Safety and Workers' Compensation (CHSWC) has put into the report, "Formulating a Copy Services Fee Schedule." We submit the following comments for your consideration.

1. The report briefly discusses the possibility of abuse by copy service companies in splitting jobs. However, the term is not clearly defined nor is recommended terminology proposed.

**Recommendation**

State Fund recommends providing a definition of what an appropriate "Split Job" is and further defining what an unnecessary "Split Job" is.

2. The recommended fee for uncontested copy services up to 1000 pages is \$103.55 but does not include payment for the preparation and service of the subpoena. However, the recommended fee of \$251.20 for contested services does include payment for the preparation and service of the subpoena.

**Recommendation**

State Fund recommends inclusion of the payment for preparation and service of a subpoena in the recommended fee for uncontested copy services. Left undefined,

this could potentially lead to abuse by copy service companies and may unintentionally defeat the purpose of the SB863 legislation.

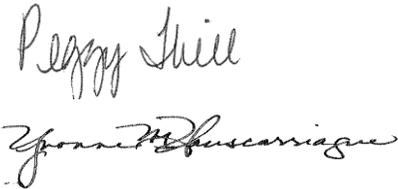
3. The report does not recommend a fee for digital production even though page 14 of the report indicates that the Division of Workers' Compensation (DWC) may want to consider establishing a flat fee for electronic services.

**Recommendation**

State Fund recommends that a fair market price for production of electronic records be established.

We thank the Commission on Health and Safety and Workers' Compensation for the opportunity to provide feedback, and we offer our ongoing support in the development of the copy services fee schedule.

Sincerely,



Peggy Thill

Claims Operations Manager

Claims Regulatory Division

Yvonne Hauscarriague

Assistant Chief Counsel

Complex Legal Unit

cc: Jose Ruiz, Director, Claims Regulatory Division

Lisa Stolzy, Chief Counsel



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October 11, 2013

Commission on Health and Safety and Workers' Compensation (CHSWC)  
1515 Clay Street, 17th Floor  
Oakland, CA 94612

RE: Formulating a Copy Services Fee Schedule

Via electronic mail – hard copy to follow

The California Workers' Compensation Services Association (CWCSA) is a nonprofit association of ancillary workers' compensation service providers of document recovery, reproduction, retention and management, language interpretation and translation services, medical transportation and other services to assist California's injured workers and their attorneys apply the provisions of the California Workers' Compensation Act. CWCSA offers the following comments with regard to the study submitted by the Berkeley Research Group (BRG) entitled, *Formulating a Copy Service Fee Schedule for the California Division of Workers' Compensation*.

To begin, we compliment BRG for its willingness to meet with representatives of the copy service industry and for its recognition of the vast differences between businesses that provide copy and related services for applicants and those who work under contract for the defendants. Unfortunately, BRG's analysis and recommendations seem not to appreciate or understand the magnitude of those differences.

The legislative reforms of 2004 (SB 899) and 2012 (SB 863) significantly increased the burden on both injured workers and their employers to produce substantial evidence to support their positions in workers' compensation disputes. Now, more than ever, the parties face the great task of producing admissible evidence, and this necessitates the involvement of document retrieval and reproduction companies. In light of the due process requirements in complex litigation and the California Constitution's guarantee of substantial justice for injured workers, it is imperative that any copy service fee schedule ensure injured workers full access to complete discovery.

Companies providing document retrieval and reproduction services to injured workers face not only the invoice collection challenges noted by BRG, but also many more roadblocks to the identification, retrieval and copying of germane records that the report overlooked. Stated otherwise, given the adversarial nature of contested workers' compensation cases, applicant copy firms encounter much greater difficulty in locating and acquiring subpoenaed records than their

***Our mission is to assure California's injured workers have full access to their rights and benefits by promoting the professionalism, ethics and performance of all the support service industries required by the California Workers' Compensation System.***

counterparts who have relatively easy access to similar records. These location and acquisition costs are not adequately considered in BRG's fee schedule recommendations. As such, the \$103.55 flat fee for "each initial copy set" – whatever the undefined term, "copy set," means – is woefully inadequate to compensate for the costs involved.

Furthermore, the proposal to include within the \$103.55 the first 1,000 pages retrieved and copied creates a disincentive to applicants' copy services to obtain all the relevant requested records, thereby denying injured workers full access to complete discovery to which they are legally entitled. The flat-fee proposal creates an inherent conflict of interest between the injured worker and the copy service who works for him or her.

The BRG analysis and proposal incorrectly assumes that costs can be reduced if only the process was more efficient and non-confrontational. In the real world, that won't happen. The proposal to increase the base fee of \$103.55 to \$251.20 when the payor wrongfully fails to make timely payment is woefully inadequate. That bump-up is less than the lien activation fee or IBR fee and totally ignores the time value of money and the additional costs of pursuing a billing dispute to conclusion.

We realize that BRG's objective was to recommend a simple, easy-to-understand fee schedule that would attempt to avoid many common billing disputes. Unfortunately, the reality is that the situation is much more complicated. In their zeal for simplification, and lacking any real life background in workers' compensation or the copy service industry, the due process rights of injured workers became compromised.

On August 22, 2013, CWCSA provided the Division of Workers' Compensation (DWC) with a suggested model fee schedule that addresses many of the deficiencies contained in the BRG Report. Attached is a copy of that document for your consideration.

CWCSA agrees with BRG regarding the value of a fee schedule that is easy to understand and easy to administer. However, we are confident that the BRG recommendation will not fulfill on that intention. Central to that value is a well-defined "flat fee" for each location where copies are requested. On page three of the CWCSA proposal, section 9795.6 (f) provides a detailed description of the services that must be included within the per location flat fee.

As we understand it, invoicing for the bare-bones "copy set" suggested by BRG will require individual line items for each additional service required in the course of retrieval of the requested evidence. As such, the BRG model will require an invoice that, in addition to the flat fee, will include multiple additional service fees, each of which will require individual research for inclusion within the fee schedule. Thus, the BRG model requires an invoice that represents the exact opposite of the intended "simple to administer" fee schedule. The objections and disputes over reimbursement would not be eliminated as BRG speculates. Instead, the BRG fee

schedule model assures new and additional frictional costs for employers and the copy companies – all to the detriment of the injured worker's right to discovery.

In contrast, the CWCSA proposal defines the per location flat fee to include all the commonly required activities that accompany evidence retrieval. We suggest that such an inclusive fee structure, including reimbursement for delivery of the requisite services, eliminates the requirement for a multi-line bill and virtually all of the friction, saving employers the cost of litigating billing disputes and possible reimbursement of Independent Bill Review fees.

The CWCSA proposal also includes a page rate as defined on page three of the attachment in section 9795.6 (g). The page rate was proposed to the Division specifically to combat the disincentive mentioned earlier and any gaming of the fee schedule that would result.

Labor Code Section 5307.9 provides, in part, that the copy service fee schedule, "shall be applicable regardless of whether payments of copy service costs are claimed under the authority of Section 4600, 4620, or 5811, or any other authority except a contract between the employer and the copy service provider." [emp. added] Since copy services working with defendants always do so pursuant to contracts, any data associated with defense copy services should not be considered when creating a fee schedule that applies only to applicants' copy services. This is particularly important because, as noted above, the costs of locating and acquiring records are considerably higher for applicants' copy services than defense copy services. In addition, defense copy services typically get paid promptly whereas applicants' copy services often have to wait months or years to get paid. Finally, applicants' copy services also face the risk of never getting paid if there is a jurisdictional dispute leading to a dismissal of the workers' comp claim. Defense copy service companies always get paid regardless of the employer's liability.

The BRG report comments that, "some problems could be solved if the pre-lawsuit production of documents also required the custodian of records to issue a declaration that all responsive documents have been produced. Then there would be no apparent basis for a second request via subpoena after the suit is filed." We disagree with that conclusion. It is quite common for an applicant's subpoena to produce more records than a defense subpoena served on the same custodian. We have several examples of situations where a defense subpoena was returned with "no records" only to have an applicant's subpoena produce several hundred pages of relevant records from the same custodian. Oftentimes, the custodian is either the defendant or an agent of the defendant, and the state should not force the injured worker to accept the declaration of these captive custodians under any circumstances.

CWCSA supports the recommendation that all applicant copy services should be registered to qualify for payment. Because registered copy services must conform to high standards of insuring the chain of custody of records and ethics, this same requirement should be imposed on defense copy services.

Commission on Health and Safety and Workers' Compensation  
Formulating a Copy Services Fee Schedule  
October 11, 2013  
Page 4

CWCSA also supports additional research into appropriate reimbursement for electronic records.

After submission of the CWCSA proposal, representatives of the Association met on September 19, 2013, with Administrative Director Destie Overpeck and CHSWC Executive Officer Lachlan Taylor to discuss our proposal. AD Overpeck commented that our draft was "helpful." Judge Taylor provided valuable insights on how to improve it. Apparently, our proposal was not forwarded to BRG.

Finally, pursuant to the "Notification of Intent to Award" for the copy service fee schedule study (Exhibit A, page 2, of contract # 41230044), BRG was obligated to "[i]nterview stakeholders in the workers' compensation system to summarize participants' issues." We know of several large stakeholder groups who were not contacted by BRG in connection with its study.

In conclusion, although we appreciate BRG's efforts to provide guidance for the DWC to create a copy service fee schedule, we believe it does not adequately appreciate and understand the numerous and complex aspects of the applicants' copy services industry to make a regulatory proposal that is fair to injured workers, their employers, and to applicants' copy services. The report should be returned to BRG for additional research.

Respectfully submitted,

A handwritten signature in blue ink that reads "Dan Mora" followed by a small flourish.

Dan Mora, President  
California Workers' Compensation Services Association

DM:moi  
enc.



California Workers' Compensation Services Association

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August 22, 2013

Honorable Destie Overpeck  
Acting Administrative Director  
Division of Workers' Compensation  
1515 Clay Street, 17<sup>th</sup> Floor  
Oakland, CA 94612

Dear Destie,

On behalf of the Board of Directors and members of the California Workers' Compensation Services Association (CWCSA), enclosed is the Association's proposal for regulations implementing Section 5307.9 of the Labor Code, otherwise known as the "Copy Service Fee Schedule."

CWCSA is proud of this proposal for a number of reasons. Chief among them is that our proposal will bring definition and predictability to the costs of copy services and curb abuse, while not restricting an injured worker's constitutional right to discovery. CWCSA has worked diligently to propose a fee schedule that is fair, practical, comprehensive and one that will work in the real world of California's workers' compensation system.

We hope that you agree.

We look forward to the first opportunity to meet with you and the staff responsible for drafting this fee schedule to discuss our proposal and respond to any questions. I will be in contact with your office to schedule that meeting as soon as possible.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. J. Cattolica".

Stephen J. Cattolica  
Director of Government Relations

Cc: Christine Baker, Director, Dept. of Industrial Relations  
Katherine Zalewski, Chief Counsel, Dept. of Industrial Relations  
Lachlan Taylor, Exec. Director, Commission on Health and Safety and Workers' Compensation  
Richard Newman, Chief Judge, Division of Workers' Compensation  
Gideon Baum, Principal Consultant, Senate Labor and Industrial Relations Committee  
Mark Rakich, Principal Consultant, Assembly Insurance Committee

*Our mission is to assure California's injured workers have full access to their rights and benefits by promoting the professionalism, ethics and performance of all the support service industries required by the California Workers' Compensation System.*

**California Workers' Compensation Services Association**  
**Copy Service Fee Schedule Proposal**

§ 5307.9. On or before December 31, 2013, the administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, 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. The schedule shall specify the services allowed and shall require specificity in billing for these services, and shall not allow for payment for services provided within 30 days of a 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. The schedule shall be applicable regardless of whether payments of copy service costs are claimed under the authority of Section 4600, 4620, or 5811, or any other authority except a contract between the employer and the copy service provider.

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**Amendment 1**

Section 9785.1 is added to Article 5 of Subchapter 1 of Chapter 4.5 of Division 1 of Title 8, California Code of Regulations, to read:

**§9785.1.**

The claims administrator shall not be liable for the cost of any copy or related services as defined in Article 5.8 (commencing with Section 9795.5 of these regulations) ordered by a treating physician if the same records from the same location were already provided by a professional photocopier to that physician.<sup>1</sup>

**Amendment 2**

Article 5.8 (commencing with Section 9795.5) is added to Subchapter 1 of Chapter 4.5 of Division 1 of Title 8, California Code of Regulations, to read:

**§9795.5. Definitions.**

As used in this article:

- (a) "Authorized representative" means any person authorized in writing by the injured worker to request records, documents or medical information.
- (b) "Copy and related services" means any and all services provided by a Professional Photocopier related to obtaining, reproducing or copying records whether in electronic or physical form produced under Section 2016.010 of the Code of Civil Procedure, Section 1158 of the Evidence Code, Section 5710 of the Labor Code, or Section 10530 of these regulations and for service of documents or records by a Registered Process Server, or an employee of a Registered Process Server. All copy and related

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<sup>1</sup> This new section will prevent disputes regarding payment of duplicate records or documents presented for payment to a claim administrator when ordered by a treating physician.

California Workers' Compensation Services Association  
Copy Service Fee Schedule Proposal

services ordered by the applicant or the applicant's representative or provided by an employer, claims administrator, or workers' compensation insurer pursuant to Section 5307.9 of the Labor Code, shall be considered a benefit to the injured worker pursuant to Labor Code 4620.<sup>2</sup> Copy and related services ordered by a physician shall be considered a medical benefit pursuant to Sections 4600 and 4603.2(b) of the Labor Code.

(c) A "Professional Photocopier" means a person or company that is registered in a county in this state pursuant to Chapter 20 (commencing with Section 22450) of Division 8 of the Business and Professions Code, or a person exempted from the registration requirements of that chapter pursuant to Section 22451 of the Business and Professions Code.

(d) A "Registered Process Server" is a person or entity registered under Chapter 16 of Division 8 (commencing with Section 22350) of the Business and Professions Code.

(e) "Records or Documents" include but are not limited to: any medical information, employment records, deposition transcripts, or any other documents determined by a party to be relevant to the adjudication of an employee's claim or necessary to prove or disprove a contested claim as defined in § 4620 of the Labor Code, a disputed medical fact as defined in Section 9793 (e) of these regulations or for the purpose of providing benefits pursuant to § 4600 of the Labor Code.

(f) "Records in the employer's, claims administrator's, or workers' compensation insurer's possession," shall mean 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.

(g) "Bill for services" means an itemized invoice for copy and related services presented to the employer for reimbursement pursuant to Section 5307.9 of the Labor Code and this Article. A bill for services may be presented in any form or format on paper or electronically and shall include the injured workers' name, claim number or Workers' Compensation Appeals Board case number, the name and address of the person who ordered the copy(ies) or related service(s), a brief description of the record(s) or document(s) copied or the service that was delivered. 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 therein.

(h) "Records that are relevant to the employee's claim" shall mean the business records of the employer, claims administrator and workers' compensation insurance carrier that pertain to the injured worker, including, but not limited to, all employment files maintained regarding the injured worker, all claims files maintained regarding the injured worker, all employee handbooks that were made available to the injured worker during the course of employment, all business postings actually posted in the offices where the injured worker may have worked, all correspondence sent to or received from the injured worker and his or her representative, all correspondence from or to any physician in regard to the injured worker, and any and all notices sent to the injured worker from any source.

(i) "Services provided" shall have the same meaning as "services incurred" as used in Sections 4620 and 4621 of the Labor Code.<sup>3</sup>

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<sup>2</sup> The WCAB En Banc decision in *Martinez v. Terrazas* introduced the concept that all types of copying (not just medical records) incurred by the injured worker shall be a medical-legal expense, and specifically not a Labor Code Section 5811 litigation expense.

<sup>3</sup> This definition makes this Article consistent with Sections 4620 and 4621 of the Labor Code and consistent with the WCAB En Banc decision in *Martinez v. Terrazas*.

California Workers' Compensation Services Association  
Copy Service Fee Schedule Proposal

(j) The "date services are incurred" shall be the date that all documents and information required by or incidental to the services ordered are served upon the claims administrator together with the bill for services pursuant to this Article.

(k) A "referral" within the meaning of Section 139.32 of the Labor Code shall mean when a copy service, related entity to a copy service, or family member of any shareholder or owner of a copy service or a related entity refers or causes a referral of an injured worker to an attorney or law office for the purposes of legal representation.

**§9795.6. Schedule of Fees for Copy and Related Services.**

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

(a) Base fee of \$ \_\_\_\_\_ for each physical address at which records are requested to be obtained.

(b) Page rate of \$\_\_\_ per page.

(c) Statutory witness fees actually paid pursuant to Sections 1158 or 1563 of the Evidence Code.

(d) Any other service authorized by a party shall be reimbursed at a reasonable fee not to exceed the lesser of the professional photocopier's usual and customary fee or the fair market value of the service in the community.

(e) All fees charged by any third party custodian of records or other person in the course of providing services pursuant to this Article shall be separately reimbursed to the person who paid the fee(s).

(f) For the purpose of this section, the base fee in Subdivision (a) is the cost related to management of a request for services subject to this Article until the requested services are incurred pursuant to Subdivision (j) of Section 9795.5 and are paid. These costs include: researching the case parties for documents and invoices; any cost for necessary access to the EAMS system; any cost for WCIRB requests related to the claim and needed to provide the copy or related services; researching the locations or witnesses for service at the correct address; reproduction and mailing copies of subpoenas or other documents required for the performance of the services; personal service of documents whenever required, including mileage and expenses for service of process; follow up contact with witness or location to schedule the release of documents for copying; the carrying costs for advance payment of witness fees or other any other fee charged by a third party custodian of records or other person in the course of providing services; responding to objections or declarations of due diligence when necessary; vehicle mileage costs to and from the location; document or record packaging and shipping costs when necessary; electronic delivery of documents when necessary; managing receipt of documents during the course of fulfilling the request for services and management of any subsequent accounts receivable collection process until the bill for services is paid. The Base Fee excludes reimbursement of any fee paid by a provider of copy and related services pursuant this Article that may be required by Subdivision (c) of Section 4603.6 and Subdivision (c) of Section 4903.05 of the Labor Code directly related to collection of disputed fees.

(g) For the purpose of this section, the page rate in Subdivision (b) includes all costs related to: scanning of hard copy documents into an electronic format when necessary or required; processing electronic documents into a manageable, printable format; electronically saving and concatenating pages of documents into the format requested or required by the parties under Section 10608.5; hard copy printing of documents or records when required by either party; storing pages electronically for delivery or archiving; numbering, tabbing or categorizing pages when requested or required; publishing a CD-ROM or DVD-ROM or other electronic media when required or requested; excerpting, reviewing or summarizing any records in accordance with Subdivision (e) of Section

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10233 or Subdivision (d) of Section 10629 of these regulations or pursuant to Subdivision (c) of Section 4628 of the Labor Code when requested or required; performing optical character recognition where requested or required and the certification of custodian of records and certification of a professional photocopier.

**§ 9795.7. Ground Rules Billing and Reimbursement of Copy and Related Services.**

- (a) When a request has been made on the employer, claims administrator, or insurance carrier for records under Section 5703.9 of the Labor Code, the employer, claims administrator or insurance carrier must serve the requested records in accordance with this Article within the time limits provided in Section 10608 (b) (1) of these regulations.<sup>4</sup>
- (b) Reimbursement shall be made in accordance with Sections 9795.6 and 9795.8 for any copy or related service requested by an injured worker or his or her authorized representative or in accordance with Section 5307.9 of the Labor Code and this Article or by an employer when no contract between the employer and copy service provider is applicable.
- (c) There shall be no reimbursement for services provided within 30 days of a 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. 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.<sup>5</sup>
- (d) Any and all records copied, produced or served under this Article shall be considered certified and trustworthy within the meaning of Sections 1271, 1561 and 1562 of the Evidence Code, Section 5703 of the Labor Code or Section 10622 of these regulations.<sup>6</sup>
- (e) The court favors production of subpoenaed records in electronic format.
- (f) In all cases, copies produced and served by an employer, claims administrator, or workers' compensation insurer in response to the injured worker's request pursuant to Section 5307.9 of the Labor Code shall be accompanied by an affidavit or declaration, signed under penalty of perjury, itemizing in detail the category or description of all records produced, together with an explanation of any withheld records which were not produced and served for any reason.
- (g) If records of any third party are produced by the employer, claims administrator or insurance carrier, said records shall be served on the requesting party directly by the Professional Photocopier used to procure the records, and service shall include a copy of the document used to procure the records from the records custodian, and the date copied.
- (h) Each bill for services presented for reimbursement pursuant to this Article may, at the option of the entity providing the copy and/or related service, include in the invoiced total, any amounts past due from previously submitted bills for any copy or related services presented for reimbursement

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<sup>4</sup> Ten calendar days.

<sup>5</sup> This circumstance is similar to that addressed in the WCAB En Banc opinion in *Cervantes v El Aquila Food Products* with respect to receipt of a physician's request for authorization for treatment by a claims administrator and the time frame required for processing the request required by 8CCR, Article 5.5.1, the *Utilization Review Standards*.

<sup>6</sup> When the copy service cannot obtain a certificate of records from a custodian, the services may not be payable under the fee schedule. This reference also assures that records served by the defendant meet the standards of evidence in Labor Code § 5703.

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applicable to the injured worker's claim, plus any unpaid penalties or interest pursuant to Section 9795.8.

(i) There shall be no liability for payment of any invoice for copy and related services when the bill for those services does not include the statement called for in Section 9795.5 (g) with respect to violation(s) of Section 139.32 of the Labor Code.

**§9795.8. Time for Payment.**

(a) All expenses for services incurred pursuant to this Article shall be paid within 60 days after receipt by the claims administrator of the bill for copy or related services unless the claims administrator, within this period, contests its liability for such payment. An employer, claims administrator or workers' compensation insurer who contests all or any part of a bill for professional photocopier services shall pay the uncontested amount and notify the professional photocopier of the objection within 60 days after receipt of the bill. Any notice of objection shall include all of the following:

- (1) An explanation of the specific basis of the objection.
- (2) If additional information is needed as a prerequisite to payment of a contested bill or portions thereof, a clear description of the information required.
- (3) The name, address and telephone number of the person or office to contact at the employer, claims administrator or workers' compensation insurer for additional information concerning the objection, and to which a "Request for Second Review," pursuant to Section 9792.5.5 of these regulations must be submitted.
- (4) A statement that the professional photocopier may adjudicate the issue of the contested charge pursuant to Sections 4603.2 and 4603.6 of the Labor Code or before the Workers' Compensation Appeals Board, as appropriate.

(b) Any bill for services pursuant to this Article which constitutes a medical treatment expense as defined in Sections 4600 of the Labor Code and which is neither paid nor contested within the time limits set forth herein shall be subject to the penalties and interest set forth in Section 4603.2 of the Labor Code.

(c) Any bill for services pursuant to this Article which constitutes a medical-legal expense as defined in Section 4620 of the Labor Code and which is neither paid nor contested within the time limits set forth herein shall be subject to the penalties and interest set forth in Section 4622 of the Labor Code.

(d) This article shall apply to services incurred on and after the effective date of this article regardless of the date of injury.

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# **RSP & ASSOCIATES**

**CALIFORNIA'S LITIGATION SUPPORT SERVICE**

State of California - Department of Industrial Relations  
Commission of Health and Safety and Workers' Compensation  
1515 Clay Street, 17<sup>th</sup> Floor  
Oakland, Ca. 94612

Commission Members,

*RSP & Associates* has been a Litigation Support Service since 1979 and has only provided those services for the defense in workers' compensation cases in the State of California. In addition, many of our clients have requested we compare Applicant Attorney Copy Service invoices and provide a similar invoice of what we consider "fair and reasonable fees" for these services. With almost 35 years in this industry and with full knowledge of what it costs to perform our industry duties, we provide these comparison invoices not on preferred vendor schedules but rather on a schedule that is fair to both the bill payer and the Applicant Attorney Service. This Bill Review Service has helped many of our clients settle sometimes awkward and confrontational sessions at lien trials.

The recently released report conducted by the Berkeley Research Group concerning a standardized/flat rate service of \$103.55 for discovery files up to 1,000 pages makes many assumptions based on faulty data. This is particularly evident when it provides information from (16) states that attempts to compare what these states charge for a request to duplicate a patients' medical file with what a service like ours actually provides to our clients.

When we first started our business, it may have been fair to label us a "copy service" but over the years we have evolved to a full service litigation support partner that now provides our clients with all of their discovery needs. These services include preparing subpoena's, serving these legal documents, follow-up phone calls with the records custodians, advancing witness fees, scheduling copy appointments – *frequently with very restrictive time frames* – and then copying the file. But, it does not stop there. All records are then scrutinized by our Quality Control employees to ensure we are providing a legible and accurate reproduction of the original file – that includes all of the special needs or limitations of the subpoena. Then, based on the personal profile of our clients, they are either shipped via UPS, after binding and packaging; uploaded to our web site for eventual downloading by our clients – following strict HIPAA regulations; provided in CD format, or emailed to the parties listed on the original distribution.

All of the steps listed above are already exceeding the proposed limit of \$103.55 per file and does not include the research involved with locating a medical/employment or insurance claim file; contacting the defense attorney of claims adjustor for additional documentation to proceed with the service of the subpoena (like case number, applicant attorney name/address so "notice can be served", clarification of special requests and/or specific claim numbers or dates of service requested, etc.).

And, as the level of sophistication and demand has increased in this process, we have been mandated to place additional importance on our hiring and training methods to ensure we have the best employees on our staff that are able to develop the critical thinking skills required to maintain our success and prevent any liability situation.

*In addition* – as an employer in California, it is our responsibility to provide a “living wage” for our staff, that includes contributions to their medical insurance needs as well, as a safe and harassment free work environment that comes at an expense for all of the employers in our industry. With the suggested fee schedule mentioned in this report, this will become more and more difficult to provide for our staff.

And finally, I have read many articles and reports over the last couple years about the “obstacles” the Applicant Attorney Services must overcome to secure a profitable *bottom line*. In one article they listed liability insurance, costs for advancing witness fees, leasing of equipment, postage, paper costs, professional licenses, “brick and mortar” overhead costs and workers compensation insurance coverage for their employees. Really – this is not unique to their side of this aisle! And when the argument is made about the length of time it takes for payment to be received for their services, I suggest you poll some of the members in our industry on the DEFENSE side that fight the same fight for payments. Claims Adjustors and Insurance Examiners have a heavy work load and frequently have the cases moved or reassigned in their offices. And then we have the example(s) where one day it was a claim covered by one TPA or Insurance carrier but now has been transferred to another carrier. And you start the collection process all over –realizing there is a line you cannot cross to ensure they return with their next order.

In conclusion, I sincerely believe that there needs to be some guidelines and schedules installed to control any perception of “padding or inflating” of any service provider invoice. And with my close to 25 years of service in this industry, I would have enjoyed - *and taken seriously* - my responsibility to provide an honest and fair input in this process. The Berkley Research Group has not provided the members of this commission with that honest and fair input.

Sincerely,  
James Naley, President  
RSP & Associates

A handwritten signature in black ink, appearing to read 'James Naley', written over the printed name.