

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General Comment	The proposed photocopy fee schedule is problematic at many levels and will fail to produce the results intended by SB863.	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9.	No action.
§ 9980(a)	<p>Authorizations as defined by the California evidence code are clearly for request of information prior to filing of any action or the appearance of a defendant in an action and are primarily used by claims administrators for resolution of claims filed by injured workers prior to any representation or application of adjudication being filed on the injured workers’ behalf. Authorizations are primarily utilized in workers’ compensation claims by contracted professional photocopy services.</p> <p><i>Note: the process of requesting records by an authorization has been used by copy services to request copies of records from treating physicians regardless of representation under regulation 10626.</i></p> <p>§10626. Examining and Copying Hospital and Physicians’ Records. Subject to Labor Code section 3762, and except as otherwise provided by law, all parties, their attorneys, agents and physicians</p>	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	Disagree. Authorizations are used in the workers’ compensation system and removing their use from the schedule could lead to litigation over the reasonableness of charges.	No action. Records obtained via authorization are covered in the fee schedule.

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	shall be entitled to examine and make copies of all or any part of ...			
9980(b)	<p>Expenses by third party agents not authorized under an authorization and/or subpoena and should not be included as part of a flat fee schedule as proposed.</p> <p>Insurance companies and/or third party administrators should not be charging a witness fee as claimed under California evidence code; 1563(b) clearly delineates the fees are for <u>non-party witnesses</u>. Much of the additional fees for copying of records currently being charged are from internal contracted copy services which should further exempt “expenses” from the proposed flat fee schedule.</p> <p>The use of authorizations for the production of records may provide the circumvention of proper notification to all parties by way of a subpoena or notice of production and should be removed from this section.</p>	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	<p>Release of information fees are controlled by Evidence Code section 1563 and disputes may be resolved by filing a petition with the WCAB or the superior court.</p> <p>Disagree. Authorizations are used in the workers’ compensation system and removing their use from the schedule could lead to litigation over the reasonableness of charges.</p>	No action.
§ 9980(c)	The words “person or entity <u>responsible for the payment</u> ” must have enforcement or penalties for non-payment or the simple ignorance of a bill/invoice submitted by a provider.	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	Disagree. The fee schedule resolves questions of reasonableness and will motivate carriers to make timely payments. These regulations address copy service	No action.

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			fees pursuant to the authority granted under Labor Code section 5307.9, not penalties.	
§ 9980(d)	This provision clearly does not provide for release of information (roi) companies acting as an agent, not authorized on an authorization or under California evidence Code 1158 OR 1560(e) for inspection or photocopying under a subpoena	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not discovery rules.	No action.
§ 9980(e) & 9982(a)	Authorization should be removed as they are primarily used by contracted copy services which will not be subject by proposed fee schedule.	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	Disagree. Authorizations are used in the workers’ compensation system and removing their use from the schedule could lead to litigation over the reasonableness of charges.	No action.
§ 9981 (a) Bills for Copy Services	Invoices prior to effective date of proposed fee schedule must be subject for self-imposed penalties and interest if not paid prior to effective date of proposed fee schedule.	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	This comment is not directed to the proposed copy service fee schedule.	No response necessary.

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§ 9981 (b)(1)	<p>The proposed flat fee as listed will be problematic for claim examiners as they will have a more difficult time identifying services if the majority of invoices are for the exact same amount.</p> <p>The proposed flat fee is not in compliance with SB863 and will increase sales tax.</p> <p>The proposed page fee of .10 cents per page as identified by the California evidence code 1158 and 1563 are for non-party witnesses and professional photocopy services should not be subject to a “par” fee for services rendered. It further fails to comply with SB 863 as a “reasonable maximum” and should be increased accordingly.</p>	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	Disagree. The flat fee simplifies payment for both claims administrators and copy service providers. These regulations do not increase sales tax. The rate of \$.10 per page over 500 pages is reasonable.	
§ 9981 (b)(2)	<p>(2) Bills for records obtained by authorization must include a declaration of completion of records pursuant to section 9984(a).</p> <p>The removal of this section should exempt all records provided by authorization as it is unclear as to what is being provided unless clearly defined by an index of records by date and title of records.</p>	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	Disagree. This section has been deleted. There is no requirement that the custodian sign a declaration and the copy service has no authority to compel a signature. The copy service itself cannot sign a declaration because it is not producing the records; it would have simply copied records	9984 has been deleted.

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			provided by the custodian. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not discovery rules.	
§ 9982(c)	If the use of authorization is being removed, it should be removed in its entity or 9982(c) must be reinstated and provide notification of records being sought by the use of an authorization to an injured worker as most records are prior medicals that have no relevance to an injured workers' claim and the injured worker currently receives no notification of what records have been obtained by the use of an authorization.	Daniel Lopez, President – California Workers' Compensation Services Association (CWCSA)	Disagree. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not discovery rules.	No action.
§ 9982(d)(1)	This provision should provide for sanctions for falsely stating that records have been provided or served on applicant or applicant's attorney. It should further disallow for non-payment where applicant's attorney request records for discovery and defendant objects to services and requires the use of contracted service or causing new subpoena request to be issued.	Daniel Lopez, President – California Workers' Compensation Services Association (CWCSA)	Disagree. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not discovery rules or sanctions for	No action.

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			false statements.	
§ 9982(e)(2)	Indexing of documents should be allowed as it simply identifies dates, providers and documents being obtained and served reducing disputes as to what records have been provided. It further reduces overall time and costs for review of records by all parties and has been deemed a cost saver! Create a reasonable maximum as provided in SB863.	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	Disagree. The BRG studied recommended against “indexing.”	No action.
§ 9982(e)(3)	Note: this is not completely accurate. If an employer fails to provide coverage information and there is a ct claim covering several years, the costs for WCIRB records can far exceed subpoena costs.	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	The public can also access WCIRB coverage information for employers for the past five years for free online. For coverage information beyond the past five years, the WCIRB charges \$10 per year of coverage requested by way of a Coverage Research Service request. Over the last several years, the WCIRB has seen a marked increase in the number of subpoenas received requesting coverage information	No action.

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			<p>for cases before the WCAB. The number jumped from a low of approximately 1,300 in 2010 to a record high of 4,000 in 2013, 90% of which were to determine the identity of the insurer for a specific employer as of a specific date and which is readily available to the public at no cost on the WCIRB's coverage website. The impact of the cost of these subpoenas on the system is a concern, particularly in view of the comment in <u>Martinez v. Terrazas</u> (2013) 78 Cal. Comp. Cases 444, 447, fn. 3 (Appeals Board en banc) that "in the context of a subpoena to recover costs associated with a subpoena to the WCIRB, the copy service would</p>	

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			need to establish the expenses were incurred to prove or disprove a contested claim and that they were reasonable and necessary at the time incurred.” In that case, the parties participated in an agreed medical evaluation before the subpoena was served on the WCIRB requesting coverage information. Consequently, it appeared to the court that the identity of the employer’s insurer had been identified prior to the subpoena for coverage information being requested and was therefore not necessary.	
§ 9983(a) Fees for Copy and Related Services	Fees for release of information services (ROI) must not be included as these fees have no legal basis under the California evidence code 1158 or 1563 and will be a burden on providers of injured workers or non-contracted photocopy services. Contracted services will	Daniel Lopez, President – California Workers’ Compensation	Disagree. Release of information fees are controlled by Evidence Code section 1563 and disputes may be	No action.

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	<p>simply obtain an approval from contracted claims examiner for payment. This is an inequality to injured workers and those providing services on their behalf. The flat fee of \$180 fails to allow for specificity of services and does not comply with the intent of sb863 and should be further reviewed.</p>	Services Association (CWCSA)	resolved by filing a petition with the WCAB or the superior court. The flat fee simplifies payment for both claims administrators and copy service providers.	
§ 9983(c)	Will this \$20 dollars include the work required for the 6 months it currently takes to obtain records from EDD? Does this section include any fees that may be charged by EDD?	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	Unemployment Insurance Code section 2111 provides that EDD is only authorized to provide EDD records only if EDD has an existing lien in the WCAB case. If EDD does not have a lien, then no records can be provided, even if EDD receives a subpoena. If EDD has a lien, the records can be obtained for free upon request from the injured worker’s attorney. Attorneys can also request records with an Authorization signed by the injured worker for \$15.	No action.
§ 9983(d)	This should be on a per year basis.	Daniel Lopez, President – California	The public can also access WCIRB coverage information for	No action.

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		Workers' Compensation Services Association (CWCSA)	employers for the past five years for free online. For coverage information beyond the past five years, the WCIRB charges \$10 per year of coverage requested by way of a Coverage Research Service request. Over the last several years, the WCIRB has seen a marked increase in the number of subpoenas received requesting coverage information for cases before the WCAB. The number jumped from a low of approximately 1,300 in 2010 to a record high of 4,000 in 2013, 90% of which were to determine the identity of the insurer for a specific employer as of a specific date and which is readily available to the public at no cost on	

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			<p>the WCIRB's coverage website. The impact of the cost of these subpoenas on the system is a concern, particularly in view of the comment in <u>Martinez v. Terrazas</u> (2013) 78 Cal. Comp. Cases 444, 447, fn. 3 (Appeals Board en banc) that "in the context of a subpoena to recover costs associated with a subpoena to the WCIRB, the copy service would need to establish the expenses were incurred to prove or disprove a contested claim and that they were reasonable and necessary at the time incurred." In that case, the parties participated in an agreed medical evaluation before the subpoena was served on the WCIRB requesting</p>	

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			<p>coverage information. Consequently, it appeared to the court that the identity of the employer's insurer had been identified prior to the subpoena for coverage information being requested and was therefore not necessary.</p> <p>Allowing a per year fee for WCIRB records would not address the excessive amount of subpoenas for unnecessary WCIRB records.</p>	
§ 9983(e)	<p>This section must be removed as release of information (roi) companies have no basis in law under the California Evidence Code 1158 which states: "No copying may be performed by any medical provider enumerated above, or by an agent thereof..."</p> <p>And under California Evidence Code 1560(e) which regulates procedures states: " (e) as an alternative to the procedures described in subdivisions (b), (c), and (d), the subpoenaing party in a civil action may direct the witness to</p>	Daniel Lopez, President – California Workers' Compensation Services Association (CWCSA)	<p>Disagree. Release of information fees are controlled by Evidence Code section 1563. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not discovery rules.</p>	No action.

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	<p>make the records available for inspection or copying by the party's attorney, the attorney's representative, or deposition officer as described in section 2020.420 of the code of civil procedure..."</p> <p>SB588 and ab2059 attempted to make changes to the California Evidence Code and failed. Any and all references to an ROI company must be removed from the proposed photocopy fee schedule.</p>			
§ 9983(f)(1)	<p>The fee of .10 cents per page fails to provide a reasonable maximum for professional photocopy services. A fee that is "par" with the evidence code is not acceptable at any number of pages as this fee is defined under the California Evidence Code 1158 and 1563 for non-party witnesses.</p>	<p>Daniel Lopez, President – California Workers' Compensation Services Association (CWCSA)</p>	<p>Disagree. The flat fee simplifies payment for both claims administrators and copy service providers. These regulations do not increase sales tax. The rate of \$.10 per page over 500 pages is reasonable.</p>	<p>No action.</p>
§ 9983(f)(3)	<p>This section needs to be further clarified as to who is ordering the records. This section should also provide a reasonable maximum for a paper set plus delivery if required.</p> <p>California evidence code §1158 presentation of authorization for inspection and copying of</p>		<p>Disagree. The section adequately covers provisions for injured workers and all other requests for additional sets of records are payable by the party ordering the additional set. Injured</p>	<p>No action.</p>

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	<p>patient's records; failure to comply; costs</p> <p>1. <u>Definition of when an authorization is to be used:</u></p> <p>Whenever, prior to the filing of any action or the appearance of a defendant in an action, an attorney at law or his or her representative presents a written authorization therefor signed by an adult patient, by the guardian or conservator of his or her person or estate, or, in the case of a minor, by a parent or guardian of the minor, or by the personal representative or an heir of a deceased patient, or a copy thereof, a physician and surgeon, dentist, registered nurse, dispensing optician, registered physical therapist, podiatrist, licensed psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, or pharmacist or pharmacy, duly licensed as such under the laws of s the state, <u>or a licensed hospital</u>, shall make all of the patient's records under his, hers or its custody or control available for inspection and copying by the attorney at law or his, or her, representative, promptly upon the presentation of the written authorization.</p>		<p>workers do not have to pay for one additional set of records in electronic form.</p> <p>These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not discovery rules.</p>	

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	<p>2. <u>Definition of who is to make copies:</u></p> <p><u>No copying may be performed by any medical provider enumerated above, or by an agent thereof, when</u> the requesting attorney has employed a professional photocopier or anyone identified in section 22451 of the business and professions code as his or her representative to obtain or review the records on his or her behalf. The presentation of the authorization by the agent on behalf of the attorney shall be sufficient proof that the agent is the attorney's representative.</p> <p>3. <u>Definition of costs/liability for failure to comply timely:</u></p> <p>Failure to make the records available, during business hours, within five days after the presentation of the written authorization, may subject the person or entity having custody or control of the records to liability for all reasonable expenses, including attorney's fees, incurred in any proceeding to enforce this section.</p> <p>4. <u>Definitions of reasonable costs to a patient:</u></p> <p>All reasonable costs incurred by any person or</p>		<p>These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not discovery rules.</p> <p>These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not discovery rules.</p> <p>These regulations address copy service fees pursuant to the</p>	

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	<p>entity enumerated above in making patient records available pursuant to this section may be charged against the person whose written authorization required the availability of the records.</p> <p>5. <u>Definition of actual charges by provider enumerated above:</u></p> <p>"Reasonable cost," as used in this section, shall include, but not be limited to, the following specific costs: ten cents (\$0.10) per page for standard reproduction of Documents of a size 8 1/2 by 14 inches or less; twenty cents (\$0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to an authorization;</p> <p>6. <u>Definition of clerical costs charged to a witness by a third person for the retrieval and return of records (ie. Iron mountain):</u></p> <p>Reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of sixteen dollars (\$16) per hour per person, computed on the basis of four dollars (\$4) per quarter hour or fraction</p>		<p>authority granted under Labor Code section 5307.9 not discovery rules. It is not clear that all civil discovery rules apply to discovery in WCAB cases.</p>	

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	<p>thereof; actual postage charges; and actual costs, <u>if any, charged to the witness</u> by a third person for the retrieval and return of records held by that third person.</p> <p>7. <u>Definition of Costs Charged to those WHO can Photocopy Identified in 22451 of the Business and Professions Code:</u></p> <p>Where the records are delivered to the attorney or the attorney's representative for inspection or photocopying at the record custodian's place of business, <u>the only fee for complying with the authorization shall not exceed fifteen dollars (\$15), plus actual costs, if any, charged to the record custodian</u> by a third person for retrieval and return of records held offsite by the third person.</p> <p><u>SUMMARY:</u></p> <p>An Authorization for release of records is to be used prior to file and action or the appearance of a defendant. When an attorney or attorney's representative (a licensed Professional Photocopier as defined by 22451 of the Business and Professions code) No copying may be performed by the Custodian/Witness, or Custodian's Agent (ie. Release of Information (ROI) Company). Reasonable Cost that can be charged directly to a patient for making a copy of the records</p>			

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	<p>to the patient is only .10 cents per page for Standard 8 ½ x 11 paper or .20 cents per page for Microfilm; Actual costs for the reproduction of documents requiring special processing (ie. Blueprints, books, binders, X-Rays, MRI's, Films). Most films are currently being provided on a CD-Rom or DVD with an embedded viewer.</p> <p>Reasonable Clerical costs in locating and making the records available to the patient are to be billed at a maximum rate of \$16 dollars based on \$4 dollars per quarter hour of fraction thereof, plus actual cost, if any, Charged to the custodian / witness by a third person where records are held by the third person (ie. Iron Mountain) for retrieval and return of records.</p> <p>The ONLY FEE when records are delivered to an attorney or attorney's representative (as defined by 22451 of the Business and Professions Code) shall not exceed \$15 dollar, plus actual cost, if any, Charged to the custodian / witness by a third person where records are held by the third person (ie. Iron Mountain) for retrieval and return of records.</p> <p>Companies classifying themselves as the Release of Information (ROI) or Agent of the medical providers enumerated above have</p>			

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	<p>sought to change the law legislatively through SB588 (Emmerson) and more recently AB2059 (Muratsuchi), both of which failed passage leaving ROI companies no basis in law to function in their current capacity. These ROI companies continue to imbed themselves into hospitals, doctor’s offices, and clinics acting as their agent for Release of Information and charging fees far in excess of California Evidence Code 1158 for authorizations and 1563 for subpoenas as properly defined. Fees being charged by ROI companies have significantly increased costs to all types to request for records including Social Security, Civil, Long Shore, and Workers’ Compensation cases for both insurers and attorneys representing both sides and most attorneys representing patients do not want ROI companies providing records on their behalf.</p>			
§ 9983(e)	<p>As argued many times previously, there is NO WAY any copy service can pay for these fees and incur them into their cost of the flat rate. There are numerous times where the amount will exceed the flat rate of \$180. This is NOT a “cost of doing business” charge. I would not incur this fee if I was not hired by defense attorney and or Insurance carrier. Furthermore, as your office has failed to properly deal with this issue and instead</p>	<p>Jason Chapanar General Manager CD Photocopy Service, Inc.</p>	<p>Disagree. One copy service provider (Med-Legal) commented that the overall average of release of information fees average is \$6. Release of information fees are controlled by Evidence Code section 1563 and disputes may</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>placed the burden on us, I am now personally seeing applicant attorney copy services becoming ROI companies, creating another loophole that will only benefit them. I know of at least two companies doing this and can provide more specifics should you wish to discuss further on the matter.</p> <p>With regard to ROI fees, the copy service should be required to contact the payer and get approval to pay these fees PRIOR to any payment and an invoice from the facility should also be provided proving the amount of the fees to the payer, either at the time of approval or attached to the bill for the services completed.</p>		<p>be resolved by filing a petition with the WCAB or the superior court. The flat fee simplifies payment for both claims administrators and copy service providers.</p>	
§ 9983(a)	<p>Shipping and handling should in no way be included in the flat rate of \$180. I am in agreement that there should be only one charge for this as I have seen many applicant attorney copy services bill for shipping and handling separate, ie. Shipping = \$10 and then another line item of Handling = \$10. The rate should also be fair and reasonable as well. However, there are countless times when our clients need these records on a rush basis, or need a copy of records to be overnighted to a review doctor which can easily cost \$150 for</p>	<p>Jason Chapanar General Manager CD Photocopy Service, Inc.</p>	<p>Disagree. Shipping and handling is included in the flat fee.</p>	<p>No action.</p>

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	<p>delivery by UPS or Fed ex. How are we expected to pay that amount and make any money off of that record at all. If one of these instances were to occur on an infrequent basis, I might even be ok with it. But it is not. The normal day to day expectation is to provide records as soon as they are received. We have a set rate agreement with UPS currently. As an example, we charge \$7.85 to ship records via UPS and they go out ground, meaning they will arrive within 2-3 days, however they generally provide the delivery next day. We are also provided with tracking and confirmation of delivery with a signature on every shipment. If the record needs to be overnighted however, the price changes based on the weight of the shipment and the location. Even if the record is small and say is 200 pages to ship overnight to Sacramento would be \$56.81. Subtracting this from the flat rate of \$180 would mean we would get paid \$123.19 on that particular location. We are already supposed to include the witness fee that is REQUIRED by law for service in the amount of \$15. Subtract that and we would make \$108.19. Again, this is not an infrequent event but rather a normal occurrence and again this is not a cost of doing business. Further, if the facility was to charge</p>			

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	<p>us based on CA Evidence code 1563 with what is labelled as reasonable fees for this record, we would be charged 200 pages x .10 cents a page = \$20 plus \$6 every quarter hour = 3 quarter hours x 6 + \$20 = \$38. Subtract that from the \$108.19 and we would be getting paid \$70.19 to provide our client with a 200 page record. We would make more money on this had the location not had any records and provided a Certificate of No Record. With regard to the shipping and handling, a receipt of shipment should be provided as well for all overnight packages to justify the amount billed and for regular ground shipments there is no more than \$10 allowed.</p>			
§ 9984	<p>Elimination of Declaration of Completion of Records Under § 9984, the initial proposed regulations required a declaration of completion along with the production of records. This section has subsequently been struck from the regulations. The declaration creates certainty regarding the completeness of produced records. Without it, parties may make additional requests for the same records under the rationale that there is no evidence demonstrating all requested records were initially produced. In order to avoid</p>	Jeremy Merz CalChamber	These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not discovery rules. There is no requirement that the custodian sign any declaration and the copy service has no authority to compel a signature. The copy	No action.

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	unnecessary reproductions and additional costs, we urge the DWC to reinstate § 9984.		service itself cannot sign a declaration because it is not producing the records; it would have simply copied records provided by the custodian.	
§9983(f)	This subsection contains a numbering error. The modified regulations list four subsections under 9983(f). However, the content of 9983(f)(2) has been struck in its entirety – leaving only three subsections. This section should be renumbered to reflect the deletion.	Jeremy Merz CalChamber	Agree.	The error has been corrected.
	The defense is the full cause of liens from copy services in the WCAB system. For years we have attempted to have copying agreements with carriers, TPA's and self-insured (the defense) and have been told time and again NO. Today the defense will not negotiate because the DWC has given them FULL powers by charging \$150 for a lien and placing hearing at remote Boards such as Oxnard and San Bernardino. The carriers know it is very expensive to defend a lien. Going to Oxnard for the day costs about \$500 and our invoice may only be \$300. Even when we offer to accept the \$180 fee the defense many times will not accept our offers. It appears the DWC is aiding	John Antonelli	These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not lien procedure, discovery rules, or penalties.	No action.

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	<p>the defense and attempting to get rid of applicant copy services. The defense has absolutely no reason to settle or negotiate any bill because they believe the cost of the lien and travel will preclude it. How equitable is this? As I stated before, for years we have diligently attempted to come to an agreeable price schedule with carriers and they have consistently refused. Under the Fee Schedule the same thing is going to happen. There are absolutely no clear provisions for the defense to pay a bill. There MUST be a clearly defined matrix that greatly penalizes defense for not paying or for objecting to bills that they should pay. One item that needs to be enacted is the defense objecting to subpoenaed records. If the defense receive notice to copy and DOES NOT object within 15 days of mailing of notice via mail or via email to a specific email address of the copy service, then the copy service has right to proceed to copy and the defense is obligated to pay the copy fee. We have been told time and again that they (the defense) do not have to object to the subpoena notice. Their position is if they have provided the records and the attorney issues a subpoena then it is the applicant's attorney who is responsible for the bill. Attorneys make mistakes at times and we are looking for a way</p>			

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	<p>to eliminate the errors that occur. If the defense objects because they have provided the records then the copy service will cease and it is all over with. If we copy the records and the defense refuses to pay then the entire system falls apart and more time and money is spent attempting to resolve the matter. Simple, let's eliminate any opportunity for errors, mistakes and Board battles by having very clear rules on copying and paying.</p>			
	<p>Dear Panel Members; You have failed to address the difficult position we face in regard to witness fees. You have refused to allow us to collect any fees in excess of \$15.00. However, there is no means in which we can make facilities accept only the allowed \$15.00 witness fee. How are we going to enforce the mandated \$15.00 witness fee with the facilities we obtain records from? We are often told "Do you want the records or not." If we do not pay the variable fee then we do not obtain the records. In rare circumstances the defense attorney will obtain an Order from the Judge for the facility to release the records. However, in this industry time is of the essence, especially when making an AOE/COE determination. If we do not pay the requested fees than the records cannot be timely obtained. In a lot of cases the claims are</p>	<p>Lisa A. Moore, President Sundance Copy Service, Inc.</p>	<p>Disagree. Release of information fees are controlled by Evidence Code section 1563 and disputes may be resolved by filing a petition with the WCAB or the superior court. The flat fee simplifies payment for both claims administrators and copy service providers.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>not litigated and thus, the examiner does not want to refer the case out to an attorney and incur all of the extra legal costs necessary for the Judge to issue an Order to Compel the facility to release the records. Nor, can this be completed on a timely basis due to the high volume at the WCAB. This will only increase the volume of appearances at the WCAB and continue to back log the system. Not to mention increase the costs for the Insurance Carriers. I have attached two examples in which fees were requested from our office in just the last week:</p> <p>EXAMPLE 1 A California State Agency; The Department of Corrections and Rehabilitation Archives Unit has requested an advance fee of \$88.68 to produce records.</p> <p>EXAMPLE 2 Axiom Imaging has requested an advance fee of \$214.00 to produce four interpretation reports. These are not films or X-rays. I can produce numerous examples of fees that are charged in excess of the allowed \$15.00. Not to mention, out of state fees that are requested in order to produce records are exorbitant. We have no way to make out of state facilities comply with accepting our mandated witness fees. Because we are a</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>defense oriented company we always obtain the approval of excessive fees from our clients before obtaining the records. By failing to adequately address this issue you are doing a dis-service</p>			
<p>§ 9982 and 9983</p>	<p>I predict I'm probably the only injured worker participating in public comment on DWC's proposed regulations. Because the founding mission of DWC was to serve injured workers, not the work comp. industry, I hope you take special notice of my comments since injured workers are significantly underrepresented in the rigged circus that the WCAB has become. As a preliminary matter, it should go without saying that DWC's first obligation is fidelity to the Constitution and to the law, followed by its mission to serve injured workers. Unfortunately, it appears a lot of reminding is necessary. All of my below comments on the proposed regulations should be read in the context of this important reminder.</p> <p>Section 9983 sets forth the payment amounts for copy services. Section 9982 exempts section 9983 for copy services contracted by insurance companies (not injured workers). The effect of these two regulations is that DWC will interfere with injured workers due</p>	<p>Michael Katz</p>	<p>Disagree. Labor Code section 5307.9 allows the employer and the copy service provider to contract for costs outside the fee schedule.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	process right to discovery on an equal basis as insurance companies. DWC needs to either regulate both sides equally or don't regulate at all.			
	Section 9983(f)(1) allows a charge of ten cents (\$0.10) per page for copies over 500 pages. If DWC takes action to ensure DWC officials are actually issuing the subpoenas, and ensure each subpoena is measured, targets relevant and unprivileged records, then this provision is reasonable. However, if DWC is going to stand on the sidelines with its hands in its pockets while copy services themselves draft the description of the materials to be produced and then Photoshop a state official's signature onto the self-created subpoena, then the ten cents per extra page is just an incentive for overbroad descriptions of materials to be produced.	Michael Katz	These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not discovery procedure. The definition of subpoena preparation is not changed by these regulations and the discovery process has not been changed.	No action.
	Section 9983(f)(3) talks about copy services retaining copies of records they copy. The job of the copy service is to copy only records that have been properly obtained, and then turn those records over to the part(ies). Their job is not to retain those records indefinitely. There's no authority for allowing copy services to retain privileged and constitutionally protected records after their assignment is	Michael Katz	Disagree. Section 9983(f)(3) regulates costs for additional sets of records, not retaining records.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	completed.			
	<p>Section 10208.7 discusses retention, return and destruction of DWC records. What's missing is a procedure for destruction of documents that are irrelevant, or that both parties agree should be removed from DWC's system of records, or that contain information filed into DWC's system of public records in violation of laws such as the Information Practices Act of 1977, Civil Code section 1798.85 et seq. relating to SSN's, Civil Code section 56 et seq. relating to irrelevant medical information, Labor Code section 3762 relating to irrelevant medical information, Cal. Constitution Art. I, Sec. 1 relating to the inalienable right to privacy, and DWC regulations restricting the content of medical-legal reports to relevant medical issues only. DWC/WCAB needs to take action on the copy service problem and protect the Constitutional rights of injured workers. Putting an end to the WCAB's subpoena circus and the assault on injured workers' Constitutional right to privacy is well overdue. It's only a matter of time before the criminal justice system takes a very close look at the copy services and WCAB's subpoena circus. Finally, I'm confident DWC/WCAB is going to retaliate against me in</p>	Michael Katz	<p>Disagree. These regulations do not address the relevancy of records or discovery</p> <p>These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not the subpoena process.</p>	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the most oppressive ways it can for my making these public comments, because that would be consistent with what DWC/WCAB has already been doing to me. In a twisted way, I actually hope the retaliation continues, because all your retaliation and oppression just further proves that DWC/WCAB is nothing but a kangaroo court inside a circus tent, and all of your bullying will come back hard on you one day. I know DWC/WCAB is hypersensitive to the "kangaroo court" designation, but you have absolutely, hands down earned it, and garbage like these proposed regulations, and the other things you've done, and the fact that you're doing nothing to distance yourself from all of it amounts to overwhelming proof you're a bunch of clowns who stain the honor of public service.</p>			
§ 9981 Bills for Copy Services	<p>1. The DWC has modified § 9981 (b) to include the county of registration. The DWC has indicated that its intent is to alleviate the burden on claims administrators having to verify photocopiers in 58 different California counties.</p> <p>2. Proposed § 9981 (b)(1) reads, in relevant part: “Bills for records may include billing codes. WC 020 is for Flat Fee of \$180, WC 021 is for Cancelled Service of \$75, WC 022 is for and</p>	Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF)	No response necessary.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Certificate of No Record of \$75, WC 0223 is for Per Page Fee of .10 per page, WC 023 is for Additional Paper Set of \$50, WC 024 is for records from the Employment Development Department (EDD) of \$20, WC 025 is for records from the Workers' Compensation Insurance Rating Bureau of \$30, WC 026 is for an Additional Electronic Set of \$5, WC 02567 is for an Additional Electronic Set of \$30, WC 028 is for Duplication of X-Ray of \$10, and WC 026 is for Duplication of Scan of \$15 or scan of \$10.26, WC 0289 is for CD of X-rays and scans of \$3."</p> <p>Recommendations</p> <p>1. State Fund makes no additional recommendation to this section and strongly supports the DWC's addition of "county of registration" on the bill for copy service. This addition will help claims administrators in identifying the registration of the provider and prevent potential abuse from non-professionals seeking to benefit from the system.</p> <p>2. Though the formation of WC codes (from WC 020 through WC029) is an excellent way to delineate specific services, further clarification is needed. Since the section corresponds directly to § 9983, State Fund recommends adding the codes described in § 9981 (b)(1) to</p>		Disagree. The billing codes contained in 9981 do not need to be	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	§9983 to avoid confusion and lend clarity to the fee schedule.		duplicated in 9983.	
§ 9982 Allowable Services	The DWC has added the word “written” to proposed §9982 (d)(1).2 Recommendation State Fund strongly supports this change as it specifies what is considered a request for records thus reducing potential disputes regarding whether a valid “request” was made.	Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF)	No response necessary.	No action.
§ 9983 Fees for Copy and Related Services	1. State Fund recommends keeping the language for both “witness costs” and “the production of records” as it is a more accurate reflection of the services being performed in line with Labor Code § 132. Keeping both terms in the regulations will help avoid confusion regarding filing disputes at the Workers’ Compensation Appeals Board. 2. State Fund recommends that numbering be corrected to avoid confusion and promote consistency and ease of reading. The current (f)(2) should be removed and the following sections (f)(3) and (f)(4) should be replaced by numbering (f)(2) and (f)(3).	Peggy Thill Claims Operations Manager – State Compensation	Disagree. “the production of records” includes disputes regarding “witness costs.” Agree.	No action. The error has been corrected.
General Comment	As I understand it, the proposed revised rules would provide for \$151 for a 50 page	Troy Kisiel, CPCU, ARM,	Disagree. The flat fee for up to 500 pages of	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>transcript, plus \$3 per page after that. As I was part of the team for CWIC that assisted the DIR in developing the Medical-Legal Fee Schedule, and have reviewed, handled, or overseen more than 50,000 work comp claims during my career, I believe I am particularly qualified to offer comment. As such, I believe the rates being discussed will substantially burden the Work Comp process relative to photocopy fee costs.</p> <p>Here are my concerns:</p> <p>1. That type of fee schedule will produce extensive overbilling by service providers, with copying of ALL records, regardless of records already having been the subject of being copied previously. An example is the claim administrator's claim file, which is frequently copied by the applicant attorney. If the actual file materials were 75 pages in length, with 500 pages of prior records, the cost for copying the file would be over \$1,700, while arguably, the 500 pages of prior records would have already been paid for in the copying process.</p> <p>Copying records of medical facilities like Kaiser will produce fees in the thousands of dollars range. In fact, the main cost for copying records is many times recouped within the first 50-75 pages of copying, representing a</p>	<p>AIM Control Point Strategies, Inc. Claims and Risk Management Consulting</p>	<p>records simplifies payment for both claims administrators and copy service providers.</p> <p>Disagree. The BRG study explained that the amount of work involved generally is not reflected by a larger number of pages. Each request requires significant staff time to set up while the actual copying of pages is not as time-consuming as the other steps involved.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>breakeven point above which excessive profits accrue, at the cost of employers, with a trickle down effect on employees and customers. Perhaps we could provide a more graded Fee Schedule that provides for specific reimbursements for segments of pages copied? It could look like the following:</p> <p>Category # Pages Copied Reimbursement Rate Cat I Certificate of No Records \$50.00 Cat II 1-25 pages \$75.00 Cat III 26-75 pages \$75 plus \$2 per page - up to \$175 Cat IV 76-100 pages \$150 plus \$1.50 per page - up to \$187.50 Cat V 101-200 pages \$187.50 plus \$1.25 per page - up to \$312.50 Cat VI 201-500 pages \$312.50 plus \$1.00 per page - up to \$612.50 Cat VII Any pages beyond 500 \$612.50 plus \$.75 per page</p>			
General comment	<p>Many times on litigated claims, the applicant attorney will use the photocopy process as a means to "building their file". While proper assessment and application of the medical-legal fee schedule would hold that this type of discovery is not "necessary", with the need for the bill to be objected to and not paid, 2 instead, most claim administrators pay the bills in full, without any type of audit. Alternatively, an objection for this type of bill will produce a lien, which will ripple effect into the remainder of the system. Perhaps it would</p>	Troy Kisiel, CPCU, ARM, AIM Control Point Strategies, Inc. Claims and Risk Management Consulting	Disagree. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9 not the discovery process.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	be beneficial to specifically identify the types of discovery that are covered under the Copy Service Fee Schedule, which would provide for a training opportunity for the claim administrators, as well as the attorneys that are involved in the system. This would eliminate unnecessary copy efforts.			
9982(a); 9982(d)(3); 9980(f)	Section § 9982 entitled Allowable Services in its current proposed modification deletes from application of the regulation contracts between employers and copy services providers. In the modified version of the proposed regulation the term “claims administrator” is inserted in subsection (a) to replace the term “employer”. By its definition in Section § 9980 an illegally uninsured employer is not included in the persons or entities defined as a “claims administrator”. Thus, the legal nexus can be created that services between an employer and the copy service provider are not covered by the proposed fee schedule. This ambiguity will leave uncertainty in the market and undoubtedly lead to fee disputes and litigation in the future. Subsection (d)(3) in the modified version of the proposed section § 9982 it is defined that, “There will be no payment for copy and related services that	Veronica Allard Legislative Committee Administrative Assistant California Lien Professional Assn.	Disagree. Contracts between employers and copy service providers are specifically excluded in Labor Code section 5307.9. Replacing “employer” with “claims administrator” will not lead to additional disputes. Disagree. The fee schedule only allows	No action. No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>are: Provided by any person or entity which is not a registered professional photocopier.” Proposed modified section § 9980(f) sets forth that, “Professional photocopier” is defined by section 22450 of the Business and Professions Code. Chapter 20 of the business and professions code entitled “Professional Photocopiers” contains section 22450 but continues in section 22451 and sets forth that said chapter does not apply to an identified group of individuals otherwise deemed by statute as qualified to provide professional photocopier services. Business and Professions Code Section 22451 qualifies that, “This chapter does not apply to any of the following:</p> <ul style="list-style-type: none"> (a) Any government employee who is acting in the course of his or her employment. 2 (b) A member of the State Bar or his or her employees, agents, or independent contractors. (c) Any person who is specially appointed by the court to obtain or reproduce in order to transmit or distribute those records. (d) An employee or agent of a person who is registered under this chapter. (e) Any custodian of records who makes his or her own copies. (f) Any certified shorthand reporter, official 		<p>payment from claims administrators to professional photocopiers who have a registration number. If an attorney makes copies, the costs would be part of their overhead. The Business and Professions Code does not regulate what claims administrators must pay for and is not in conflict with these regulations.</p>	

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>court reporter, or stenotype operator who makes his or her own copies.</p> <p>(g) Any person licensed under Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code or his or her employees.</p> <p>(h) The Office of the Secretary of State." Therefore, the logical legal nexus can be formed that Subsection (d)(3) in the modified version of the proposed section § 9982 would be no payment for copies obtained from any of the eight identified classes of copy providers that are authorized by the business and professions code statutory authority from which proposed modified section § 9980(f) sets forth that, "Professional photocopier" is defined for the purposes of the proposed copy fee schedule regulations. CLPA reiterated its contention that this over regulation of persons or entities who will be paid for copy services under the copy service fee schedule is in conflict with the existing business and professions code statutory authority. Here again, this conflict in the proposed regulation with existing statutory authority will leave uncertainty in the market and undoubtedly lead to fee disputes and litigation in the future. With the current limiting provision in the proposed modified regulations by logical</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>extension it can and will be argued to avoid payment by a claims administrator that “Any custodian of records who makes his or her own copies.” and is otherwise entitled to payment for the production of record as authorized by Evidence Code section 1563 would not be entitled to payment in a workers’ compensation case under the proposed fee schedule. This illogical conclusion most certainly will be extended to the actual individual obtaining the copies of documents. As excluded from being further registered a professional photocopier under the Business and Professions Code statutory authority set forth in 22450, et seq is, “An employee or agent of a person who is registered under this chapter.” Thus each individual on a registered a professional photocopier company is not required to be registered as an individual Subsection (d)(3) in the modified version of the proposed section § 9982 that seeks to define that, “There will be no payment for copy and related services that are: Provided by any person or entity which is not a registered professional photocopier.” Will undoubtedly be argued by overzealous legal representative of claims administrators who are seeking to escape liability for payment of copy service charges</p>		<p>Disagree. Registered professional photocopiers are to be paid.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>that the currently proposed modified regulatory promulgation asserting “any person” would include the person making the copies that is otherwise employed by a registered a professional photocopier. With the current limiting provision in the proposed modified regulations by logical extension it can be argued that “A member of the State Bar or his or her employees, agents, or independent contractors.” otherwise entitled to payment for the production of record as authorized by the Business and Professions code statutory authority set forth in 22450, et seq would not be entitled to payment in a workers’ compensation case under the proposed fee schedule. This would unreasonably restrict a member of the State Bar from the statutory rights for payment to obtain records that is currently authorized by statue.</p> <p>Further use of the term “registered photocopier” defined by proposed modified section § 9980(f) can be found in proposed modified section § 9983 “Fees for Copy and Related Services” where subsection (a)(6)(B) makes reference to “copy is retained by the registered photocopier”. Therefore, duplicate copies of records obtained from any of the eight identified classes of copy providers that</p>		<p>Agree. Duplicate copies of records obtained from any of the eight identified classes of copy providers that are authorized by the business and professions code statutory authority</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	are authorized by the business and professions code statutory authority would not be subject to the proposed copy service fee schedule.		would not be subject to the proposed copy service fee schedule. Only registered photocopiers are to be paid by the schedule.	
	In interpreting the validity of proposed regulatory promulgation that is in conflict with existing statutory authority the Courts have repeatedly opined that, "... we are guided by two of the central provisions of the administrative rule-making provisions of the Administrative Procedures Act [APA] (Gov. Code, § 11340 et seq.), to which the AD is subject. Government Code section 11342.2 provides that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute." Hence, it has been said that "[w]hen a statute confers upon a state agency the authority to adopt regulations ... , the agency's regulations must be consistent, not in conflict with the statute" (<i>Mooney v. Pickett</i> (1971) 4 Cal. 3d 669, 679, 94 Cal. Rptr. 279, 483P.2d 1231) and that "[a] regulation that is inconsistent with the statute it seeks to implement is invalid." (<i>Esberg v. Union Oil Co.</i> (2002) 28 Cal. 4th 262, 269, 121 Cal. Rptr. 2d 203, 47 P.3d 1069.) "No matter	Veronica Allard Legislative Committee Administrative Assistant California Lien Professional Assn.	Disagree. Section 9982 is not in conflict with existing statutory authority and is not inconsistent with governing statutes.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes.” (<i>Mendoza, supra</i>, 75 Cal. Comp. Cases at p. 640; see <i>Agric. Labor Relations Bd., supra</i>, 16 Cal. 3d at p. 419.)Government Code section 11342.1 provides that “[e]ach regulation adopted, to be effective, shall be within the scope of authority conferred.” Thus, it has been said that “administrative regulations which exceed the scope of the enabling statute are invalid and have no force or life” (<i>Woods v. Superior Court</i> (1981) 28 Cal. 3d 668, 680, 170 Cal. Rptr. 484, 620 P.2d 1032) and that “[a]dministrative regulations that ... enlarge [a statute's] scope are void and courts not only may, but it is their obligation to strike down such regulations.” (<i>Cal. Assn. of Psychology Providers, supra</i>, 51 Cal. 3d at p. 11 [quoting from <i>Morris, supra</i>, 67 Cal. 2d at p. 748</p> <p>Based upon the above articulation and citation to supporting authorities it is the position of the CLPA that the currently proposed "Copy Service Fee Schedule" regulations, specifically Section § 9982 as modified, remain in conflict with existing statutory authority as required by Gov. Code, § 11342.2. The proposed regulation, Section § 9982(d) as modified, is</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>not reasonably necessary to carry out the purposes of the statute that the proposed regulation is implementing and does not address the problem for which it is proposed in violation of Gov. Code, § 11350, subd. (b)(1). The members of the California Lien Professionals Association would strongly urge that the administrative agency limit the proposed regulation to the specific authority granted by Labor Code section 5307.9 from which this proposed regulatory action takes its authority.</p>			
	<p>In addition support of the objection to Section § 9982(d) the CLPA notes that the Notice of Proposed Rulemaking set forth that, "The Acting Administrative Director has determined that the proposed regulations are not inconsistent or incompatible with existing regulations, except Workers' Compensation Appeals Board Rule 10740 which will be amended in a separate rulemaking. After conducting a review for any regulations that would relate to or affect this area, the Acting Administrative Director has concluded that these are the only regulations that concern a copy service fee schedule for purposes of Labor Code section 5307.9." As set forth in our prior comments said proposed modified</p>	<p>Veronica Allard Legislative Committee Administrative Assistant California Lien Professional Assn.</p>	<p>Disagree. Business and Professions Code Section 22451 does not regulate claims administrator costs and is not in conflict with section 9982(d). These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>regulation Section § 9982(d) is in conflict with Business and Professions Code Section 22451 which allows for services to be provided b the enumerated classes of entities and individuals. Therefore, the "Determination of Inconsistency/Incompatibility with Existing State Regulations" statement in the Notice of Proposed Rulemaking is incorrect. Again the members of the California Lien Professionals Association would strongly urge that the administrative agency limit the proposed regulation to the specific authority granted by Labor Code section 5307.9 from which this proposed regulatory action takes its authority.</p>			
	<p>Proposed section §9990 entitled, “ Division Fees for Transcripts; Copies of Documents; Certifications; Case File Inspection; Electronic Transactions” as modified sets forth in pertinent part in subsection (c) & (d), “(c) For paper transcripts of any testimony proceeding of record, \$100 to order transcripts of 33 pages or less, for transcripts over 33 pages, (1) An additional charge of three dollars (\$3.00) for each page over 33, and of the first copy of transcripts, and one dollar and fifty cents (\$1.50) for each page of additional copies of the transcript, \$1.50 per page, for each page of additional copies of the</p>	<p>Veronica Allard Legislative Committee Administrative Assistant California Lien Professional Assn.</p>	<p>Disagree. There has been no changes to the person that would be charged for a transcript request. Even the costs for transcripts are the same. Instead of an estimate and later additional payment or refund based on the overage of the estimate, the fee is an up-front fee equivalent to a fee for an estimated 33-</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>transcript, \$1.50 per page, both to be paid prior to the release of the transcripts." (d) For inspection of a case file not stored in the place where the inspection is requested, ten dollars (\$10.00) plus any postage or other delivery costs, except when requested by an injured employee or his or her attorney or his or her representative of record." This proposed amendment to proposed section §9990 lacks clarity, as required by 1 CCR 16 which sets forth in pertinent part that, "A regulation shall be presumed not to comply with the "clarity" standard if any of the following conditions exists: (1) the regulation can, on its face, be reasonably and logically INTERPRETED to have more than one meaning; or (2) the language of the regulation conflicts with the agency's description of the effect of the regulation;..." It could logically be interpreted that the reference in subsection (d) that, "...except when requested by an injured employee or his or her attorney or his or her representative of record." applies to the entire regulation and not just subsection (d). Otherwise this would lead to the illogical conclusion that all injured workers would be forced to pay the sum of \$100 to obtain a transcript of a proceeding of adjudication of their application for benefits. This fee increase from the prior fee of \$3 per</p>		page transcript.	

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>page with no such astronomical minimum cost of \$100 present in the amended proposed regulation could be reasonably and logically interpreted to apply to the injured worker and his representative of record. Such a cost shifting burden on to the injured worker is without fiscal analysis as to a logical basis for the need of such an amendment to the proposed modified regulation. Based upon its newly obtained transcript review it is now asserted that the average transcript length is 33 pages</p> <p>in length. This, therefore acknowledges that any injured worker requesting a transcript of less than 33 pages will be forced to pay the higher flat fee as opposed to the per page fee that currently applies under existing regulation. In the Copy Service Fee Schedule Initial Statement of Reasons (Hereinafter, ISOR.) dated May 16, 2014 the Subject Matter of the Regulations to be promulgated and amended was identified as "Copy Service Fee Schedule". Existing regulation section §9990, enacted as long ago as 1978 and last amended in 2000 is unrelated to the promulgation of the "Copy Service Fee Schedule". The rationale for the agency's determination that the amendment of section §9990 is reasonably necessary to carry out the purposes of labor</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Code section 5307.9 and to address the problem for which it is proposed is not present in the proposed regulatory promulgation as modified. In support of this analysis in the specific purpose set forth for Section 9990, in the same proposed regulatory promulgation it is set forth in the ISOR that, "This amendment is necessary to clarify that it is not part of the copy service fee schedule and that it covers fees charged by DWC. (Emphasis added.) The method for collecting fees has changed while the actual charges remain the same at \$3.00 a page for those transcripts that are 50 pages or more. An up-front fee replaces an estimate which is later adjusted upon pickup. DWC's average number of pages for ordered transcripts is 77 pages. Therefore, most transcript requests will have a total cost of \$216, comprising of \$150 (the up-front flat fee for the first 50 pages) plus \$66 (22 pages times \$3.00). ¶ DWC staff has encountered difficulties with issuing reimbursements for over-estimates of transcript costs, especially with those fees paid by credit card. To improve efficiency, the deposits have been replaced by an up-front fee. Transcripts which are less than 50 pages would be more expensive to obtain at \$150 rather than \$3.00 per page." While previously candidly acknowledging that,</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 3 rd 15 day	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>“Transcripts which are less than 50 pages would be more expensive to obtain at \$150 rather than \$3.00 per page.” Thus, extending the excluding language in subsection (d) , “...except when requested by an injured employee or his or her attorney or his or her representative of record.” to the entire proposed regulation would not impose this astronomical costs increase upon any injured workers seeking transcripts of fewer than the newly revised 33 pages to further pursue their claims of industrial injury. The Notice of Proposed Rulemaking set forth that it was intended to , “...implement the provisions of Labor Code section 5307.9, of Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013). Labor Code section 5307.9 mandates this Copy Service Fee Schedule for copy and related services and provides that the schedule shall specify the services allowed and shall require specificity in billing for these services.” Further the Notice of Proposed Rulemaking set forth that, “ Cost impacts on a representative private person or business: The Acting Administrative Director is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.” California's Administrative Procedures</p>			

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	<p>Act (APA), Gov. Code, § 11346 et seq., does not shift the analytical task entirely onto affected parties. Instead, the statutes require the agency to meet an initial, nonconclusive, nonexhaustive evidentiary burden. Gov. Code, §§ 11346.2, subd. (b)(6)(A); 11346.5, subd. (a)(8). Here the agency has not met said burden in increasing the transcript fee from \$3 per page to a \$100 minimum charge. IT is though to be acknowledged that more precise current documentation has resulted in the proposed fee being reduced from \$150 50 the currently proposed \$100 fee level.</p> <p>It still remains unclear the relation that the existing regulation section 9990 has to the implementation of the “Copy Service Fee Schedule” The Courts have repeatedly opined that “In considering the validity of a regulation, “our task is to inquire into the legality of the ... regulation, not its wisdom.” (<i>Moore v. Cal. State Bd. of Accountancy</i> (1992) 2 Cal. 4th 999, 1014, 9 Cal. Rptr. 2d 358, 831 P.2d 798; accord, <i>State Farm Mutual Automobile Ins. Co. v. Garamendi</i> (2004) 32 Cal. 4th 1029, 1040, 12 Cal. Rptr. 3d 343, 88 P.3d 71 (<i>State Farm</i>).) Thus, we are “limited to determining whether the regulation (1) is within the scope of the authority conferred (<i>Gov. Code, §11373</i>) and (2) is reasonably</p>			

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	<p>necessary to effectuate the purpose of the statute.” (<i>State Farm</i>, 32 Cal. 4th at p.1040 [quoting from <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976) 16 Cal. 3d 392, 411, 128 Cal. Rptr. 183, 546 P.2d 687 (<i>Agric. Labor Relations Bd.</i>) (internal citations and quotation marks omitted)].) “[a] regulation that is inconsistent with the statute it seeks to implement is invalid.” (<i>Esberg v. Union Oil Co.</i> (2002) 28 Cal. 4th 262, 269, 121 Cal. Rptr. 2d 203, 47 P.3d 1069.) “No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes.” (<i>Mendoza, supra</i>, 75 Cal. Comp. Cases at p. 640; see <i>Agric. Labor Relations Bd., supra</i>, 16 Cal. 3d at p. 419.) Government Code section 11342.1 provides that “[e]ach regulation adopted, to be effective, shall be within the scope of authority conferred.” For the purposes of 1 CCR 14 the CLPA respectfully challenges the agency’s “authority” as the CLPA respectfully submits that the proposed amendment to section 9990 is not reasonably necessary to effectuate the purpose of the authorizing statute Labor Code section 5307.9 Based upon the above articulation and citation to supporting authorities it is the position of the</p>			

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	<p>CLPA that the currently proposed "Copy Service Fee Schedule" regulations, specifically Section § 9982 as modified, are in conflict with existing statutory authority as required by Gov. Code, § 11342.2. The proposed regulation, as modified is not reasonably necessary to carry out the purposes of the statute that the proposed regulation is implementing and does not address the problem for which it is proposed in violation of Gov. Code, § 11350, subd. (b)(1). The members of the California Lien Professionals Association would strongly urge that the administrative agency limit the proposed regulatory promulgation to the specific authority granted by Labor Code section 5307.9 from which this proposed regulatory action takes its authority.</p>			