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

PUBLIC HEARING
(via Zoom)

Monday, August 30, 2021
Elihu Harris State Office Building Auditorium
1515 Clay Street
Oakland, California

George Parisotto
Administrative Director

Carol Finuliar
Moderator
Industrial Relations Counsel

Maureen Gray
Regulations Coordinator

Michelle Thomas-Simon
Legal Unit Manager

Kathleen Estrada
Regulations Coordinator

Reported by: Shauna Mullin, CSR No. 11014
(Pages 1-19)
Olivia Lizarraga, CSR No. 13475
(Pages 19-42)

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1 (Time Noted: 10:04 a.m.)

2 MS. FINULIAR: Welcome. Let's give everyone a chance to
3 join in the meeting. Thank you for attending this public
4 hearing for the Copy Service Price Schedule. Before I get into
5 how this Zoom meeting is going to work, I would like to make
6 some introductions. The Administrative Director of the
7 Division of Workers' Compensation, George Parisotto, is here
8 today. My name is Carol Finuliar. I'm the attorney at the
9 Division, and I will be your moderator.

10 This hearing is being recorded, and it will be
11 transcribed. Our hearing reporters are Olivia Lizarraga and
12 Shauna Mullin. I'd also like to thank our staff: Maureen Gray,
13 Michelle Thomas-Simon, and Kathleen Estrada for coordinating
14 this event.

15 I hope you've had a chance to review the proposal to
16 update the Copy Service Price Schedule. We've already received
17 written comments, and we will continue to accept written
18 comments up until midnight tonight. Your input is a vital part
19 of the rule-making process. We are here mainly to listen
20 today. We won't engage in discussion, and I won't be able to
21 tell you that your suggestions will be implemented; but I want
22 you to know that every comment will be considered in drafting
23 the final version; and the final version will need to be
24 approved by the Office of Administrative Law before it becomes
25 effective.

1 Now getting to the mechanics of how this Zoom hearing
2 will work. Please sign in to speak using the Zoom Chat
3 function. Send a message to request to speak. Regulations
4 Coordinator Maureen Gray is handling this virtual sign-in
5 process and will call speakers in the order of sign-ups that
6 request to speak -- or I will be calling speakers. Please
7 provide your full name and organization. Please also use your
8 name as your screen name, so our coordinators can queue you up
9 properly.

10 You can also sign up to speak by sending an email to
11 DWCRules@dir.ca.gov. Please indicate "Request to Speak" in the
12 subject line along with your full name and organization. If
13 you're calling in, please also let us know your phone number,
14 so that Kathleen Estrada can queue you up. Our Zoom
15 coordinators are not monitoring the Raise Hand function during
16 the hearing, and our hearing reporters will not be taking down
17 Chat messages.

18 Each speaker will have three minutes. Everyone's
19 currently muted. You'll need to click on the unmute message
20 before you speak. Please state your name and organization and
21 spell your name for the record. If you're from a copy service,
22 please let us know if you're from the applicant side or the
23 defense side.

24 Michelle Thomas-Simon will give you a warning when you
25 have a minute left. Please take that opportunity to wrap

1 things up because you will be muted after three minutes and the
2 next person called. If you weren't able to finish, you can
3 sign up to continue, and you will be called up again after
4 everyone's been given an opportunity to speak. Follow-ups are
5 limited to two minutes.

6 All of your comments are being taken down by our
7 hearing reporters. Please pace yourself especially if you're
8 reading comments. Our hearing reporters might interrupt to ask
9 for clarification or to ask for a correct spelling of a word.
10 Please also spell out technical terms for the record.

11 Please restrict your comments today to the Copy
12 Service Price Schedule. This is not a general complaint forum.
13 Your comments will not be turned over to a judge for
14 adjudication, so please don't address individual Workers'
15 Compensation Appeals Board cases here. We will be closing the
16 hearing at 5:00 p.m. or earlier if everyone is finished
17 speaking. We will take a break for lunch. We will reopen the
18 record after lunch if there are people still signed up to
19 speak.

20 Lastly, everyone who signed up to speak is on
21 Maureen's list for notice. If you would like to be added to
22 this list, please send an email to DWCRules@dir.ca.gov with
23 your name and contact information and please indicate that you
24 would like to receive notice of the Copy Service Price
25 Schedule. You can also request notice of other DWC rules and

1 send in your written comments to that same email address.

2 Just to reiterate, if you would like to comment,
3 please send a Chat message to "Request to Speak" with your full
4 name and organization. If you're calling in, please send an
5 email to DWCRules@dir.ca.gov and please indicate "Request to
6 Speak" in your subject line. Provide your full name,
7 organization, and phone number so that you can be called.

8 Okay. Let's get started. I'm not seeing anyone on
9 here signed up to speak. Okay. So far, I only see that one
10 person has signed up. This is going to be a really short
11 hearing if only one person is signed up, but Mark Gearheart.

12 MR. GEARHEART: Thank you. Can you hear me?

13 MS. FINULIAR: Yes.

14 MR. GEARHEART: Okay. Thank you. My name's Mark
15 Gearheart. I'm here on behalf of the California Applicants'
16 Attorneys Association this morning, and I want to thank you for
17 the opportunity to make some comments.

18 CAAA applauds the proposal to provide a much-needed
19 fee increase for copy services. The things they do are
20 critical to the system, and we think the increase is a good
21 idea and perhaps long overdue. We are a bit puzzled by the
22 failure to include a cost-of-living adjustment in the Fee
23 Schedule. If you recall, this was recommended for the
24 med-legal Fee Schedule and wasn't adopted. You know, this just
25 means you have to keep doing the regulations over and over

1 again every few years because the prices become outdated, so we
2 would suggest that a COLA be added.

3 Aside from that, there's some problematic language in
4 these regulations from our point of view. The Section
5 9982(d)(1) requirement that a party send Notice of Intent to
6 Copy or Subpoena Records and wait 30 days is a problem. The
7 language, first of all, is somewhat ambiguous regarding whether
8 this only applies to subpoenas directed at employers or
9 carriers or whether it applies to all subpoenas; and it further
10 provides that if an objection is raised, the parties need to
11 meet and confer. First of all, I think it needs to be
12 clarified who this is suppose to apply to. Is it just employer
13 subpoenas or is it all subpoenas?

14 And I think that it's probably duplicative. You know,
15 currently we have a procedure, if you subpoena records and the
16 other side objects, they file a Motion to Quash. This just
17 layers another set of procedures on top of existing procedures
18 that are really duplicative, and I don't think there's any good
19 basis for that. It will just cause increased frictional costs.
20 What, are we going to have an argument about the 30-day
21 objection and then we'll do a subpoena and then we'll have an
22 argument about the subpoena? This is just process upon
23 process. Furthermore, I don't think the requirements in
24 9982(d)(1) I've been discussing are within the Administrative
25 Director's authority.

1 MS. THOMAS-SIMON: One-minute warning.

2 MR. GEARHEART: Thank you.

3 The Labor Code Section 130 gives the Board and the
4 judges authority over subpoenas, not the Administrative
5 Director; and what we have here is an attempt to use the Fee
6 Schedule to limit or regulate the subpoena process. The AD's
7 not empowered to do that, and it's basically an attack on
8 workers' rights to do discovery. It'll delay things. It'll
9 create a lot of frictional disputes that are really
10 unnecessary. I'm not sure why the Newsom administration is
11 launching an attack on workers' discovery rights right now.

12 I'm also troubled by the removal of the good cause
13 standard for duplicate records in 9982(f). Sometimes there's a
14 good cause to get a duplicative set of records. Maybe there
15 was a fire, and the records burned. I mean, there should be a
16 good cause requirement, and then lastly -- I know I'm going to
17 run out of time -- the Certificate of No Records saying that,
18 you know, if there's more than four Certificates of No Records
19 in a case, nobody's going to pay for those. Sometimes there's
20 a reason to subpoena records that you think might exist and you
21 don't know and you have a duty to your client to try and find
22 out. The way you do that is you subpoena the records.

23 So I think that a good cause standard would be good,
24 but that's it. So I will end now in respect for the time
25 limitations, but I'd certainly be happy to discuss this further

1 if anybody wants to in some form.

2 MS. FINULIAR: Actually, you are the only one signed up to
3 speak. Would you like to continue?

4 MR. GEARHEART: Can I make a couple more points briefly?

5 MS. FINULIAR: Let me just make a little announcement.

6 If anyone is here and would like to comment on the
7 Copy Service Price Schedule, please send a Chat message to
8 "Request to Speak" with your full name and organization. If
9 you're calling in, you can send an email to
10 DWCRules@dir.ca.gov. Please say "Request to Speak" in your
11 subject line and provide your full name, organization, and
12 phone number, so that we can call you up.

13 Thank you.

14 MR. GEARHEART: Thank you very much, and I'll try to keep
15 it brief. The other thing that strikes me is it seems like
16 this may have originated -- I don't know who DWC talked to to
17 come up with this idea of putting procedural requirements into
18 a fee schedule, which I think is inappropriate; but it looks to
19 me like maybe some carriers were concerned about subpoenas for
20 the claims file. We subpoena the claims file because the
21 defendants don't do their job. I file a case. I request the
22 records, including the claim file, which is not privileged --

23 (Reporter interruption.)

24 MR. GEARHEART: The claims files are not privileged.
25 There's multiple cases on that cited in our written comments.

1 So what often happens in my experience, and I've been doing
2 this for 40 years, is you file an Application and you request
3 the claims file and you get nothing or you get two sheets of
4 paper, so you subpoena the claims file. I don't do it right
5 away. I wait 30 days. But if the carriers served the
6 documents they were supposed to in a timely manner, we wouldn't
7 have subpoena problems with having to subpoena records, and
8 adding more layers of process on here just slows everything
9 down.

10 I think it's beyond the authority of the AD anyway to
11 try and rewrite the rules for subpoenas. You can set a fee
12 schedule, but saying you have to do these other procedural
13 requirements, I don't see any legal basis for that in the AD's
14 enumerated powers; so we would hope that you would perhaps
15 consider removing the process and just leaving in the fee
16 increase because I don't think the process addresses any real
17 problems. It just creates problems. I'll stop, but thank you
18 for the time.

19 MS. FINULIAR: Thank you.

20 Maureen, do we have any more people signed up to
21 speak?

22 Okay. I see only one more person signed up to speak.
23 Again, this is going to be a really short hearing. After John
24 Castro, I'll ask George to say a few words; but if we have no
25 other speakers, we will be closing this hearing very quickly.

1 John Castro, you are the last speaker signed up.

2 MS. ESTRADA: Is it J-O-H-N?

3 Carol, I don't see -- oh, okay. Here you go.

4 MS. FINULIAR: Okay. While you're queuing John up, I'll
5 do the announcement again.

6 If you would like to comment on the Copy Service Price
7 Schedule, please send a Chat message with your request to speak
8 with your full name and organization. If you're calling in,
9 you can send an email to DWCRules@dir.ca.gov. Please indicate
10 "Request to Speak" in your subject line and provide your full
11 name, organization, and phone number to be signed up.

12 But so far, I have only one speaker signed up left.

13 Okay. Go ahead, John.

14 FRANK-5994: I'm sorry to unmute, but I just wanted to let
15 you guys know, if it's not already understood, that the Zoom
16 meeting is broken on the website.

17 THE REPORTER: And who was that speaking?

18 FRANK-5994: This is Frank.

19 THE REPORTER: I did not hear a last name.

20 MS. FINULIAR: Maybe it's the Zoom link that's not
21 allowing people in.

22 FRANK-5994: Yeah, so myself, Dan Mora, who is the CEO of
23 Gemini and has participated quite heavily in the development of
24 this Fee Schedule, we both tried to get in and the link is
25 broken. It kept saying invalid meeting, so I decided, okay,

1 let me try calling in; and that worked. I don't know how many
2 people are attempting to join by a computer.

3 MS. COHEN: I'm trying to come in by computer. Should we
4 call in, then?

5 FRANK-5994: That's the only way I could come in is by the
6 telephone. I tried to get in by the android, and it didn't
7 work, both of them. Somebody can start that meeting. Who's
8 the host that created that link, "Join from PC, Mac, Linux, iSO
9 or Android" on the DIR website?

10 MR. LOPEZ: This is Daniel Lopez. I am logged onto the
11 Zoom meeting, and it looks like there's quite a number of
12 people that are logged on, and I'm not experiencing a delay.

13 MR. RODRIGUEZ: This is Daniel Rodriguez.

14 Frank, was that on the calendar invite or on the
15 website because I got in through the website. I couldn't get
16 in through the invite.

17 FRANK-5994: I'm directly on the website. I clicked on
18 both access information and the dir.gov.zoom address, and both
19 of them are failing. I'll try again.

20 MS. COHEN: I had the same failure.

21 FRANK-5994: Do you guys have, like, a pay-for account; or
22 is this a free account and you already have the max
23 participants? It's like 50 participants --

24 MS. LIZARRAGA: Excuse me. This is the court reporter.
25 We're having a very difficult time keeping track of who's

1 speaking. Can we possibly go off the record until we figure
2 out the Zoom thing; and then once it's figured out, can we go
3 back on the record?

4 MS. FINULIAR: That's a good idea. Off the record.

5 (Brief interruption.)

6 MS. FINULIAR: I'll go back on, and we'll have one more
7 speaker, which is Daniel Lopez.

8 Olivia, can we go back on the record?

9 If you would like to comment on the Copy Service Price
10 Schedule, please send a Chat message to "Request to Speak" with
11 your full name and organization. If you're calling in, you can
12 send an email to DWCRules@dir.ca.gov. Please indicate "Request
13 to Speak" in your subject line and provide your full name,
14 organization, and phone number if you called in to be signed
15 up. Speakers will be called in the order of sign-up. As far
16 as I can tell, we have only two speakers signed up. John
17 Castro, who is not able to log in, and Daniel Lopez. If we get
18 no other sign-ups, Daniel will be the last to speak.

19 Go ahead, Mr. Lopez.

20 MR. LOPEZ: Thank you. I'm Daniel Lopez of Lopez &
21 Associates. I've been in the copy service with this since
22 1988, and I've been involved in some of these discussions as
23 well. I'm a very neutral party. I'm not applicant-oriented or
24 defense-oriented. I'm record-oriented. We actually go after
25 the records, and I do find some issues with the language in the

1 text regarding the notices regarding the limitations of
2 discovery with the CNRs. And from my experience, to be honest,
3 discovery is done very differently --

4 (Reporter interruption.)

5 MR. LOPEZ: -- from both applicant -- I'll slow down --
6 and defense. Defense looks at defending their client in the
7 form of, you know, history, existing injuries, and so on and so
8 forth. Applicant tries to prove the injuries of the injured
9 worker. I, as a copy service, try to come at it from a neutral
10 standpoint. I've submitted my comments to the DIR, so they are
11 all complete in there; and there just is some language that
12 needs to be re-reviewed; and I'm sure it's been covered as CAAA
13 addressed it; and I'm sure others may have addressed it.

14 As to the unclarity, because even in that submitting
15 of a Notice of Intent or the letter of intent, to copy, who's
16 to meet and confer, there's a lot of unclear questions that
17 need to be answered in this process, so I just hope that the
18 DIR is able to review these comments, and is there going to be
19 a follow-up to this meeting or after the comments are reviewed
20 or what happens at this point? Carol?

21 MS. FINULIAR: Today is just to hear from you. As I
22 mentioned earlier, all of the comments will be considered in
23 drafting the final version or the final proposal; and then
24 before the final rules can be made effective, they have to be
25 approved by the Office of Administrative Law. Are you

1 finished, Mr. Lopez?

2 MR. LOPEZ: I'm finished, yes.

3 MS. FINULIAR: Thank you. Okay. We have two more
4 speakers signed up. Next will be Diane Cohen; and after Diane,
5 Darcy Duran.

6 MS. COHEN: Hello, Carol and fellow worker comp community.
7 I'd like to thank you very much for the changes that were made
8 in these regs. I feel that these regs did a very nice job
9 correcting a lot of what the defense lost in the original set
10 of regs, and so I'd like to thank you very much for restoring
11 the ability to have paper sets, providing us with additional
12 codes. I really appreciate all those things that were
13 problematic that have been fixed, and so I just want to say
14 thank you very much for taking those issues to consideration
15 and rectifying them.

16 MS. FINULIAR: Thank you, Diane.

17 Next is Darcy Duran, and she is the last one signed up
18 to speak.

19 MS. DURAN: Hi. This is Darcy. I would like to address
20 several items; but I know we're on a time limit, so I will
21 start out with the general raises on prices. I noticed that
22 the flat rate is increased, but there are no increases on the
23 other items; and I would like to know why they weren't
24 considered for an increase as well. For example, cancelled
25 service, Certificates of No Records, they seem like they should

1 have gotten a percentage increase and more importantly, the
2 10 cents per page. This is a giant issue.

3 Many insurance companies literally pay us 10 cents,
4 one dime, for the pages over 500, not 10 cents per page, but
5 one dime. It is misunderstood how it applies; and even at
6 10 cents, it makes no sense. We are being billed per the
7 Evidence Code, which is 10 cents a page. Then we get to charge
8 10 cents a page. For that same dime, we have to rescan all the
9 pages; we have to do a quality check on them; we have to page
10 number them, upload them, distribute, collect money. We lose
11 money on large charts. We would really like to consider a
12 raise in that 10 cents a page for the pages over 500.

13 And the electronic storage media of \$3. You can't
14 even begin to make an additional set of records in any form for
15 \$3. There's the labor in duplicating, mailing, emailing,
16 supplies. That fee alone doesn't even cover the cost of the
17 postage. Not only is this not a profit, it's a loss. And
18 lastly, in the specific dollar amounts, there's WC 030
19 requested services and WC 032 contracted services. I do not
20 see where there is any description as to what those services
21 are, and I'm curious what they are for billing. And one more
22 under additional sets, which is WC 033. I understand that the
23 \$5 originally being billed for a set requested at the time, or
24 30 for records requested later on, is now being changed to a
25 flat 10. Again, you simply cannot make another set of records

1 for that, and it doesn't matter if they're done electrically,
2 CD, paper. It doesn't matter. It's impossible to produce a
3 set of records for that amount of money, and that number needs
4 to be reconsidered. Thank you.

5 MS. FINULIAR: Thank you.

6 Two more speakers have signed up. First will be John
7 Castro. After John, Mike Callan from the Coalition of
8 Professional Photocopiers, and he could be the last one.

9 MR. CASTRO: All right. This is John Castro. Can you
10 hear me? This is John.

11 MS. FINULIAR: Yes, we can hear you.

12 MR. CASTRO: This is John Castro. Can you hear me?
13 Please tell me you can hear me.

14 MS. FINULIAR: Yes, we can hear you.

15 MR. CASTRO: Okay. Very good. Very good. Sorry. I
16 could not get onto the Zoom meeting even using the link on the
17 DIR website. Nevertheless, here are my comments: Basically, I
18 had sent in my comments on August 26, and my comments are
19 these, and it's on behalf of our firm Floyd Skeren.

20 For the court reporter, Skeren is S-K-E-R-E-N.

21 The issue we were having is CCR 9982(d)(1), allowable
22 services, has the copy service sending a Notice of Intent to
23 Copy Records, and that's being sent to the claims administrator
24 or workers' compensation insurer; but when a copy service goes
25 onto EAMS and sees that they are represented by counsel, then

1 they should send that Notice of Intent to counsel of record
2 because what happens next is counsel can do a Motion to Quash
3 if they feel it's necessary under Civil Procedures 1987.1.

4 But the other issue I have is the meet and confer. If
5 they're represented by counsel, usually the copy service is
6 represented by a hearing representative; and they're held to
7 the same standard as an attorney under Labor Code Section
8 4907(b). That being the case, they cannot be contacting our
9 clients to meet and confer. They must contact counsel of
10 record; otherwise, that would be a violation of State Bar Rule
11 4.2, communication with a represented person.

12 So counsel of record must be made aware that there's
13 someone requesting copies. The Notice of Intent should go to
14 counsel of record. It's not difficult for a copy service to
15 simply go onto EAMS -- they do it every day -- and see if the
16 carrier's represented by counsel. If they are, do not
17 communicate with them other than send them a Notice of Intent;
18 but that should also go to counsel of record.

19 Again, the meet and confer: we have to follow; they
20 have to follow. We all have to follow State Bar rules and
21 communications with the represented person. If that copy
22 service is meet and conferring with our client, a represented
23 client, then we're back in the court filing a Petition for
24 Costs and Sanctions against that copy service also asking that
25 their privileges be suspended under 4907, and so that's

1 basically our position here at Floyd Skeren.

2 One last thing, if I may, is that the time to start
3 the 30 days is when a request is made and what about the delay
4 time in between -- the request is made by applicant's counsel,
5 copy service has it, copy service sits on it for a week, then
6 copy service sends out a Notice, you've already lost a week of
7 that 30 days; and it's at a disadvantage to the defendant; and
8 I thank you so much for allowing us to speak.

9 (Whereupon Hearing Reporter Olivia Lizarraga reported
10 the following portion of the proceedings:)

11 MS. FINULIAR: Thank you.

12 I have only one speaker left, but if you would like to
13 comment on the Copy Service Price Schedule, please send a Chat
14 message with "Request to Speak," with your full name and
15 organization. You can also send an email to
16 DWCrules@dir.ca.gov. Please put "Request to Speak" in your
17 subject line, provide your full name and organization, and if
18 you're calling in, your phone number, so that you can be queued
19 up.

20 Our last speaker will be Mike Callan.

21 MR. CALLAN: Hi, Carol. Thank you very much.

22 My name's Mike Callan. I'm the Vice President of the
23 Coalition of Professional Photocopiers. I'm also the owner of
24 a small copy service, professional photo-copy service, out of
25 the Bay Area.

1 I'd like to take just a second here and just thank the
2 administration, and the DWC, on behalf of the Coalition for the
3 opportunity to comment on the proposed regulations, but
4 particularly for the long overdue fee increases proposed in
5 9981 and 9984. Thank you for that.

6 Although there are some areas we feel require some
7 attention and improvement to reduce friction and costs, the
8 Coalition is generally supportive of the proposed amendments,
9 and, therefore, I'm going to limit my verbal comments, really,
10 only to the most salient points.

11 The main one, it appears that these proposed
12 amendments in 9982(d)(1) have caused a lot of major concern and
13 controversy. We urge the DWC to drop these changes and keep
14 the original language in tact to minimize friction and expenses
15 within the ecosystem. Our industry has waited long enough, and
16 the costs to run a business in California have skyrocketed out
17 of control; therefore, it's our position that the rest of these
18 proposed amendments get passed without further delay and
19 without further comment periods.

20 Thank you very much for your time. I appreciate it.

21 MS. FINULIAR: Thank you. That was our last speaker.

22 We have one person who wants to make a follow-up.
23 Before we get to her, George might like to say, I guess, some
24 parting words.

25 But, again, you can still sign up to speak. Again,

1 send a Chat message to request to speak, with your full name
2 and organization, if you would like to speak. We have only one
3 more speaker, and if there are no more after Darcy wants to
4 come back, then we will be closing this hearing.

5 MR. PARISOTTO: Well, Carol, thank you very much.

6 And I would like to thank everybody for attending. I
7 certainly apologize for any technical difficulties that we had.
8 If we hear that some individuals were unable to join in this
9 Zoom, then we will certainly look into possibly rescheduling or
10 having a second hearing on this matter. We want to make sure
11 everybody's voice is heard. Certainly, everybody is free to
12 submit a written comment. We have received some, and we look
13 forward to it.

14 We do take all the comments seriously. We do look at
15 them, we will respond to them, and we will determine whether or
16 not we'll make any additional changes to the regulations. If
17 we do, we will have probably an additional comment period.

18 But again, thank you very much, and it looks like we
19 are going to be giving people some time back for their day.
20 Thank you.

21 MS. FINULIAR: Thank you.

22 Darcy Duran is the last speaker.

23 Again, if you would like to speak, there's still time.
24 You can send a Chat message to request to speak, with your full
25 name and organization, or you can send us an email with the

1 same message line. And please give us your phone number, if
2 you are on the phone.

3 Go ahead, Darcy.

4 MS. DURAN: Thank you. And I would like to thank
5 everyone, too, for the opportunity for all of us to voice our
6 comments and opinions, and I wish that more people were
7 reaching out right now to talk, because I know there's so much
8 to say about many of these items.

9 I would like to address date of service. It's under
10 the definition 9980(g). The date of service needs to be
11 clarified. At this point, it's on the date the records are
12 requested. That doesn't really make sense. It should be on
13 the date that the records are completed. I'd like that to be
14 reconsidered.

15 Also, there's a section under 9981, Bills, Section D,
16 that states that the invoices should have a statement of under
17 penalty of perjury. I'm not certain how penalty of perjury
18 could be on an invoice. Penalty of perjury from whom -- from
19 the company issuing the bill? from the billing clerk
20 generating the bill? Does it need to be signed? Normally,
21 anything under penalty of perjury requires a signature. It
22 would be ridiculous to have to sign every invoice. And again,
23 more importantly, the responsibility of who is signing under
24 penalty of perjury -- the individual generating the bill, or
25 the copy service that they are doing it for.

1 And also, Personal Appearance Subpoenas have not been
2 addressed at all for fees. There's not only the basic service
3 charge that should be considered for Personal Appearance
4 Subpoenas, but also mileage and the time. They're normally
5 done after hours -- so evenings, early mornings, or weekends --
6 and there's no Billing Codes or Fee Allowance set for those,
7 and that should be inserted. Thank you.

8 MS. FINULIAR: Thank you.

9 Let me give out this message again: I don't have any
10 other speakers lined up, but if you would like to comment on
11 the Copy Service Price Schedule, please send a Chat message to
12 request to speak, with your name and organization. If you're
13 calling in, you can send an email to DWCRules@dir.ca.gov.
14 Please indicate "Request to Speak" in your subject line and
15 provide your full name, organization, and your phone number, if
16 you're calling in, so that you can be queued up.

17 I'm going to -- oh, we do have one more request for a
18 last speaker, but even after the last speaker goes on, I will
19 probably, you know, leave a few minutes if there are people who
20 still want to request in.

21 The last speaker I have here is Edna Toufer. Thank
22 you.

23 MS. TOUFER: Yes, hi. First of all, thank you for taking
24 my call. Secondly, I also agree with Darcy with a lot of the
25 line items that she spoke about. One of the concerns that I do

1 have is, although we have -- it shows that we received an
2 increase of 225, I don't truly see an increase, because it's
3 been reduced from \$30 for the second set to \$10, so basically
4 taking one line item to another. It's very hard, as Darcy
5 stated, for us to make any kind of money or to do something for
6 \$10. Whether it's five, ten, any of those fees, the time that
7 it takes, you know -- as --

8 I'm not sure if you're aware, a lot of doctors,
9 whether they're AME's, QME's, will refuse to even accept CD's
10 to evaluate patients. They require paper so they can review
11 them, they can, you know -- to review them and everything. So
12 I just don't understand how there has been an increase, if now
13 you're taking away from other line items. As Darcy also
14 stated, we have not received any increase, whatsoever, on the
15 other line items.

16 I know one of the issues with the Certificate of No
17 Record, we have no control with the facilities if they give us
18 a Certificate of No Record, one. A lot of times they'll -- the
19 files may be missing, two, the records are destroyed. There
20 are many scenarios that happens. Trust me, we do not want a
21 Certificate of No Record, because there is no money in that.
22 By the time we call facilities, by the time we try to hunt
23 things down, if we have to pay at least a \$15 for a Witness
24 Fee. Many times they're actually trying to charge us \$50 to
25 basically sign the Certificate of No Record, which, you know,

1 we have to fight with the facilities.

2 I just hope, you know, as small businesses, that you
3 guys take us in consideration.

4 You know, and also another, we have clients who also
5 want Personal Appearance Subpoenas. There is nothing in the
6 regulations that allows that. For us to currently do that, we
7 would have to file a lien, which would be at a loss, because
8 it's not listed on the line item. It's \$150 to file that, and
9 we have to pay out-of-pocket because we have to pay the Witness
10 Fee, we have to pay the Mileage Fee, so there is a lot to that.

11 The \$180 that you're basically giving us is, again,
12 minus, you know, \$35. We're now -- what is that? No, we're
13 down to -- I'm sorry, a little nervous -- approximately \$150,
14 you know. It's just we would like something in place where if
15 you're going to have us police medical facilities, please give
16 us the tools to do that. You can't just tell us to police
17 them, but don't give us any tools to be able to enforce
18 anything. We need your help with that, in order to be able to
19 do that.

20 I'm trying to think what else. There's just so many.

21 And I hope, you know, George, if you have time to, you
22 know, meet with some of the smaller copy services that don't
23 have a coalition. I know a lot of them would love to speak
24 with you. They don't have lobbyists and stuff. Maybe you can
25 talk to them and, you know, hear them out, because, you know,

1 we are the backbone of the, you know -- of our country and
2 everything. And anything you guys can do, we would really
3 appreciate it.

4 Many copy services have already gone under because of
5 the last Fee Schedule, a lot of the smaller ones. Six years
6 now, minimum wage has gone up 50 percent, 50 percent. So even
7 the 25-percent increase, which are taking the second set from,
8 doesn't even touch where we are currently.

9 So, anyway, I appreciate your time. Thank you.

10 MS. FINULIAR: Thank you.

11 We have one more speaker. I keep saying that. But
12 even after our last speaker, I'll still keep the record open or
13 -- not keep the record open. I'll keep the line open to allow
14 people to come to sign up. If you would like to sign up to
15 speak, please send a Chat message to request to speak, with
16 your full name and organization. You can also send an email to
17 DWCRules@dir.ca.gov. If you're calling in, please provide your
18 phone number so that you can be queued up.

19 We have two people who have signed up to speak. The
20 first is one Ruth Leshay, and after Ruth, Daniel Lopez has
21 asked to come back.

22 Go ahead, Ruth.

23 MS. LESHAY: Hi, hi, good morning. I just want to comment
24 on some of the proposed changes, appreciating the fact that
25 there was some changes that needed to be made. And the

1 increase does actually seem fair, and, I think, on both sides,
2 because I've had the opportunity to see from both sides,
3 working internally for a copy service and being on the defense
4 side, as well, defending the billing and/or the lien. And I
5 think a lot of the passion comes from understanding the cost
6 aspects, and then also understanding the -- understanding the
7 flaws in understanding actually copy-service billing.

8 So, having said that, I think some of the things that
9 are lost is, when does there become a need for a copy service?
10 I think, from a defense prospective, that's our biggest issue
11 because, as I think as Floyd Skeren also mentioned, sometimes
12 they're coming in when records are already in route to be
13 produced and/or distributed to the applicant's attorney, and
14 here comes the copy service coming in to provide a service on
15 top of something that's naturally going to occur anyway. So I
16 think that's one of the gaps.

17 And then as far as costs go, I think, often times, on
18 this side, there's a lack of understanding to the fact that in
19 order to be an efficient copy service, much of it, if not
20 nearly all of it, can't be manual, everyday type of routine.
21 They have to have a system in place to be, A, efficient and
22 effective. So giving off this position that everything is
23 manual, and there's nine people sitting there, and you have to
24 do everything manual, I don't know if it's disingenuous, it's
25 just a little archaic. Copy services, just like everyone else,

1 are moving toward a more cleaner way of processing records.

2 A lot of times, even on the medical side of it,
3 they're dealing with an electronic transfer from themselves to
4 the custodian of records, and back and forth. So the
5 efficiency within their system is what's going to eliminate a
6 lot of these a charge for this, a charge for that, a charge for
7 this, a charge for that. And I think that is where we need to
8 understand, that that base charge is what that's for. Because
9 once that base work has been done, you're now feeding off of
10 that base work to produce another set. You're not having to go
11 back out and reroute and redo all of that initial work. And I
12 think that's why the Copy Service Fee Schedule is more in line
13 with current and future endeavors. No copy service is going to
14 back to the very beginning to start a, quote on quote, a
15 "second set."

16 And there's QME's or AME's ordering additional sets,
17 as the copy service is stating, then they need to be paying for
18 it, especially if they are wanting individualized services that
19 are unique to them as opposed to the defendant, because that's
20 where the conflict comes into play. The defendant is having to
21 go to court and litigate anything and everything, and that
22 clogs the Workers' Comp. system with something that should be
23 very, very simple.

24 So that's my comment. I have nothing else to add.

25 MS. FINULIAR: Ruth, did you say what organization you are

1 from, if you are comfortable?

2 MS. LESHAY: On behalf of the Law Office of Edward De La
3 Loza.

4 MS. FINULIAR: Thank you.

5 Okay. I have only one more speaker left, and that's
6 Daniel Lopez.

7 MR. LOPEZ: Thank you, Carol.

8 Real quick, I just wanted to follow up. I did make a
9 comment in my written comments regarding personal services for
10 service of process for a depo or a trial hearing.

11 Just to keep in mind that I believe -- and this goes
12 all the way back to the prior Administration -- that these Fee
13 Schedules were for records only, and not for service of
14 process, number one. Number two is, if you do consider
15 regulating further on service of process, that keep in mind
16 that State employees, Witness Fees, and mileage are much
17 different.

18 I've had to subpoena State employees or CHP officers,
19 and the base witness fee is not \$35; it's like \$275, per the
20 Government Code. So just to keep that in mind, that you guys
21 are aware, in -- if you take that into consideration in this
22 process. But, again, regulating a Fee Schedule, regulating
23 procedures seems a little, I mean -- for us, it's a little
24 challenging, but I understand controlling the cost is
25 important. But, again, this is not the -- personal appearance,

1 personal services are not part of this regulation, and if that
2 can be clarified, that would be helpful, as well.

3 MS. FINULIAR: Thank you.

4 I have one more speaker. I keep saying that, but,
5 please, if you would like to comment today, you can send a
6 Chat. Please send a Chat message to request to speak. Provide
7 your full name and your organization, and you can also send an
8 email to DWCRules@dir.ca.gov.

9 Oh, I got another speaker that has requested in, so we
10 have two more. First would be Edna Toufer again, and after
11 Edna, Katheryn Greve.

12 Go ahead, Edna.

13 MS. TOUFER: Yes, hi.

14 The previous speaker, with all due respect, it's very
15 hard for someone to tell you how to run your business, when
16 that's not what they do for a living. So I understand
17 streamlining, but I think a lot of people that are in the law
18 firms don't understand what it is taking the copy service to be
19 able to do what they do. So that was number one.

20 Number two, I just wanted to clarify again as far as
21 the 10 cents a page that you guys are currently giving us, per
22 1563, you know, facilities are currently charging 10 cents a
23 page, so that 10 cents that you are giving us for anything over
24 500 pages, that's going straight to the facility. Now we have
25 to negotiate, we have to file petitions, so basically try to

1 get back the 10 cents that we're basically losing. So I
2 really, really hope that we can at least get 20 cents a page.

3 We can also see increase on the line items. And, you
4 know, on all the other line items that we did not get, again,
5 if there's a way that we can enforce carriers for not paying on
6 time, not paying sales tax. We have a lot of times that, you
7 know -- how do we go to court because the -- a carrier is
8 refusing to pay -- I'm sorry -- pay sales tax. So once again,
9 now we're at a loss, because they're refusing to pay that
10 sales tax.

11 So, thank you.

12 MS. FINULIAR: Thank you.

13 My last speaker is Katheryn Greve.

14 Kathleen, that's G-R-E-V-E.

15 Go ahead, Kathleen -- Katheryn. Sorry.

16 MS. GREVE: Hi, yes. Good morning. Thank you.

17 Yes, I have been working in the Workers' Comp.
18 industry since 1993, and I first got my experience in work --
19 copy service, and then moved on to applicant work and such. So
20 I just wanted to say a couple of things and concur with Mark
21 Gearheart, from the Applicants' Attorneys Association, that
22 there's -- I'm concerned about, in both respects, with regard
23 to particularly the applicants' case, the, you know, delayed
24 for them to get records that they need to get that are not in
25 the possession of the insurance carrier or employer at the time

1 of the request. That -- that all the attorneys that we work
2 with, and the copy service that I work with, as well, we always
3 require that letter, and we wait the 30, plus five, days for
4 the defendant to get the records to applicant attorney that are
5 in their possession.

6 And then at that time, when we issue a subpoena,
7 sometimes the defendant will come forward and say that they
8 will produce them. They'll file a Motion to Quash, maybe on
9 the 30th day after the subpoena issues, and then file a Motion
10 to Quash, saying that they will produce those or they're going
11 to, when the time frame for them to produce has already passed.

12 So I'm really concerned now because of the comments
13 that John Castro made, because, you know, the Notice of Intent
14 to copy on top of that, first of all, coming from the copy
15 service, seems, well, I think it's -- we're in a blind spot,
16 because the request has already been made to the carrier and
17 the employer, and the records have not been timely served, and
18 the issuance of a subpoena sometimes brings forth an objection
19 where the defendant -- and this is very common -- that they say
20 that they will provide it, or they would provide it, if they
21 had a request. Now it looks like, as Mr. Gearheart said, that
22 the Notice of Intent to Copy adds an additional barrier for the
23 applicant to get their records after already a demand has been
24 made.

25 And then I'm concerned that this is going to be a very

1 difficult position for the copy service, itself, to be in,
2 because, first of all, they're not going to be the one who
3 meets and confers. And what does "meet and confer" mean? An
4 additional barrier to what -- these processes that are already
5 in place.

6 And then this is, you know -- I do review records for
7 applicant attorney on a regular basis for litigation and for --
8 to determine the case, and what we find is that there are
9 places that we go to that the defendants don't have it, so when
10 they say that they're going to get a Notice of Intent to Copy,
11 and the defendant objects further, is their objection just
12 going to be any type of objection? And when they object, are
13 they going to be filing a DOR? And so this comes to John
14 Castro's comment, which was, basically, that somehow the copy
15 service should, you know, make sure that that Notice gets to
16 the defense attorney, when, in fact, they may not appear even
17 on the case search that they've recently filed, because a lot
18 of this happened in the beginning of the case, was that defense
19 attorney has only, you know, after 35 days go by, has just
20 maybe joined on to the case, and they don't appear on the
21 service list yet. Okay.

22 So what -- we would be in a position, according to
23 John Castro, of being sanctioned for not sending it to them. I
24 think it's very problematic, and I think it's going to lead to
25 a lot more litigation. And what is the valid reasons for

1 defendants objecting in that case, and how is the copy service
2 supposed to deal with that? I think that that Notice of Intent
3 to Copy could just happen in the initial letter. And why
4 additional time and additional litigation? So I do think
5 that's going to lead to a lot of additional litigation.

6 And I thank you for chance to speak on that.

7 MS. FINULIAR: Thank you.

8 I have one more speaker that has signed up. John
9 Castro would like to speak again.

10 Again, if you would like to speak, please send a Chat
11 message to request to speak, or send an email to
12 DWCRules@dir.ca.gov.

13 Go ahead, John.

14 MR. CASTRO: John Castro. Can you hear me?

15 MS. FINULIAR: Yes, we can hear you.

16 MR. CASTRO: Can you hear me?

17 MS. FINULIAR: Yes.

18 MR. CASTRO: Oh, very good.

19 Again, for the court reporter, this is John Castro,
20 with the Law Offices of Floyd Skeren.

21 So in regards to the -- and I appreciate and respect
22 the copy services out there. There are many good copy service
23 places that we work with that -- they do an outstanding job.
24 There are many that, not so much.

25 But as far as the 30 day, when the Notice of Intent

1 issues, and we have those records, we'll send those records
2 that -- if we possess those records. But if the 30 days has
3 already passed, and we haven't sent them, we have no leg to
4 stand on, when the copy service goes out and copy. And they
5 should go out and copy it. We didn't respond within 30 days,
6 they should go out and be allowed to copy those records.

7 What I do ask, though, is that when the -- in order to
8 make life so much easier, like many of the copy services that
9 we've worked with closely, they send us a copy. We ask them to
10 send us a copy of the records that you subpoena, just email
11 them. You don't -- you don't have to send a hard copy, email
12 them. That way, when you send the demand, I can look at those
13 records. I can see what the true value is. I can make an
14 appropriate recommendation to the client. I can secure
15 authority, and I can resolve it without the Court's
16 involvement.

17 Many times, they respond -- other copy services will
18 respond with, "Oh, we sent it to your client. Get it from your
19 client." And all I'm asking to do is, take a look at records
20 that you said you sent our client, so I can look and make a
21 well-reasoned decision as to what I think should be paid on it.

22 You know, I recently purchased a vehicle online, but I
23 was afforded the opportunity to look at the vehicle before I
24 purchased it. I say the same thing with these copy services,
25 "You send me the records, I'll look at them, and I will make a

1 fair assessment, and we do not have to involve the Court."

2 As far as 30 days, I'll repeat that if after 30 days
3 of the Notice, that counsel of record, defense counsel, hasn't
4 sent those records, go ahead and copy them. As far as the last
5 speaker saying that many times they're not on EAMS as counsel
6 of record yet, then all you have to do is, that day, make a
7 copy of that. That will fortify your position that they
8 weren't even on EAMS, and I did do what I had to do. And
9 that's our position.

10 Once again, I thank all of you, and may you and your
11 entire family stay safe.

12 MS. FINULIAR: Thank you.

13 I have no other speakers lined up. I will be going
14 off the record and keeping the Zoom meeting open for five more
15 minutes, to allow for people that might be late and wanting to
16 speak.

17 Again, if you would like to comment for today's
18 hearing, please send a Chat message to request to speak, with
19 your full name and organization. If you're calling in, please
20 send an email to DWCRules@dir.ca.gov, with "Request to Speak"
21 in your subject line. Provide your full name, organization,
22 and phone numbers so that you can be queued up to speak.

23 Can we go off the record for five minutes, and I'll
24 come back on at 11:05 and close this out, if there are no other
25 speakers.

1 Thank, you everyone, for commenting today. Again,
2 you're a very vital part of this rule-making process. It's
3 really good for us to hear from you and from different points
4 of view, and we will be considering every comment that's made
5 before we issue a final version of these rules. Thank you.

6 (Recess is taken.)

7 MS. FINULIAR: It is now 11:05. No one else has signed up
8 to speak. I want to thank everyone for attending today, and
9 for participating. Again, your comments are vital to this
10 process. We really appreciate the time that you've taken to
11 speak with us.

12 It's not too late. If you want to comment, you can
13 jump right in right now, before we close the record. Send a
14 Chat message to request to speak, or an email to
15 DWCRules@dir.ca.gov. I don't see that anyone else has --

16 MR. RODRIGUEZ: Good morning. Good morning, Carol. This
17 is Daniel Rodriguez, with California Schools JPA. I submitted
18 a request. I'm not sure. It didn't show up.

19 MS. FINULIAR: I'm sorry. Go ahead.

20 MR. RODRIGUEZ: Okay. So right here, provided within 30
21 days a written -- a Notice of Intent to Copy records to an
22 employer, so normally that intent -- the Notice of Intent that
23 is currently being sent, is telling the employer we're going to
24 copy records from your location. The Notice of Intent, it
25 would be helpful if it included a listing of all the locations,

1 not just the employers' location, or those in possession of the
2 TPA or the insurance company, but of all locations that the
3 applicant's attorney is requesting records from, which will
4 allow the claims administrator to piggy-back on that and
5 request copies for those records, as well. Because a lot of
6 times, there's duplication, and that's the main issue on the, I
7 guess, the employer. One of the biggest objections I see from
8 the insurance side, or the TPA side, and the self-insured
9 employer's side, is because the records are being requested by
10 both parties simultaneously.

11 And if theory is that, you know, the defense side or
12 the employer side is only going to request pages one through,
13 you know -- get 100 copies, but only provide 50 to applicant's
14 attorney, it can be avoided by, you know, us or the insurance
15 side piggy-backing on their request for records. Because a lot
16 of times, also, they have more locations than the defense side
17 does, so that would be helpful.

18 And also, too, and what may help prevent some of the
19 meet and confer -- because I don't even really know that that
20 has any teeth to it -- is that the applicant's attorney would
21 have to sign and indicate what the records are being requested
22 for, so that way the claims administrator or the insurance
23 company or defense attorney can look at that and say, "Okay.
24 We're not going to raise an objection. We're going to go ahead
25 and proceed and allow those records to be requested. We're

1 just going to request a copy of those be served on us as well,"
2 which is already being done. The copy services do send out the
3 Notice and say, you know, "Would you like a copy?" But a lot
4 of times you really don't get the copy, when you're requesting
5 it.

6 The other is, changing the -- so -- or indicating
7 somewhere in there what's a valid request for additional
8 copies, or whenever an applicant's attorney or the injured
9 worker is requesting an additional copy of records, that they
10 have to sign for it, or personally, you know, request it
11 because what's occurring and seeing -- I've worked at a couple
12 companies and self-insured, self-administered employers. What
13 you see is that there will be a request, you'll get the
14 records, the flat-fee bill, and then you'll also receive a
15 copy, an electronic copy, either CD or in an electronic link,
16 but then on day 31, you're also receiving another bill for \$30
17 for, you know, providing you with an additional copy to all
18 parties. And there's no evidence that that request was ever
19 being requested.

20 Also, if it could be somewhere in here, indicate what
21 is a valid med-legal copy charge for this prospective, because
22 what occurs is -- so if -- if a request for records come in,
23 and if for some reason we've already provided it to the
24 Applicant's attorney, then they'll come in and do a Motion to
25 Quash. You do the Motion to Quash, that's, you know -- who

1 knows how much money -- about \$500, probably. And then you
2 have to file an objection for a non-IBR, and then you have to
3 go get in front of the judge, and the judge is normally
4 deferring it until the end of the case, so now you have this
5 outstanding lien that's out there. And because for copy
6 service, you don't have to pay a lien-filing fee, so, you know,
7 they just come in, you know, you just keep getting the bills
8 over time.

9 And a lot of the times, too, from what I've noticed,
10 because I'm on the employer's side now, is that the claims
11 administrators are not actually properly objecting to the -- to
12 the copy service. What they're doing is, they're sending an
13 objection letter instead of an explanation of review. And
14 because of that, it doesn't really start the med-legal process,
15 and then the copy services will send in one objection to your
16 billing, and then the other one will be like, "Oh, you didn't
17 file a valid DOR." Then after 60 days, you know, or 90 days,
18 then they're, I mean -- technically, they have to pay the bill
19 in full, with penalties, potential sanctions, and interest.

20 So I think the main thing is just outlining exactly
21 what the records are being requested for, and having the
22 applicant's attorney have to sign off on it, because a lot of
23 times, they'll see you're getting the request for subpoenas.
24 It has the same person's name on it across the board, for
25 multiple, you know, entities, multiple law firms, and it's just

1 basically a stamp. So I think more accountability and giving
2 the employers the opportunity to request copies of what the
3 applicant's attorney is being -- is requesting.

4 Thank you.

5 MS. FINULIAR: Mr. Rodriguez, I'm sorry. What
6 organization are you with?

7 MR. RODRIGUEZ: California Schools JPA. Joint Powers
8 Authority.

9 MS. FINULIAR: Thank you.

10 I don't have any other speakers lined up. But I think
11 I'm going to keep the line open again, in case anyone wants to
12 sign up. If you would like to comment today, please send a
13 Chat request -- I mean a Chat message to request to speak, with
14 your full name and your organization. You can also send an
15 email to DWCRules@dir.ca.gov.

16 We can go off the record. We can stay on line for
17 another two minutes, to allow for people to speak if they would
18 like to.

19 (Recess is taken.)

20 MS. FINULIAR: No one else has signed up to speak.

21 Thank you, everyone, for commenting today. We are
22 still accepting written comments. You can send them to
23 DWCRules@dir.ca.gov. Those will be accepted until midnight
24 tonight.

25 Thank you again. We will be closing the public

1 hearing at this time. Thank you.

2 (Whereupon the proceeding concludes at 11:13 a.m.)

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REPORTER'S CERTIFICATE

We, the undersigned Hearing Reporters for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken stenographically before and by us; was subsequently, with computer-aided transcription, produced under our direction and supervision; and that the foregoing is a full, true and correct transcript of our original shorthand notes.

We further certify that the proceedings, as transcribed, comprise an accurate transcript of the testimony.

Signed and dated at Oxnard and Anaheim, California, this 3rd day of September, 2021.

Shauna Mullin

Shauna Mullin
Official Hearing Reporter

Olivia Lizarraga

Olivia Lizarraga
Official Hearing Reporter