

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF WORKERS' COMPENSATION

4 COPY SERVICE PRICE SCHEDULE
5 PUBLIC HEARING (VIA ZOOM)

6 Friday, February 25, 2022

7
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10 Industrial Relations Counsel

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24 Reported by: Jerilyn McGuire
25 WCAB Hearing Reporter

I N D E X

1		
2	Darcy Duran	5, 29, 37
3	Anonymous Speaker	7, 23
4	John Castro	9, 33
5	Dan Mora	10
6	Diane Worley	12
7	Diann Cohen	14, 31
8	Daniel Lopez	15, 36
9	Christian Groneberg	16
10	Charles Rondeau	18, 27
11	Donna Gaetano	20
12	Katheryn Greve	22, 32
13	Sophia Duncan	26
14	Victor Altamirano	35

15
16
17
18
19
20
21
22
23
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1 (Time Noted: 10:15 a.m.)

2 MS. FINULIAR: Welcome everyone. This is the Public
3 Hearing for the Copy Service Price Schedule. My name is Carol
4 Finuliar. I'm an attorney at the Division of Workers'
5 Compensation. I will be your moderator today. George Parisotto,
6 Administrative Director, is also here. I have some DWC
7 attorneys: Lindsey Urbina and Nicole Richardson are also here.

8 This hearing is being recorded and will be transcribed.
9 Our Hearing Reporter is Jerilyn McGuire. DWC Regulations
10 Coordinator, Maureen Gray, is our lovely host. She's labeled as
11 Request to Speak in the chat box, and Kathleen Estrada is
12 assisting with un-muting speakers.

13 I hope you've had chance to review the Copy Service Price
14 Schedule. We will continue to accept written comments up until
15 midnight tonight.

16 Your input is a vital part of the rule making process.
17 We're here today mainly to listen. I'm not going to engage in a
18 discussion with you, and I won't be able to tell you if your
19 suggestions will be implemented, but every comment will be
20 considered in drafting the final proposal. The final version
21 will still need to be approved by the Office of Administrative
22 Law before it becomes effective.

23 Getting to the mechanics of today's hearing - thank you
24 everyone that registered to speak today. That was kind of a new
25 process that we put in. If you have not registered, you can

1 still sign up to speak using the Zoom chat function. Send your
2 chat message to "Request to Speak." Please provide your full
3 name and organization. If you're calling in, please provide your
4 phone number. Maureen is handling the Request to Speak function.
5 You can also sign up to speak by sending an email to
6 DWCrules@dir.ca.gov. Please put "Request to Speak" in the
7 subject line along with your full name and organization, and if
8 you're calling in, please provide your phone number so that you
9 can be identified in the Zoom call.

10 Each speaker will have three minutes. Everyone is
11 currently muted, so you'll need to click on the un-mute message
12 before you speak. Please state your name and organization and
13 spell your name for the record if you didn't pre-register. If
14 you're from a copy service, can let us know if you're from the
15 applicants' side or the defense side, or if you do both. Nicole
16 will give you a warning when you have a minute left. Please take
17 that opportunity to wrap things up because you will be muted, and
18 the next speaker will be called. If you weren't able to finish
19 you can sign up to continue. If time allows, you'll be called up
20 again after everyone has been given an opportunity to speak.
21 Follow-ups are limited to two minutes.

22 Our Hearing Reporter will not be taking down chat messages.
23 All of your comments will be taken down by the Hearing Reporter.
24 Please pace yourself; especially if you're reading your
25 statement. Our Hearing Reporter will remain unmuted in the event

1 she needs to ask for clarification. Please spell out technical
2 terms for the record.

3 Please restrict your comments to the Copy Service Price
4 Schedule. This is not a general complaint forum. Please don't
5 talk about Appeals Board cases, because nothing is going to be
6 turned over to the judge.

7 We'll be closing the hearing at 5:00 or earlier if everyone
8 is finished speaking. We'll take a break at 11:00, and then
9 another break for lunch, and we'll reopen the record after the
10 breaks if there are still people signed up to speak.

11 Lastly, everyone who signed up to speak is on Maureen's
12 list for notice. If you would like to receive notice of any
13 changes to the Copy Service Price Schedule and be added to the
14 list, please email DWCRules@dir.ca.gov with your name, contact
15 information, and please indicate that you would like to receive
16 notice of the Copy Service Price Schedule. You can also request
17 notice of other DWC Rules and send in written comments until
18 midnight to the same email address.

19 I believe we have 11 speakers signed up, but first is Darcy
20 Duran. After Darcy John -- no. Anonymous will speak. Go ahead,
21 Darcy.

22 MS. DURAN: Hi. Can everyone hear me? This is Darcy
23 Duran. I'm the office manager here at Hard Copy. We do
24 primarily defense work, and I have been with the company 30
25 years, and another copy service prior to that. I would like to

1 address -- I have a list of ten concerns, but I'd like to address
2 my three main ones first in an effort to allow time for everyone.
3 May I please find out if everyone can hear me?

4 MS. FINULIAR: Yes.

5 MS. DURAN: Okay, perfect. Thank you. First of all, I
6 don't think we can really afford anymore delays, so I think that
7 a lot of our arguments or concerns -- certain ones may have to be
8 put to rest and reviewed at another time. I think we just have
9 to get something passed, rather than nothing passed. We have
10 been waiting almost seven years, and it's getting extremely more
11 difficult. I also don't see any provisions listed for the
12 future. So, are we going to have to do this again in another
13 seven years? Our issues are that during the same time the State
14 of California has required us to raise minimum wages from \$9 to
15 \$15, and on July First -- being in the City of Los Angeles -- we
16 have to be raise our minimum wages to over \$16 an hour. During
17 that same time period, we have not been allowed to increase fees
18 whatsoever. The same state that's trying to give the workers
19 more money is trying to put the company out of business, and we
20 just can't continue like that. That's why we're also concerned
21 that there are no provisions for any future increases. The two
22 particular subjects that I'd like to discuss are number 1 for us,
23 under Section 9984(b)(2), the new third-party fees. The
24 regulation states that we're only going to have to pay \$15 to
25 these ROI services for C&R's, and thirty-some dollars for

1 records. The question is, who's going to tell these ROI services
2 that --

3 MS. RICHARDSON: One minute remaining.

4 MS. DURAN: -- and who's going to enforce it? I'd like to
5 know that, because we're at their mercy. They make more money
6 than we do. The other section is the remaining part of the bill
7 that we get to charge 25 percent penalty -- we don't even get
8 paid on most of our bills now, and we work for the defense. I'm
9 not interested in 25-percent penalty. I'm interested in better
10 ways to get paid, period. Okay, thank you.

11 MS. FINULIAR: Thank you. Next is our anonymous speaker.
12 After anonymus will be John Castro.

13 ANONYMOUS SPEAKER: Hi. Can you hear me? Carol, can you
14 hear me?

15 MS. FINULIAR: Yes.

16 ANONYMOUS SPEAKER: Hi. This is Edna with Doc Central. We
17 feel that the DIR has let down workers-employees once again after
18 seven years who have promised to help and protect by forcing them
19 to work under poverty levels -- under poverty wages which was
20 done by the DIR. Minimum wage has gone from nine to -- \$9 to now
21 \$15 and \$16.50 depending on the city. That is almost a
22 50-percent increase. The DIR has had seven years to do an
23 economic analysis and has refused to do so, so they can purposely
24 keep workers working under poverty wages. They have purposely
25 refused to address the fee schedule or do any analysis year after

1 year to avoid having to give an increase. What excuse will there
2 be this year for no true increase or another delay? Companies
3 have had to cut medical coverages for their employees just to be
4 able to keep their doors open, while DIR gets to enjoy the
5 luxuries of having health care for themselves and their families
6 to get care. Why are the workers from copy services any
7 different? Why can't copy services be paid enough to afford
8 livable wages so everyone can have the same luxuries of being
9 able to afford a simple thing like health care to take care of
10 themselves. DIR has made it impossible to be able to continue to
11 work in this industry by putting us through obstacles to do the
12 work and get paid. If DIR wants to reduce fraud, they need to
13 pay workers livable wages to be able to afford basic essentials
14 like food and health care. This is how you reduce fraud; not
15 creating more obstacles and costs without true increase. Has DIR
16 done an analysis to see how many copy services they have put out
17 of business since the original fee schedule was put in place?
18 Where's the study? Did they even care? One of the largest copy
19 services in the industry just went out of business this year due
20 to not being able to keep their doors -- DIR intentionally put
21 those thousands of --

22 MS. RICHARDSON: One minute.

23 ANONYMOUS SPEAKER: DIR intentionally put thousands of
24 workers out of work due to their lack of care and analysis and
25 issue an increase to pay live wages. I guess I don't have time

1 to read all of that. Please stop listening to people who have no
2 idea what it takes to have a copy service when they don't own
3 one. It makes absolutely no sense. Thank you.

4 MS. FINULIAR: Thank you. You can -- if you didn't finish,
5 you can request to continue by sending a chat message to Request
6 to Speak and/or send an email to DWCrules@dir.ca.gov. I have
7 John Castro lined up. After John Castro will be Dan Mora.

8 MR. CASTRO: Carol, can you hear me?

9 MS. FINULIAR: Yes.

10 MR. CASTRO: Very good. So, my response in regards to the
11 fee schedule pertains to the notice of intent to copy records.
12 So, my position is the copy service should also send those notice
13 of intent to copy records to counsel of record. They just go on
14 EAMS and see if the carrier's represented. Our firm is hired to
15 represent the interests of the carriers including whether to file
16 like a motion to quash, or any other legal action that is in
17 order. So, I'm asking that the rules simply add that if the
18 defendant is represented by counsel, that counsel of record
19 should receive that communication as well. As for the meet and
20 confer to resolve the objection for the copy of records, my
21 position fortifying our previous argument, is that the notice of
22 intent to copy records should be sent to counsel of record as the
23 meet and confer as it's currently proposed would require the
24 representative of the copy service to communicate with our
25 client, which would violate State Bar Rule 4.2, communication

1 with a represented person. My proposal is that the rule change
2 should simply add that if the carrier is represented by counsel,
3 that the meet and confer is to take place with counsel of record.
4 An additional argument that I am making is in regards to the
5 securing the copy of records. I think they should be provided to
6 the defense firm of record. That way we can make a well-reasoned
7 assessment of those records and make the appropriate
8 recommendations to our client as far as any payment is concerned.
9 My recommendation actually avoids the unnecessary litigation;
10 provides the strong public policies favoring judicial economy and
11 uniformity in the application of the law and the prevention of
12 inconsistent judgments that undermine the integrity of the
13 judicial system.

14 Many times I get these copy services; I look at the
15 billing; I make recommendations --

16 MS. RICHARDSON: One minute.

17 MR. CASTRO: -- to the client, and the client issues the
18 payment. That's the best way as opposed to trying to reach some
19 claims adjuster when you know that they're represented by
20 counsel, and then they refer you to counsel, and then you don't
21 communicate with us. Um, that's basically it. That's my take.

22 MS. FINULIAR: Thank you. I have Dan Mora signed up.
23 After Dan Mora will be Diane Worley.

24 MR. MORA: Good morning. I am Dan Mora representing the
25 Coalition of Professional Photocopiers; representing both

1 applicant and defense copy services. I want to give an answer to
2 the perennial question of why workers' compensation in California
3 is so expensive. I am a student of organizational waste; how to
4 combat it and eliminate it, and the answer is complexity.
5 Complexity is the mother of all waste. There are eight types of
6 organizational waste. Complexity affects every one of those
7 eight types of waste. But I'm not here to talk about why we have
8 complexity. I'm here to advocate. Complex systems require deep
9 subject matter experts and exceptional collaboration to simply
10 maintain; let alone improve the systems that make up our
11 industry. If we can define the problem, we can affect the
12 problem.

13 California Business and Professions Code 22450 states that
14 a professional photocopier is a registered and bonded entity.
15 Section 22458 continues... Responsible for the integrity and
16 confidentiality in the transmittal of records. A responsibility
17 that our CCP members agree to uphold. Workers' compensation is
18 an evidenced-based system. Truth in evidence is absolute and
19 shall not be compromised. Independent discovery is a presumed
20 right to all parties.

21 I want to specifically thank and recognize the DWC Policy
22 Staff for their time and attention, hard work and inclusion in
23 bringing these regulations up to date. We cherish the working
24 relationship our coalition has cultivated in this journey, and we
25 look forward to future collaboration. I want to recognize the

1 coalition's board: Mike Callan and Steven Schneider, both
2 industry veterans and professionals with high standards. We each
3 hold each other in high regard, and it's been a pleasure to
4 accomplish what we have with collaboration, expertise and
5 energy --

6 MS. RICHARDSON: One minute.

7 MR. MORA: Our progress would not have been possible
8 without many others: Lori Paul, Sherry and our coalition
9 members, and the many stake holders that have given their time to
10 hear us. Without our coalition's advocacy and shared best
11 practices, there is no doubt that we would have -- we have
12 affected -- we would have not affected further harm to our
13 members. To be clear, these regulations have not gone far enough
14 to right the damage of neglect, clarify the process and reduce
15 friction, and will require future improvement. But, we recognize
16 that the process of compromise should leave all parties, to a
17 degree, unsatisfied, and we strongly advocate for this draft to
18 go into effect as stated on April 1st. Please take the time to
19 review our written comments. We have recommended
20 non-controversial and constructive minor edits in the spirit that
21 these regulations be adopted immediately. Thank you.

22 MS. FINULIAR: Thank you, Dan. I have Diane Worley next,
23 and after Diane, Diann Coehn. We also have two other speakers
24 that have signed up.

25 MS. WORLEY: Thank you, Carol. I'm Diane Worley. I'm the

1 Executive Director of the California Applicant's Attorneys'
2 Association. We submitted our written comments on the recent
3 proposed provisions yesterday afternoon, and therein we
4 highlighted a significant issue with regard to proposed
5 Regulation 9982 subdivision (e)(5), which allows that "no fee
6 will be paid where a party has made a timely objection to
7 subpoena for records from the employers, claims administrator or
8 the insurance carrier." The most common reason for an
9 applicant's attorney to subpoena a claims file is the carrier
10 fails to provide it. A claims file is essential to handle a
11 case. Without a requirement of good cause in this subsection, an
12 objection will simply be a matter of suppressing the applicant's
13 right to discovery. The rule as written will severely harm
14 injured workers. Under current law, employers have an adequate
15 remedy for disputes regarding subpoenas. That is a motion to
16 quash, and that requires good cause. We respectfully request
17 that subsection (5) be eliminated, as it will encourage
18 bad-faith, delays, friction and increased costs. As an
19 alternative in our written comments, we recommended that the
20 following language be provided as an amendment, because it would
21 be more consistent with the Labor Code and with the California
22 Constitution, and reading into the record that language is:
23 "Charges for services related to a subpoena for records and the
24 employers' claim administrators or workers' compensation
25 insurer's possession, or for cancellation of such a subpoena, are

1 payable by the defendant/employer unless it is filed a timely
2 Petition to Quash the Subpoena stating good cause, which has been
3 adjudicated in its favor by the Appeals Board.

4 MS. RICHARDSON: One minute.

5 MS. WORLEY: Thank you for the opportunity to make
6 comments, and I just want to make a general acknowledgment in
7 support of the copy services that have testified so far and will
8 be testifying. I hope you hear them loud and clear that seven
9 years is appalling, quite frankly, for them to have to wait for a
10 very minor pay increase, which is reflected in these proposed
11 regulations. Thank you again for your time.

12 MS. FINULIAR: Thank you, Diane. Next I have Diann Cohen.
13 After Diann will be Daniel Lopez.

14 MS. COHEN: Good morning, I'm Diane Cohen, Vice President
15 of client services for MacroPro. We are a defense copy service.
16 I would like to thank the Committee and everyone that I've met
17 with over the past seven years to discuss the unintended
18 consequences of the original copy service reform. We feel that
19 the updated reforms have addressed our concerns and fixed the
20 issues that copy services have dealt with. In addition, I would
21 like to thank the DIR for putting in additional regulations for
22 the ROI companies as their fees have been un-regulated and
23 continued to increase. We thank you for listening to us and
24 including these concerns that we've had in the new regulations.
25 Thank you.

1 MS. FINULIAR: Thank you, Diane. Next we have Dan Lopez.
2 After Daniel will be Katheryn Greve.

3 MR. LOPEZ: Hi. This is Daniel Lopez with Lopez and
4 Associates. I actually do both sides. I do defense work and
5 applicant work; employer work, and I've been in the business
6 since 1988; quite a long time, with my own firms and other firms
7 as well.

8 A lot of issues have been addressed. I'm just going to
9 touch on two, and they have to do with 9984(b)(1) and (b)(2) in
10 relating to cancellation and certificates of no records. It's --
11 there's a request in here asking for the original order. I think
12 Dan Mora touched on some of the integrity and confidentiality of
13 information, but when a subpoena is generated by either party,
14 whatever side I do, the notices that go out to the opposing
15 counsel do have -- do list the requesting attorney on that
16 request. I don't -- and Dan also touched on the complexities
17 that go on, and this would add to it. Because trying to pull an
18 original order -- which, a lot of notes go on, because as you
19 know, with COVID, a lot of locations -- things have changed
20 trying to track things down -- a lot of notes. So it's really
21 work product that goes on with the copy service, and I think that
22 the provision for requiring an original order from the requesting
23 party, regardless of what side it is, should be eliminated out of
24 9984(b)(1) and (2). Because the notices are given. The identity
25 of the requesting firm is given. An affidavit is signed by the

1 facility on a certificate of no records on who it came from, and
2 I think that should be enough to qualify that work has been done
3 appropriately.

4 MS. RICHARDSON: One minute.

5 MR. LOPEZ: And I will listen to the rest. That's it.
6 Thank you very much, and I do appreciate the whole board and the
7 team as far as trying to push this thing forward. I know it's
8 been a challenge, and again, I do thank everybody whose putting
9 their opinions into this thing to make this environment better
10 for everybody. Thank you.

11 MS. FINULIAR: Thank you, Daniel. Do you know if Katheryn
12 Greve wants to speak? I have her listed as from your firm, but
13 Maureen's telling me she's not in the room.

14 MR. LOPEZ: Just go ahead and go on. I don't have her here
15 in the office. So, if she's not listed in the room, just go
16 ahead and go to the next person.

17 MS. FINULIAR: Okay, thank you. I have Christian
18 Groneberg, and after Christian, Charles Rondeau, and after
19 Charles, I believe I have only two more speakers.

20 MR. GRONEBERG: Yes, can you hear me?

21 MS. FINULIAR: Yes.

22 MR. GRONEBERG: Great. So, my name's Christian. I'm the
23 paralegal at Thomas Lyding in Concord. We're a defense firm
24 representing employers. We're opposed to the new amendments to
25 the Copy Service Fee Schedule because they would increase

1 frictional costs. The costs increases appear to benefit only
2 copy services rather than the injured worker or employer, and
3 encumber the awarding of compensation to the injured worker. The
4 Section 9981(d) increase to \$230 from \$180 is going to result in
5 thousands or tens of thousands of dollars in extra costs. These
6 costs will ultimately be passed onto California taxpayers and
7 consumers. The interests of copy services are relatively low on
8 the totem pole as far as importance compared to medical services,
9 TD and PD. So, I would recommend keeping prices the same or
10 enough for the industry to at least survive, but not a 27 percent
11 increase. Doing some quick research, it appears inflation has
12 only been around 18 to 19 percent; not 27 percent as the increase
13 reflects. Regarding the ten percent -- the \$10 fee under 9980
14 and 9984(d), we don't think there should be an additional fee
15 since the copy services already have the records and shouldn't
16 have issues sending them again. The fee should either be
17 eliminated or shifted to applicant attorneys who lose their
18 records and can't find them. Regarding the 25 percent penalty
19 under 9981(e), we think that this will undermine the flexible and
20 cordial relationship between the --

21 MS. RICHARDSON: One minute.

22 MR. GRONEBERG: -- copy service and the client. There
23 already are enough penalties under 5814 and 4650 of the Labor
24 Code that provide enough incentives to avoid unreasonable
25 behavior, and there should be no penalty without a qualification

1 for bad-faith tactics. So, thank you for the opportunity to
2 speak.

3 MS. FINULIAR: Thank you, Christian. I have Charles
4 Rondeau. After Charles, Donna Guétano. After Donna, I have
5 Anonymous that wanted to continue.

6 MR. RONDEAU: Good morning. First of all, I'd like to
7 thank Administrative Director Parissotto and the legal staff at
8 the DWC for all their hard work in trying to promulgate
9 regulations that they feel are appropriate, and their work is
10 commendable.

11 I'd like to peg my comments on the -- my -- the preceding
12 speaker. I agree that there is an inordinate amount of
13 frictional costs, and when we're talking about questions of fee
14 schedules, I suggest that we look at things from a more universal
15 and comprehensive perspective and not in a vacuum, so when it
16 comes to ordering records, et cetera, and what should be
17 reimbursed and so on, I think the frictional costs that are being
18 engendered by claims administrators and insurance carriers is
19 relevant to that discussion as well, and I'm going to, after I
20 have some preliminary comments, focus on the proposed regulation
21 the 9982(e)(2), (e)(4) about records for IMR. But, continuing on
22 in the process, as far as -- in any event, everything comes down
23 to costs, and I agree. That's what it comes down to is costs,
24 and trying not to incur unnecessary costs in the system. When it
25 comes to regulations such as those that are being considered

1 today, I think our legitimate question ought to be asked, is
2 there underlying administrative -- or rather frictional costs
3 that are being unnecessarily incurred? Because for whatever
4 reason, insurance carriers, claims administrators, employers;
5 whoever they may be, are conducting utilization reviews over
6 items that cost \$2 or \$3, and the expense associated with the IMR
7 process to determine --

8 MS. RICHARDSON: One minute.

9 MR. RONDEAU: -- that that's not certified, is
10 disproportional.

11 Going to specifically 99.2(e)(4), what this particular
12 regulation fails to acknowledge, or take into consideration, is
13 the fact that there's very short time periods to submit records
14 to the IMRO, and those records may not even be in the possession
15 of the claims administrator or the applicant attorney within the
16 period of time that's provided for to submit those records. So,
17 you know, the ability to obtain them through a professional copy
18 service who can do that in a more expeditious fashion, is in the
19 interest of the injured worker, and ultimately that's what the
20 system was intended to benefit; the injured worker. Thank you.

21 MS. FINULIAR: Thank you. Charles, can you spell your name
22 for the record? You're on mute, sorry.

23 MR. RONDEAU: It's R-o-n-d-e-a-u.

24 MS. FINULIAR: Thank you.

25 MR. RONDEAU: Thank you.

1 MS. FINULAIR: Okay, I have Donna Gaetano, I hope I'm
2 pronouncing that correctly, and Katheryn Greve -- you are signed
3 back up, and then after Katheryn, I have someone who wants to
4 continue their previous testimony.

5 MS. GAETANO: My name is Donna Gaetano. I work for Express
6 Copy in Walnut Creek, and we do applicant and defense copy
7 service requests, and I apologize, I was just notified this
8 morning that I was supposed to be attending this meeting, so I'm
9 a little, maybe, unprepared in certain regards, so what I would
10 like to bring up, though, is what if in the proposed changes that
11 we're discussing -- what is the copy services' recourse to get
12 paid within mandated times of payment that are already on the
13 books? I don't think based upon anything I've heard today, that
14 there's been a change to that, but I'm not sure. So, my question
15 is, what is it in the new legislation, if anything, that permits
16 a copy service to have recourse to getting paid within the times
17 that we're supposed to get paid. We constantly also have bills
18 going out that are -- it's mandated in the code right now what we
19 have to charge. This is what we're discussing right now, and yet
20 we will get people sending -- the insurance company sending back
21 bill review statements which -- they are done by people out of
22 state. They don't have any idea of the California law at all.
23 So, then we're forced to file a lien, which supposedly was why a
24 lot of these changes were made previously is to avoid people
25 filing liens; when in fact, when the copy service has no way to

1 make sure they get paid in a timely fashion -- they ignore
2 past-dues; they ignore telephone calls. This --

3 MS. RICHARDSON: One minute.

4 MS. GAETANO: And in response to someone else earlier who
5 said copy services are overpaid, I'd be happy on another call to
6 give you a list of the duties that we undertake every day to do
7 our work. We're professionals. We're entitled to get paid a
8 fair wage, and we're entitled to be treated like professionals
9 instead of having to beg, literally, to get paid for mandated
10 fees that are supposedly -- supposedly, that's what the insurance
11 companies are supposed to pay. So, this is -- this is the
12 express copy's biggest beef about the existing regulations and
13 any new regulations -- if you don't have a way for us to get paid
14 -- put some teeth into this, all of this is just a waste of
15 everybody's time. Thank you.

16 MS. FINULIAR: Thank you, Donna. You have until midnight
17 tonight if you want to submit written comments, you can email
18 them to DWCRules@dir.ca.gov. If you want to speak, you can also
19 send an email to that same email address. Please put "Request to
20 Speak" in the subject line along with your name, organization,
21 and if you're calling in, your phone number. There's still time
22 to request to speak. You can send a chat message to "Request to
23 Speak." Please provide your name, organization and if you're
24 calling in, your phone number. I believe I have one more speaker
25 listed, and then after that, two others want to continue, and we

1 might not even need to take -- just might go pretty quickly, but
2 go ahead, Katheryn.

3 MS. GREVE: Good morning. This is Katheryn Greve. Um,
4 thank you for giving me an opportunity to speak this morning. I
5 do -- I would like to say that we are missing -- as Darcy had
6 said -- we are missing provisions for future increases in the
7 copy service, and as a work comp professional for 30 years -- um,
8 everyone else -- all the other schedules have mandates on that,
9 so that there's at least -- it's not another seven years. It's
10 just been, um, too long and too little money. But, here's the --
11 I would like to just speak to Mr. John Castro's, um, comments,
12 and, um, just want to say that the meet and confer appears to
13 have been removed this time, and that was, I think, a valid move,
14 but in most cases, when the subpoenas issue, they are after the
15 35-day waiting period after a written demand, and then if counsel
16 gets involved after that, um, then they issue an objection that
17 falls under my other issue, which is that 9982 -- I think it's
18 (c)(5) -- where -- where an objection should be -- yeah, an
19 objection should be not only timely, but filed with the WCAB and
20 resolved in an Order Quashing that is signed by a Workers' Comp
21 Judge and served upon the copy service as well as all parties to
22 the claim. As soon as a defendant does becomes, um, represented,
23 we -- you know, they are definitely sent a copy of the subpoena.
24 For them to have to get a letter that was sent to the claims
25 administrator and employer before they were involved, is just an

1 additional burden for the applicant attorney and, you know, an
2 opportunity for -- well, usually is -- the objection is, "Well,
3 we will provide it," or "We will in the future," or "We don't
4 think that the claims administrator employer file is relevant to
5 the claim," or that "Some medical that -- we don't even know
6 what's in the medical" but definitely "Applicant's medical --

7 MS. RICHARDSON: One minute

8 MS. GREVE: -- are not relevant to the claim." Okay, so
9 basically is that I'm really happy to hear that. I do think that
10 we are getting closer, and there needs to be no more delays on
11 this. Um, it's looking so much better, but definitely on that
12 9982(e)(5) -- that that should say "filed with the WCAB which
13 resolves an Order Quashing signed by a WCJ and served upon the
14 copy service." Because we will cancel the order if they do make
15 an objection, and often it's not even filed with the WCAB, and
16 the objection is like oh, we would have; could have; should have;
17 or will provide them sometime in the future. So just, um, thank
18 you very much, and that's it for this morning. Thank you.

19 MS. FINULIAR: Thank you. I received a chat message to me
20 directly that Sophia Duncan would like to speak, but I'm not sure
21 if you're que'd up, so I'm going to go out of order and have Edna
22 come back on to continue, and after Edna, Sophia Duncan, you can
23 speak.

24 ANONYMOUS SPEAKER: Hopefully I can finish this time.

25 Um, currently, as you know that you guys are imposing to -- I'm

1 sorry -- the DIR is imposing \$230 which the, um -- and the
2 additional set has gone from \$30 to \$10. All that I feel like
3 DIR is doing is taking the money from the first set of records
4 and putting it, um --- I'm sorry, taking it from the additional
5 set and putting it on the first, um, set of records, which is not
6 a true increase. Also where's the COLA? Also, we're only
7 allowed 10 cents a page after 500 pages; while the facilities are
8 charging us 10 cents a page starting from the first page, six
9 dollars a quarter, so we are working at loss. Anything -- um --
10 with that -- the DIR is currently charging a dollar a page to
11 copy at their own desk. If the DIR can't do it at 10 cents a
12 page, how can they expect copy services to do that?

13 As far as the certificate of no records, um, you got the -- the
14 DIR is supposing that we can't -- we can't get paid after four
15 C&R's. The problem is is that due to HIPPA regulations, medical
16 facilities cannot tell us that there is no records. So, DIR is
17 basically asking the facilities along with us to, um, you know,
18 basically break HIPPA law by, you know, asking them to provide
19 those records, which we're not entitled to; nor, is DIR allowed
20 to do that.

21 As far as the penalties -- 25 percent penalties important
22 to insure carriers pay on time otherwise -- they will continue to
23 purposely not pay. Also, a defense attorney can basically rack
24 up fees for billable hours to just sit there and um -- um --
25 object to every single bill that we get that would -- um --

1 basically, we wouldn't get paid for. WCRB currently charges \$20
2 to \$40 a year. We only get 20. How -- how does -- how does DIR
3 expect us to pay out of pocket over and over for things that we
4 cannot get reimbursed for? Medical summaries are necessary for
5 law firms and their applicants. It reduces the cost and time for
6 parties to -- including carriers -- when copy services have these
7 summaries performed. It will also reduce the cost --

8 MS. RICHARDSON: One minute.

9 ANONYMOUS SPEAKER: -- which currently pays doctors \$3 a
10 page copy when copy services can do it for half of the pay -- for
11 half of the cost, and also personal care and subpoenas are not
12 listed in fee schedule, which they should be. It helps as far as
13 to -- um -- I'm sorry. It strips the Applicant's rights to be
14 able to have a witness there.

15 It's apparent that DIR has failed to review the previous
16 fee schedule since it is clear, um, nothing has changed in the
17 last seven years. We hope, um, this is not a true intention of
18 DIR. They learn from their mistakes quickly by making changes
19 and paying workers what they're entitled to by law before they
20 wipe out the whole industry like they have with other fellow copy
21 services causing thousands of jobs lost. Thank you.

22 MS. FINULIAR: Thank you. The last person that I have
23 signed up is Sophia Duncan. After Sophia, I don't have any other
24 speakers, but I do have some requests to continue. So, after
25 Sophia will be Charles Rondeau back again, and then Darcy Duran.

1 But, we will be taking a break at 11:00. So, I'm not sure if we
2 can get everyone in by then, but go ahead, Sophia.

3 MS. DUNCAN: Thank you, Carol. I'm sorry I couldn't figure
4 out how to chat with "Request to Speak." I'm so sorry.

5 So these are my personal opinions. My name is Sophia
6 Duncan. I work for CorVel. I've been in the industry for about
7 12 years, so these are -- these opinions are not reflective of my
8 employer's. I would like to express my appreciation for the
9 DIR's addition of requiring copy services to provide evidence of
10 the original order form from the requesting attorney. The WCAB
11 has consistently held that essentially it is not about what you
12 know or what you type onto an invoice, but what about -- about
13 what you can prove. Typing a name onto a subpoena or an invoice
14 does not prove who actually requested the records, and most
15 importantly, why? Requiring copy services to provide evidence of
16 the requesting attorney's order is akin to requiring medical
17 providers to provide proof of their referral from a physician.
18 Copy services should pretty much be held to the same standard as
19 are medical providers and are med/legal evaluators. While most
20 copy services are forthright in their services, I have on many
21 occasions in which, um, applicant's attorney requests two or more
22 copy services obtain records from the same source; same order
23 form; different copy services. These issues are not normally
24 brought before the court as often as they should simply because
25 of cost. It's cheaper to pay the two copy service invoices

1 rather than, as somebody mentioned, give it to a defense
2 attorney; have them bill, or take it to court. It just isn't
3 worth it.

4 With that said, I really appreciate the hard work of all
5 the copy services as they definitely assist with the legal
6 discovery needed to evaluate a claim. Um, I do think the DIR may
7 need to take into consideration some sort of requirement to avoid
8 these duplicative issues that seem to stem from the originating
9 attorney. Thank you for allowing me to speak, and have a great
10 Friday.

11 MS. FINULIAR: Thank you, Sophia. I think we're just going
12 to have one more speaker and then take a break. I know we only
13 have two, but I probably want to allow people time to join in.
14 It's not too late. If you want to the speak or continue what you
15 were speaking about earlier. Send a chat to "Request to Speak"
16 with your name, organization, and if you're calling in, your
17 phone number. You can also send an email to
18 DWCRules@dir.ca.gov.

19 Charles Rondeau, I have you signed up to continue.

20 MR. RONDEAU: Thank you. Um, turning to separate matters,
21 it's been my honor and pleasure to represent multiple copy
22 services that do work both at the request of defendants; as well
23 as applicant attorneys, and, um, I'd like to just -- um, how
24 should I say? I would like to acknowledge the fact that the
25 Administration is taking into consideration the costs associated

1 with doing the work -- the valuable work -- that these companies
2 do for both defendants and applicants in furthering discovery
3 that's necessary to move cases forward. The increases that are
4 proposed in the amended regulations -- though, they may be
5 modest, are certainly justified based upon the costs associated
6 with doing business with which having consulted with many of
7 these companies is certainly well-deserved.

8 Now, going onto related matters, I think that -- and this
9 is sort of kind of relevant to what I said before -- when it
10 comes to all of these sorts of things, I think the Administration
11 should take a more comprehensive approach to reviewing in the
12 underlying cost factors, frictional costs, as Mr. Groneberg
13 referred to, in determining, not just copy service fee schedule
14 regulations, but just everything in general having to do with the
15 payment of costs associated with the function of workers'
16 compensation system -- medical/legal, the physician schedules,
17 and so on and so forth, and they're ought to be --

18 MS. RICHARDSON: One minute.

19 MR. RONDEAU: -- evidence based. There should be studies
20 commissioned as there have been in many other instances through
21 RAND, et cetera, et cetera, so that there is evidentiary support
22 for whatever changes that the Administration proposes to make,
23 and that again as we are afforded today, there is an opportunity
24 for public comment upon the results of those studies, and with
25 that, thank you very much.

1 MS. FINULAIR: Thank you. We're going to take a
2 five-minute break. Let's go off the record. I'll come back on
3 the record at 11:06.

4 (break held)

5 Let's go back on the record. We took a short break. We
6 have one speaker to go. After that we will probably be closing
7 the record. There is still time. If you would like to speak
8 send a chat message to our host, "Request To Speak," with your
9 name, organization, and if you're calling in, your phone number.
10 You can also request to speak by sending an email to
11 DWCRules@dir.ca.gov. Our last speaker is Darcy Duran.

12 MS. DURAN: I wanted to make two closing comments. Where
13 hard copy stands, and with what has happened over the last few
14 years, is that the increases in minimum wage has allowed us to
15 give a lot of our employees a big increase, but prohibited us
16 from having any funds to increase the other workers, so my people
17 who do the hardest, best work, have gone without money. We have
18 even been forced to move two projects overseas and hire an
19 employee out of state just to try to stay afloat. The fee
20 schedule is the biggest issue. The second part, which is why
21 Donna from Express is now my new best friend, she went on to
22 discuss why getting paid is such a problem. I cannot reiterate
23 that enough. All of this -- every increase, every penny is
24 almost a moot point when we hardly get paid. We work for the
25 defense. We get hired by defense attorneys and by insurance

1 companies directly. At least 50 percent of our bills get
2 returned completely unpaid or cut. The ten cents a page over 500
3 pages; they give us one dime. The taxes don't get paid. The
4 second-set fees don't get paid. I go over and over this with
5 these companies and get absolutely no response. I know that
6 Sophia Duncan from CorVel spoke earlier. I also see that there
7 was a submission from Liberty Mutual. These are some of the same
8 people that I try and get paid from. I have list after list of
9 major insurance company and major TPA's that reject our bills;
10 yet they're the ones that hired us. Many of them have their own
11 EOR services. I don't understand why it has to be so difficult
12 to get paid, and why -- I don't want to file a lien against my
13 client.

14 MS. RICHARDSON: One minute.

15 MS. DURAN: That's not what I want to do. I just wish
16 there was a better way for us to get paid. Thank you.

17 MS. FINULIAR: Thank you. We do have one other speaker
18 signed up. It's not too late if you want to continue or speak
19 for the first time today, send a message to "Request To Speak"
20 with your name, organization and phone number, if you're calling
21 in. You can also send an email to DWCRules@dir.ca.gov.

22 Oh, okay, another person wants to speak again, so we have
23 two -- and it's not too late if you want to sign up to speak. I
24 have Diann Cohen, and after Diann, Katheryn Greve. Oh, and,
25 sorry, another one. After Katheryn will be John Castro.

1 MS. COHEN: I just want to address real quick some of the
2 things that I heard, and, for example, the examiner who is very
3 much like the bill review companies, do not understand the
4 process of copy services, and what we do. There's a complaint
5 that we serve two subpoenas for one location to get records. No,
6 nobody does that. That's not what happens. What happens is
7 there may be one building, and there could be two custodians, and
8 in order to get those records, you have to serve a subpoena to
9 each of those locations in order to get it. So if you got x-rays
10 on one floor, and you have medical records on another floor, they
11 are two different custodians. So you can't use one subpoena, and
12 often times our bills are being rejected because they think that
13 we're doing something underhandedly. We're not. We're just
14 following the rules and the regulations set forth for us to do in
15 order to obtain the evidence necessary to determine the value of
16 that claim. Bill review companies, unfortunately, do not
17 understand the difference between a duplicate and an additional
18 set, and this has been a problem for a long time. There are --
19 in listening to the other defense copy services -- there are
20 hundreds of thousands of invoices that aren't being paid because
21 they don't understand the difference, and even when we try to
22 educate them, it falls on deaf ears. So, I think before they
23 start casting a stone at what we do, maybe they should understand
24 what it is we're doing, and why we bill the way that we do so
25 that the process would not be so difficult to collect, because

1 like our colleagues -- being able to collect for the work that we
2 do is very, very difficult, and if people would understand the
3 process of what it takes to serve a subpoena, to gather records,
4 then perhaps we wouldn't have this type of problem, but we're not
5 doing things that are underhanded. We're doing things according
6 to protocol. Thank you.

7 MS. FINULAIR: Thank you. I have Katheryn Greve and John
8 Castro, and it's not too late. You can sign up still. Go ahead,
9 Katheryn.

10 MS. GREVE: Okay, thank you for a second opportunity,
11 Carol. I just wanted -- I didn't know the gentleman who spoke
12 before the break, but just to clear the record -- I know you
13 don't speak back to things -- but, SB863, which put us in line to
14 get a fee schedule for the first time ever, resulted in a huge
15 RAND study, which caused a delay of two years in getting that fee
16 schedule enacted, which was, I guess, was sort of retroactive on
17 us, but -- so, we've already been through all that, and yeah, um
18 -- was just stated there are -- there are several locations where
19 if you issue a subpoena like, um -- I'll just name Riverside
20 Medical Clinic, or and then Riverside Community Hospital -- you
21 know -- they make you serve two 7117 often for both, but if you
22 don't have two separate subpoenas; one for hospital and one for
23 medical, you're only going to get one of those two, so that comes
24 up to an issue -- in fact, I have -- I'm litigating that right
25 now with the Board because, you know, the judges don't have time

1 to look at this before in a Pre-trial Conference Statement just
2 so we can get \$180. So, there is that. So we try to do the best
3 we can, and thank you for the opportunity to speak again.

4 MS. FINULIAR: Thank you. We only have one speaker left --
5 John Castro. You can still sign up. Send a chat message to
6 "Request to Speak" with your name, organization, and if you're
7 calling in, your phone number, or you can send an email to
8 DWCRules@dir.ca.gov, but we will probably be ending this pretty
9 soon. Go ahead, John.

10 MR. CASTRO: Yes, so, I just wanted to -- just a brief
11 comment on what Donna Gaetano said about after the defendant gets
12 involved, she says after that, and I'll stop there in the sense
13 that, what I was referring to was, defendant's already involved,
14 and you go into EAMS. You're the copy service. You go into
15 EAMS, and you see that the carrier is represented by counsel, so
16 I was not talking -- I was not talking about an argument when
17 defense counsel is not of record. She said defendants are always
18 sent a copy of the subpoenas -- never, never -- that never
19 happens. I always have to fight to get copies of the subpoenas.
20 The argument I get is: "We sent them to your client; get them
21 from your client." So -- and they talked about bill cuts; about
22 them getting their bills cut; defendants just billing and doing
23 -- just continue to generate billable hours. Maybe they don't
24 know that defense firms -- I'm with Floyd Skerin. We've been in
25 existence over 30 years. We've been in existence for a reason,

1 and that's because we're -- we're always trying to do our best
2 for our client. The bill cuts -- we get our bills cut. We get
3 our bills cut, and so we understand that. You notice that I
4 didn't make any argument about the increase in your fees? I
5 don't have a problem with that, but I do have a problem when I
6 see all the copy services that they secure the records, and then
7 a second copy, and a third copy, so that they can maximize their
8 -- the fees. I recently used Doc Central. I heard Edna speak.
9 I recently used Doc Central. I got the records in three weeks,
10 quick. That was quicker than I've ever seen records secured, and
11 we round-tabled that, and I mentioned that to the firm -- Doc
12 Central --

13 MS. RICHARDSON: One minute.

14 MR. CASTRO: -- that Doc Central provided those records
15 extremely quick. They were very thorough, very professional and
16 submitted the billing to our client to issue payment. I do want
17 to say that the comments made by Sophia Duncan were
18 well-reasoned, and I commend her for those. Thank you.

19 MS. FINULIAR: Sorry, I was on mute. We don't have any
20 other speakers signed up. I'll stay open for another minute. If
21 you would like to speak -- okay, we do have another speaker. If
22 you could like to speak, please send a chat message to "Request
23 to Speak." Please provide your name and organization. Please
24 spell your name for the record. If you're calling in, please
25 provide your phone number so that Kathlene can unmute you. You

1 can also send an email message to DWCRules@dir.ca.gov. Victor
2 Altamirano -- I'm sorry if I didn't pronounce that correctly --
3 has requested to speak. After him, we don't have any other
4 speakers, so we will be probably closing soon. Go ahead, Victor.

5 MR. ALTAMIRANO: Yes, can you hear me?

6 MS. FINULIAR: Yes. Can you please spell your name for the
7 record?

8 MR. ALTAMIRANO: Yes, this is applicant's attorney Victor
9 Altamirano in Santa Ana, California, and that's
10 A-l-t-a-m-i-r-a-n-o. This is a brief comment. I have been
11 hearing defense attorneys here, and let me just tell you about my
12 experience. Invariably, in almost 100 percent of my cases in
13 which I subpoena after asking for the records before -- subpoena
14 the claims file or the employer file -- invariably I get
15 objections and Petitions to Quash without -- in many times
16 without any reason. So in many cases, the case is denied.
17 They're not paying correctly, and so on, and so I need employment
18 records to make sure that my client is not getting railroaded,
19 and the defense attorneys, they do it as a matter of fact, file
20 objections, and then they file Petitions to Quash, and there
21 should be some negative consequences for that type of behavior,
22 and I haven't seen that. They do that with impunity. Those are
23 my comments.

24 MS. FINULIAR: Thank you. You can also submit written
25 comments up until midnight tonight. You can email

1 DWCRules@dir.ca.gov. I have one more speaker who would like to
2 continue and another one who wants to continue again. I guess
3 that's okay. I have Daniel Lopez, and after Daniel Lopez, Darcy
4 Duran.

5 MR. LOPEZ: Hi Carol. Thank you again for the second
6 opportunity. As I think we're all listening to, it seems to be a
7 common -- SB863 -- it seems like there's a huge divide here, you
8 know, we all -- applicant and defense copy services -- both sides
9 are looking for information. Both sides are struggling to get
10 paid. Where is the problem? What is the problem here? I know
11 that a lot of stuff goes through bill review, and I agree with
12 Darcy. I get paid ten cents a page. Sometimes that's all they
13 send me is one dime. The check cost more -- seriously -- I have
14 checks for ten cents, and I'm supposed to deposit it, and with
15 the number of checks that we process, it costs me 20 cents to
16 deposit the check. I've lost 10 cents by depositing that 10
17 cents. I mean, these are the crazy things that go on here. If
18 you listen to the -- all the comments in commonality from copy
19 services, our goal -- just like the defense attorney and
20 applicant attorney, is to provide quality services to their
21 clients. That is our job and objective as well too; to do the
22 discovery according to the laws. Defense, applicant -- I do both
23 sides. I've been able to go down the middle and provide records.
24 I'm a neutral party. I don't see the applicant. I don't write
25 reports. I don't review reports. All I do is provide

1 information. How it's used to argue and settle the cases, that's
2 on the parties. Applicant counsel, defense counsel use -- as you
3 heard, defense counsel used Edna, who I believe primarily is an
4 Applicant-based firm. Maybe she does defense as well too, but
5 they can use both sides. So sometimes these arguments seem like
6 that we're splitting hairs when we're -- we all have something in
7 common. We're just trying to do our job; trying to secure
8 records so the Applicant -- because everything we do is for the
9 -- getting the Applicant back to work, or getting them back
10 healthy again, because I'm an employer. I don't want my people
11 off work. If somebody files a work comp against me, I want to be
12 able to either bring them back --

13 MS. RICHARDSON: One minute.

14 MR. LOPEZ: -- bring them back to good health, so I think
15 we have to look at the comments as a whole, and how this fee
16 schedule really affects everybody that's involved. Thank you
17 very much.

18 MS. FINULIAR: Thank you. Darcy Duran would like to speak
19 again. I got a question, though, asking about the time limits.
20 We might rethink our time limits. We put the three minutes on --
21 for me, historically, was because we wanted to get through
22 everything in one day, but with the Zoom calls, it's much more
23 efficient getting people in, so we might allow for the next
24 hearing, allow more time, but anyways; go ahead, Darcy.

25 MS. DURAN: Okay, I just want to re-comment on a couple of

1 things that people brought up. One of them was when we're
2 discussing subpoenaing more than one subpoena to a custodian of
3 records. I know that was addressed, but I have a couple of
4 additional comments. There are times when a client asked us to
5 return to and get additional records. That's a new subpoena.
6 We're asking for updated documents, but bill review kicks it back
7 as a duplicate. There are also entities that require you to do a
8 separate request for each item. Many insurance companies ask you
9 to request each file separately, and the WCAB wants a separate
10 request form for each file you order. That implies duplicate,
11 but it is not a duplicate. Also, that we're not liable for
12 payment for more than four certificates of no records -- there is
13 absolutely no way we as a copy service have any idea where the
14 person went. If the client asks us to subpoena, that's what we
15 do. There are many times that an aka may be discovered partially
16 through the copying process, and in which case we go back and
17 re-subpoena to get records. There's times when the client
18 provides us incorrect information such as bad date of birth. We
19 have no control over that. We can't just stop at four.
20 Certificates of no records are not something we want to get
21 anyway. And lastly, in regards to cancellation orders, there are
22 times when we as the copy service cancel the order when we have
23 no choice. For example, the location will not release records
24 due to the fact that they're considered confidential, and they
25 refuse to put that in writing. We can't just keep an order open

1 for eternity. We have to close it. Sometimes we can't locate
2 the facility. I've had requests as ridiculous as
3 Dr. Williams-Los Angeles, and they expect us to find it. We will
4 review other records copy, and --

5 MS. RICHARDSON: One minute.

6 MS. DURAN: -- sometimes we just can't locate it. Also,
7 there are occasions where the location refuses to cooperate.
8 We've tried for months, many different ways, and we simply don't
9 get records. We still want to be compensated for our time.
10 Thank you.

11 MS. FINULIAR: Thank you. I don't have any other people
12 signed up to speak, but I'm going to keep the record open for
13 another minute. If you would like to speak, send a chat message
14 to "Request to Speak" with your name, organization, and if you're
15 calling in, your phone number so that we can identify you. You
16 can also send an email to DWCRules@dir.ca.gov. We are accepting
17 written comments up until midnight tonight. You can send it to
18 that same email address. I don't see anybody rushing in to
19 speak.

20 We will be closing the record now. Thank you, everyone,
21 for attending today. Like I said earlier, I will still need to
22 submit the final version of these rules for approval with the
23 Office of Administrative Law before they can be final. We will
24 be reviewing comments. We will possibly be still receiving them
25 today. We will accept them up until midnight tonight, and review

1 all the comments and probably come up with a final proposal. We
2 probably won't have another hearing, but you can comment up until
3 midnight tonight. Thank you.

4 (The proceedings adjourned at 11:26 a.m.)
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R E P O R T E R ' S C E R T I F I C A T E

I, Jerilyn McGuire, Official Hearing Reporter for the State of California, Department of Industrial Relations, Division of Workers' Compensation, do hereby certify that the foregoing matter is a full, true and correct transcript of the proceedings taken by me in shorthand, via Zoom, and with the aid of audio backup recording, on the date and in the matter described on the first page thereof.



JERILYN MCGUIRE,
Official Hearing Reporter,
Workers' Compensation Appeals Board

Dated: March 17, 2022
Fresno, California