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

PUBLIC HEARING

Tuesday, April 13, 2010
Elihu Harris State Office Building
1515 Clay Street
Oakland, California

Richard Starkeson
Moderator
Industrial Relations Counsel III

Destie Overpeck
DWC Chief Counsel

Reported by: Kimberlee R. Miller

I N D E X

1		
2	MOE KESHAVARZI	5
3	Employer's Insurance Company of Wausau and	
4	Safeco Insurance of America	
5	LYNN MALMSTROM	12
6	California Shock Trauma Air Rescue, CALSTAR	
7	KATHRYN DOI	16
8	CALSTAR	
9	SEAN McENEANEY	24
10	American Home Insurance Company,	
11	National Union Fire Insurance	
12	Company of Pittsburgh, Pennsylvania,	
13	and Commerce & Industry Insurance Company	
14	DAVID FREITAS	25
15	State Compensation Insurance Fund	
16	SAMUEL SORICH	27
17	Association of California Insurance	
18	Companies, ACIC	
19	JEFF RUSH	30
20	CSAC Excess Insurance Authority	
21	JASON SCHMELZER	33
22	California Coalition of Workers' Compensation	
23	BILL BRYANT	36
24	California Air Medical Services	
25	CHRIS ORMAN	
	North County Fire Protection District	42

1 PUBLIC HEARING

2 OAKLAND, CALIFORNIA

3 TUESDAY, APRIL 13, 2010 - 10:00 A.M.

4 * * * * *

5 MR. STARKESON: Good morning. Thank you for coming here
6 today. This is a hearing on the Division of Workers'
7 Compensation's proposed amendment to the regulations in the
8 ambulance section of the Official Medical Fee Schedule.

9 I'm Richard Starkeson. I am an attorney for acting
10 Administrative Director Carrie Nevans, who is unable to be
11 present this morning, and I'm appearing on her behalf. I will
12 be conducting this hearing.

13 Also here today on behalf of the Division to my right
14 is Destie Overpeck, Division's Chief Counsel, and in the front
15 row Maureen Gray, the Division's Regulations Coordinator.

16 The hearing will continue as long as there are people
17 present who wish to make comments to the regulations, but
18 should it last that long, it will close at 5:00 p.m. If the
19 hearing continues through the lunch hour, we will take at least
20 an hour break for lunch.

21 Written comments will be accepted up until 5:00 p.m.
22 at the Division's offices here on the 17th floor of the state
23 building here at 1515 Clay Street in Oakland.

24 The purpose of this hearing is to receive comments on
25 the proposed amendment to the Official Medical Fee Schedule

1 regulations, and the Administrative Director welcomes any
2 comments you may have about them. All your comments both given
3 here today and those submitted in writing will be considered by
4 the Administrative Director in determining whether to adopt
5 this regulation as written or to change it. Please restrict
6 your -- the subject of your comments to the regulation and to
7 any suggestions you have for changing it or as to whether or
8 not it should be adopted.

9 We do not intend to enter into any discussions this
10 morning, although we may ask you for clarification or may ask
11 to you elaborate further on any points you are presenting.

12 When you come up to give testimony, please give
13 Maureen or leave on the table here your business card, if you
14 have one, so that we can get the correct spelling of your name
15 for the transcript. The reporter will be preparing a
16 transcript of the proceedings. Please speak into the
17 microphone, which is over here at the podium to my right. And
18 before starting your testimony, please identify yourself for
19 the record so the reporter can take down your name for the
20 record.

21 So with that, I am going to open the hearing. So will
22 the first speaker please come to the microphone and introduce
23 yourself.

24 I would -- in order of people who signed in, Mr. Moe
25 Keshavarzi signed in first from Sheppard Mullin. If you would

1 like to come first, that's fine.

2 Go ahead when you're ready.

3 **MOE KESHAVARZI**

4 MR. KESHAVARZI: Good morning. My name is Moe Keshavarzi.
5 I am with the law firm of Sheppard, Mullin, Richter & Hampton,
6 and I represent two workers' compensation insurers in
7 California, Employer's Insurance Company of Wausau and Safeco
8 Insurance of America.

9 I wanted to thank you for the opportunity to comment
10 on the proposed Section 9789.70(c) which proposes to exempt air
11 ambulance providers from the fee schedule. I am here today to
12 urge you not to adopt Section 9789.70(c). It is bad law, bad
13 policy; it violates the California Constitution, and it
14 violates the mandate of the California Legislature in amending
15 Section 5307.1 of the Labor Code in 2003.

16 Little bit of background, I think, will put today's
17 hearing in context. As you know, Labor Code Section 4600
18 obligates an employer or workers' compensation insurer to
19 reimburse an injured worker for medical -- for all expenses
20 incurred to cure the injured worker from the effects of his or
21 her injury. This includes fees reasonably incurred, and this
22 includes services such as air ambulance services. The injured
23 worker is reimbursed pursuant to 4600 -- or the employer's
24 workers' compensation insurer pays for the air ambulance
25 services the reasonable fees.

1 Section 4600 doesn't define what is a reasonable fee.
2 That task was left to the Workers' Compensation Appeals Board
3 and individual workers' compensation judges who often, through
4 lien litigation, took in evidence and determined what is a
5 reasonable fee. This process, of course, was inefficient and
6 expensive, and it contributed to the escalating costs of
7 medical care and workers' compensation services in California.

8 As you know before 2003 the workers' compensation
9 system in California was in crisis mode. Despite increasing
10 premiums, many private insurers were unprofitable, and they
11 were abandoning the California market. And the main
12 contributor of this crisis was the increase in the cost of
13 workers' compensation services.

14 In 2003, to reign in the increasing costs of workers'
15 compensation services, the California Legislature amended
16 Section 5307.1 of the Labor Code and directed the
17 Administrative Director of the workers' compensation --
18 Division of Workers' Compensation to adopt a fee schedule and
19 to create certainty as to what is a reasonable fee.

20 Pursuant to the mandate of 5307.1, effective 1-1-04,
21 the Administrative Director adopted Section 9789.70 and
22 established a fee schedule governing ambulance services
23 including air ambulance services. It is against this backdrop
24 why we are here today, and against this backdrop that the
25 Administrative Director now proposes to adopt subsection (c),

1 which will exempt air ambulance providers from the fee schedule
2 on the grounds that the Airline Deregulation Act preempts the
3 OMFS, or the Official Medical Fee Schedule.

4 The reason the Administrative Director wants to adopt
5 this proposed regulation, according to the Statement of
6 Reasons, the Initial Statement of Reasons, is that several air
7 ambulances are threatening the Administrative Director with a
8 lawsuit, and they want to seek to enjoin the Administrative
9 Director from enforcing the fee schedule against them. We
10 believe it is a baseless lawsuit, and we believe there are
11 several reasons why the Administrative Director should not move
12 forward with adopting the proposed regulation. We joined 51
13 other insurers and self-insured employers who last week
14 submitted written comments outlining the issues and outlining
15 the reasons why we believe the proposed regulation is bad law
16 and bad policy.

17 Today I want to emphasize two points, two reasons why
18 we believe the Administrative Director should not adopt the
19 proposed regulation. The first reason is that Section
20 9789.70(c) is unconstitutional. The California Constitution in
21 Article 3, Section 3.5 provides in no uncertain terms that an
22 administrative agency has no power to declare a statute
23 unenforceable or to refuse the statute on the basis that
24 federal law or federal regulations prohibit the enforcement of
25 such statute unless an appellate court has made a determination

1 that the enforcement of such statute is prohibited by federal
2 law or federal regulations. By adopting the proposed
3 regulation, the Administrative Director would be doing
4 precisely what the California Constitution prohibits.

5 Section 5307.1 of the Labor Code directs the
6 Administrative Director to adopt a fee schedule for all
7 services under Section 4600 and enforce that fee schedule. If
8 the Administrative Director adopts the proposed regulation on
9 the ground that the Airline Deregulation Act preempts the OMFS,
10 that would violate the California Constitution. Unless a court
11 of appeal determines that the ADA exempts air ambulance
12 carriers from the fee schedule, and no appellate court has made
13 that determination, then the Administrative Director must
14 continue to enforce a fee schedule for all services rendered
15 under Section 4600.

16 So the proposed regulation is unconstitutional.
17 There's no way around that.

18 The second reason is that none of the five Labor Code
19 provisions that the Administrative Director has cited
20 authorizes to adopt the proposed regulation. In the Notice of
21 Proposed Rulemaking and Informative Digest, the Administrative
22 Director cites five Labor Code provisions which it believes
23 vests it with the authority to adopt the proposed regulation,
24 and I submit to you that none of these Labor Code provisions as
25 I'm about to describe actually authorize the Administrative

1 Director to find that the Airline Deregulation Act preempts the
2 fee schedule.

3 The first statute the Administrative Director has
4 cited is Labor Code 5307.1. This section does not, however,
5 authorize the proposed regulation. It prohibits it. Section
6 5307.1 states that the Administrative Director shall adopt a
7 fee schedule that shall establish reasonable, maximum fees, pay
8 for all services rendered under Section 4600. Section 5307.1
9 does not vest any discretion in the Administrative Director to
10 decide what services to include in the fee schedule and what
11 services not to include in the fee schedule. The Labor Code
12 provision is clear. It says adopt a fee schedule that covers
13 all services under Labor Code Section 4600. In fact, the
14 Administrative Director has acknowledged that Section 5307.1 is
15 mandatory.

16 In its Notice of Rulemaking and Information Digest
17 issued in connection with the proposed regulation, the
18 Administrative Director acknowledges that Labor Code Section
19 5307.1 requires the Administrative Director to adopt a fee
20 schedule that establishes maximum fees paid for medical
21 services under the workers' compensation system. So 5307.1
22 does not allow the Administrative Director to adopt the
23 proposed regulation.

24 The second statute the Administrative Director cited
25 is Labor Code Section 5307.3. That section provides that the

1 Administrative Director may adopt, amend, or repeal any rules
2 and regulations that are reasonably necessary to enforce
3 division for the Labor Code.

4 The proposed regulations do not enforce any provision
5 of the division for. In fact, they find that Section 5307.1 is
6 unenforceable against air ambulance providers. So, again,
7 5307.3 doesn't get the Administrative Director to adopt --
8 doesn't allow or authorize the Administrative Director to adopt
9 the proposed regulation.

10 The next section is Labor Code Section 59, the next
11 section that the Administrative Director has cited is Labor
12 Code Section 59, and that section says that the Administrative
13 Director has the power to -- shall enforce all laws that impose
14 a duty on the Administrative Director.

15 The Administrative Director has no duty to find that
16 the Airline Deregulation Act preempts the fee schedule. In
17 fact, it has a duty to enforce 5307.1. So the proposed
18 regulation actually violates Section 59. Section 59 doesn't
19 authorize it.

20 The next section cited by the Administrative Director
21 is Labor Code Section 133, and that section gives the
22 Administrative Director the power to do what the Labor Code
23 requires him to do. The Labor Code requires the Administrative
24 Director to enforce a fee schedule. It doesn't allow or
25 authorize the Administrative Director to in effect carve out

1 Section 5307.1 or create an exception to Section 5307.1 and say
2 that it doesn't apply to our ambulance providers.

3 The last section that the Administrative Director has
4 cited is Section 4603.5, and that section says that the
5 Administrative Director shall adopt any rules necessary to make
6 effective the requirements of Article 2, which commences with
7 Section 4600. Nothing in Article 2 requires or authorizes the
8 Administrative Director to find that a provision of the Labor
9 Code doesn't apply to a certain group of service providers such
10 as air ambulance providers.

11 So, as you can see, none of these Labor Code
12 provisions authorize the Administrative Director to do what it
13 proposed to do by adopting Section 9789.7(c).

14 In its haste to prevent a lawsuit by air ambulance
15 providers, the Administrative Director is about to commit an
16 act that not only violates 5307.1 of the Labor Code but is also
17 unconstitutional.

18 On behalf of my clients I urge you to stand firm
19 against this threat of a lawsuit. It is a baseless threat.
20 They're at the wrong forum, asking for the wrong remedy. If
21 they believe -- and by they I mean the air ambulance
22 providers -- if they believe that the Airline Deregulation Act
23 preempts a fee schedule, they have two options: They can go to
24 the California Legislature, the body that enacted Section
25 5307.1 and ask the California Legislature to create an

1 exception to 5307.1; or they can go to the California Court of
2 Appeal and ask for the Court of Appeal to declare -- after
3 going through the Workers' Compensation Appeals Board, go to
4 the Court of Appeal and ask for the Court of Appeal to declare
5 that the ADA preempts the fee schedule. As Section 5307.1
6 currently stands, however, the Administrative Director has no
7 power to adopt Section 9789.70(c).

8 Thank you for your time.

9 MR. STARKESON: Thank you.

10 All right. The next person who signed in is Larry
11 Golub.

12 Does Mr. Golub wish to speak?

13 MR. GOLUB: I'm going to defer my comments because
14 Mr. Keshavarzi has expressed most of them already.

15 MR. STARKESON: Next sign-in person is Lynn Malmstrom.

16 Do you wish to speak, Mr. Malmstrom?

17 MR. MALMSTROM: Yes, I do.

18 **LYNN MALMSTROM**

19 MR. MALMSTROM: Good morning. My name is Lynn Malmstrom.
20 I am the Chief Executive Officer of California Shock Trauma Air
21 Rescue, also known as CALSTAR, an air ambulance provider based
22 in northern California.

23 I am here on behalf of CALSTAR to support the proposed
24 amendment to Title 8 of the California Code of Regulations
25 Section 9789.70 to clarify that the Official Medical Fee

1 Schedule is inapplicable to air ambulance services provided by
2 federally regulated air carriers.

3 CALSTAR is a 501(c)(3) nonprofit corporation that
4 currently provides air ambulance services to over 3,000
5 patients annually. We are proud to have celebrated our 25th
6 anniversary last year. Over the past 25 years CALSTAR has
7 transported over 40,000 patients without accident or injury to
8 either patient or crew. CALSTAR currently has helicopter bases
9 in Auburn, Concord, Gilroy, Jackson, Salinas, Santa Maria,
10 South Lake Tahoe, Ukiah, and Vacaville.

11 The CALSTAR mission is to save lives, reduce
12 disability, and speed recovery for victims of trauma and
13 illness through rapid transport, quality medical care, and
14 education. In order to carry out this mission, CALSTAR
15 operates a fleet of helicopters and Cessna airplanes. Our
16 flight crews are comprised of a pilot and two certified flight
17 registered nurses. This is the gold standard for air ambulance
18 crews.

19 CALSTAR's helicopters and airplanes are equipped with
20 advanced life-support technology to provide our patients access
21 to an emergency room level of care at the accident site and in
22 the air. We also provide air transport for patients who need
23 to be transferred from one facility to another to receive the
24 level of care they need.

25 CALSTAR is a fully accredited -- is fully accredited

1 by the Commission on Accreditation of Medical Transport Systems
2 known as CAMTS.

3 Air ambulance services are an integral part of the
4 emergency response system because air ambulances can get
5 patients from the scene of an accident in a remote or congested
6 area to a trauma center more quickly than transportation by
7 ground ambulance.

8 Trauma is the number one cause of death in the United
9 States for persons under the age of 44. For trauma victims,
10 medical treatment within one hour, often referred to as the
11 golden hour, can prevent 20 to 30 percent of potential deaths
12 and dramatically reduce hospitalization times. Nationwide air
13 ambulance programs are a key component of the emergency
14 response system, delivering thousands of trauma victims to
15 trauma centers within the golden hour.

16 CALSTAR operates under its own FAA Part 135 air
17 carrier certificate and is directly responsible for all aspects
18 of flight operations and aircraft safety as well as providing
19 the emergency medical care. CALSTAR has been in good standing
20 with the FAA since it received its air certificate on May 15th,
21 1986. CALSTAR's air certificate authorizes CALSTAR to operate
22 in the 48 contiguous states and the District of Columbia.
23 While CALSTAR is a California based company, it also regularly
24 transports patients across state lines to and from Arizona,
25 Nevada, and Oregon.

1 CALSTAR has a schedule of charges and bills for all of
2 its services at those same rates regardless of the payor.
3 Prior to the adoption of the OMFS in January 2004, most
4 insurers and self-insured employers paid full billed charges
5 for the emergency services provided by CALSTAR. Since the OMFS
6 was adopted in 2004, the majority of workers' compensation
7 insurers and self-insured employers who have -- employers who
8 have become obligated to pay for air ambulance services
9 provided by CALSTAR to employees injured on the job have paid
10 the OMFS rate, which is significantly below billed charges and
11 below costs. The insurers and employers that have failed to
12 pay the balance of the invoiced have claimed CALSTAR's recovery
13 is limited to the amounts incorporated by reference to the
14 OMFS. The OMFS needs to be amended to clarify that the OMFS
15 rates do not apply to the services of CALSTAR and other
16 federally regulated air carriers.

17 In closing, CALSTAR supports the DWC's proposed
18 amendment to Title 8 of the California Code of Regulations
19 Section 9789.70 to clarify that the OMFS is inapplicable to air
20 ambulance services provided by federally regulated air
21 carriers. This amendment represents an important clarification
22 of existing law that will help enable air ambulance providers
23 like CALSTAR to continue to be able to provide critical air
24 ambulance services.

25 Questions?

1 MR. STARKESON: I just had one question. Did you say your
2 rates were published?

3 MR. MALMSTROM: No, I did not say that, but they're the
4 same regardless of a patient.

5 MR. STARKESON: Are they amended periodically, or they
6 stay the same from year to year?

7 MR. MALMSTROM: The rates are amended from time to time to
8 take into account the increased costs for the equipment, the
9 labor, the fuel, all of the components we have in our
10 operation.

11 MR. STARKESON: Would you be willing to send the Division
12 copies of your rate schedules for the last several years?

13 MR. MALMSTROM: For the last several years?

14 MR. STARKESON: Yes.

15 MR. MALMSTROM: Yes, if requested.

16 MR. STARKESON: Thank you.

17 Next listed speaker is Kathryn Doi of the law firm of
18 Murphy Austin.

19 **KATHRYN DOI**

20 MS. DOI: Yes. Good morning. My name is Kathryn Doi.
21 I'm with the law firm of Murphy, Austin Adams, Schoenfeld, and
22 we represent CALSTAR in the federal court litigation against
23 the workers' comp insurers and self-insured employers
24 challenging the Official Medical Fee Schedule, and we also
25 represent CALSTAR today.

1 We welcome the proposed regulation as providing
2 critical clarification with respect to the application of the
3 OMFS to services provided by federally regulated air carriers.

4 Although the Department of Workers' Compensation is
5 exempt from the Administrative Procedure Act in this
6 proceeding, pursuant to Government Code Section 11340.9(g)
7 because the OMFS is a regulation that establishes or fixes
8 rates, prices, or tariffs, the Division is to be commended for
9 providing the public with a meaningful opportunity to
10 participate in adoption of these regulations. And, in fact,
11 these proposed regulations meet the six standards of review
12 that are required by the APA: necessity, authority, clarity,
13 consistency referenced in nonduplication. My comments today
14 will address the necessity and authority aspects of the
15 regulation.

16 Necessity is defined as the substantial evidence of a
17 need for regulation to effectuate the purpose of a statute,
18 court decision, or other provision of law that the regulation
19 implements, interprets, or makes specific. CALSTAR's written
20 comments, which we submitted this morning, explain that prior
21 to adoption of the Official Medical Fee Schedule in 2004,
22 workers' comp insurers and self-insured employers generally
23 reimbursed air carriers who provided air ambulance services to
24 injured workers the amount reflected in the air carrier's
25 invoice for the full billed charges that Mr. Malmstrom just

1 referred to.

2 After the OMFS was adopted in 2004, many workers'
3 insurers and self-insured employers began instead to pay
4 CALSTAR and other air carriers 120 percent of Medicare, which
5 was the OMFS rate, and this reimbursement is significantly
6 lower than the invoiced amount. On the explanation of benefits
7 that accompanied the payment, the payors would explain that the
8 reason they were paying the reduced rate was based on the
9 reliance on the OMFS.

10 CALSTAR wrote to the workers' comp insurance and
11 self-insured employers and explained that the OMFS was
12 preempted by the express preemption provision of the Federal
13 Aviation Act, as amended by the Airline Deregulation Act, and
14 the majority of insurers and employers that received these
15 letters did not change their position that they were only
16 legally obligated to pay 120 percent of Medicare.

17 Finally, CALSTAR brought legal action against the
18 insurers and employers challenging the reimbursement of the
19 OMFS rate on the grounds that the OMFS rate is preempted by
20 federal law. This action is pending, and the majority of the
21 insurers and self-insured employers continue to pay the OMFS
22 rate.

23 Our written comments contain a full, legal analysis
24 explaining why the express exemption provision of the Airline
25 Deregulation Act preempts the OMFS as applied to air ambulance

1 services provided by federally regulated air carriers. But
2 frankly it is evident from the plain language of the ADA which
3 reads in part that: A state or political subdivision of a
4 state may not enact or enforce the law, regulation, or other
5 provision having the force and effect of law related to a
6 priced route or service of an air carrier that may provide air
7 transportation under this subpart. And that is 49 United
8 States Code Section 41713(b)(1).

9 The proposed amendment to the OMFS -- to clarify, the
10 OMFS is inapplicable to air ambulance services if the providers
11 of federally regulated air carrier is necessary to ensure that
12 the workers' comp insurers and self-insured employers
13 discontinue the practice of relying on the OMFS to pay
14 federally regulated air carriers a discounted rate in violation
15 of federal law.

16 Turning for a second to the authority issue.
17 Authority is defined as a provision of law which permits or
18 obligates the agency to adopt, amend, or repeal a regulation.
19 Labor Code Section 5307.1(a) directs the Administrative
20 Director to adopt and revise the Official Medical Fee Schedule
21 periodically as necessary.

22 The Administrative Director clearly has the authority
23 to promulgate the proposed regulations to the -- revisions to
24 the Official Medical Fee Schedule to ensure they are not
25 interpreted or implied in a manner inconsistent with federal

1 law.

2 In *California Drive-in Restaurant Association vs.*
3 *Clark*, 22 Cal.2nd 287, the California Supreme Court stated:

4 The authority of an administrative board or
5 officer to adopt reasonable rules and regulations
6 which are deemed necessary to the due and
7 efficient exercise of the powers expressly
8 granted cannot be questioned. This authority is
9 implied from the power granted.

10 In that case the statute in question imposed a minimum
11 wage of \$16 per week for female adults and minors working in
12 restaurants, and the regulation that was under challenge had to
13 do with whether or not the employer could count tips towards
14 the \$16 per week that these employees were to receive. And the
15 challenge was that this interpretation and whether or not tips
16 could be counted towards the minimum wage went beyond the scope
17 of the authority of the administrative body. And this
18 California Supreme Court said, no, that in that case, even
19 though it didn't have to do expressly with the setting of the
20 minimum wage, which is what the statute addressed, that that
21 was necessary in order to make sure that the purpose of the
22 statute was effectuated, and in this way -- and also
23 effectuated in a legal manner.

24 So in this case it is very similar where you have the
25 Labor Code says that the DWC is authorized to establish the

1 rates for medical services, and this proposed regulation is in
2 the same manner necessary to ensure that the implementation of
3 that law is done in an effective and constitutional manner.

4 It has also been suggested that the proposed
5 regulation go beyond the Division's rulemaking authority
6 because Article 3, Section 3.5 of the California Constitution
7 provides that an administrative agency does not have the power
8 to declare a statute unconstitutional or refuse to enforce a
9 statute on the basis of it being unconstitutional unless an
10 appellate court has made a determination that the statute is
11 unconstitutional.

12 But the rulemaking in question here does not implicate
13 Article 3, Section 3.5. First, because Article 3, Section 3.5
14 only addresses an administrative agency declaring a statute
15 unconstitutional or refusing to enforce the statute.

16 Nowhere in the documents in support of the proposed
17 rulemaking has the Division stated or implied that Labor Code
18 Section 5307.1 or any other state statute is unconstitutional
19 or that it is refusing to enforce the statute. Instead, the
20 Division is consulting federal law and interpreting the
21 existing law in the course of discharging its statutory duties,
22 two functions that were expressly approved in the *Regents of*
23 *the University of California vs. Public Employment Relations*
24 *Board*, 139 Cal.App.3d 1037 at 1042. The Regents -- the Court
25 noted:

1 We find nothing in the language at Article 3,
2 Section 3.5 which prevents the agency from
3 consulting federal law in order to determine
4 whether the state statute may be enforced without
5 offending relevant federal regulations. An
6 administrative agency still remains free to
7 interpret the existing law in the statutory
8 duties.

9 Also in *Connerly vs. State Personnel Board*, 92
10 Cal.App.4th 16 at 49, the Court addressed the difference
11 between the authority of an administrative agency to cure a
12 facially unconstitutional statute by refusing to enforce as
13 written, which the Court said an agency couldn't do, versus the
14 authority of an administrative agency to interpret an ambiguous
15 statutory provision in a constitutional manner. The question
16 is whether the statute can be implemented both constitutionally
17 and in accordance with the express terms.

18 In this case there's been no assertion that Labor Code
19 Section 5307.1 is facially invalid or generally preempted by
20 the Airline Deregulation Act. Instead, Labor Code Section
21 5307.1 is silent on the issue of services provided by federally
22 regulated air carriers, so it's fallen upon the Division of
23 Workers' Compensation to implement and interpret Labor Code
24 Section 5307.1, and in doing so the Division has correctly
25 determined that the Official Medical Fee Schedule does not

1 govern the rates paid to air carriers.

2 Before closing I also want to indicate that we agree
3 and support the Division's position on retroactivity as noted
4 in the Initial Statement of Reasons. The ISOR states:

5 The Airline Deregulation Act of 1978 predated the
6 adoption of this section of the Official Medical
7 Fee Schedule, and as it may have preempted
8 regulations which would have an effect on rates
9 charged by air carries, Section 9789.70 might never
10 have legally applied to providers which were air
11 carries as defined in the Act.

12 We believe that is an accurate statement of the law on
13 preemption as it relates to the Official Medical Fee Schedule.
14 Since its inception, it applies to federally regulated air
15 carriers.

16 For the forgoing reasons we support the promulgation
17 of the proposed regulation as meeting the standards established
18 by the Administrative Procedure Act and as necessary to ensure
19 that the Official Medical Fee Schedule is interpreted and
20 applied in a manner consistent with and not contrary to federal
21 law.

22 Thank you.

23 MR. STARKESON: Thank you, Ms. Doi.

24 The next person on the sign in sheet is Mr. Stephen
25 Foster, State Compensation Insurance Fund. Do you wish to make

1 comments, Mr. Foster?

2 MR. FOSTER: No.

3 MR. STARKESON: Also signed in from -- I can't read the
4 last name, but Peggy of State Compensation Fund.

5 MS. THILL: No.

6 MR. STARKESON: Sean McEneaney, who also has signed in, do
7 you wish to make comments? Please step forward.

8 **SEAN McENEANEY**

9 MR. McENEANEY: Good morning. My name is Sean McEneaney
10 from the law firm of Sonnenschein Nath & Rosenthal, LLP.

11 I'm here today to make comments on behalf of American
12 Home Insurance Company, National Union Fire Insurance Company
13 of Pittsburgh, Pennsylvania, and Commerce & Industry Insurance
14 Company. And I'm going to keep my comments brief, and I would
15 like to just accentuate the point made by an earlier speaker,
16 which was made more relevant by some recent comments, and this
17 goes to the DWC's authority to enact this proposed regulation.

18 I would like to go back to and revisit Article 3,
19 Section 3.5 of the California Constitution which specifically
20 provides that an administrative agency, including an
21 administrative agency created by the Constitution, or an
22 initiative statute has no power to declare a statute
23 unenforceable or refuse to enforce a statute on the basis of it
24 being unconstitutional unless an appellate court has made a
25 determination that such statute is unconstitutional. It also

1 simply be a huge increase in any litigation.

2 State Fund currently provides about one-fifth of the
3 coverage in California. On an annual basis we see more than
4 100 claims involving air ambulance services. Counsel for
5 CALSTAR mentioned earlier that their view is this should apply
6 retroactively, not just prospectively.

7 In an action that CALSTAR has filed just against State
8 Fund alone there are over 70 insurers and self-insurers in that
9 action. There are 141 claims, so the amount of litigation at
10 the WCAB over reasonableness would be just huge. It will
11 simply slow down the payment for services.

12 In my opinion, State Fund's opinion it will
13 significantly increase the cost of providing medical service
14 and ultimately will have a significant increase in premiums
15 paid with really no net benefit to the -- to employers in
16 California or to the type of services that injured workers
17 receive.

18 So I hope you really take into account the pragmatic
19 impact of this proposed regulation on how these types of claims
20 are adjusted and finalized.

21 Thank you.

22 Do you have any questions?

23 MR. STARKESON: No, I don't. Thank you, Mr. Freitas.

24 MR. FREITAS: You're welcome.

25 MR. STARKESON: Next person signed in is Mr. Kent Ball of

1 the ICW group. Does Mr. Kent Ball want to make any -- no, he
2 does not.

3 Mr. Sam Sorich of ACIC. Do you wish to make comments,
4 Mr. Sorich?

5 MR. SORICH: Yes, I would.

6 MR. STARKESON: Please step forward.

7 **SAMUEL SORICH**

8 MR. SORICH: Good morning members of the panel. I'm Sam
9 Sorich. I'm with the Association of California Insurance
10 Companies, ACIC. ACIC is an association of property casualty
11 insurance companies. Some of our member companies write
12 workers' compensation in California. In fact, ACIC members are
13 responsible for about half of the private workers' compensation
14 insurance premiums written in California.

15 We are opposed to the proposed amendment because we
16 believe the amendment is not consistent with the standards for
17 regulations that are set out in the Administrative Procedure
18 Act. In addition, this proceeding fails to comply with the
19 rulemaking requirements of the Administrative Procedure Act.

20 We have a written statement, and I would just like to
21 highlight some of our points.

22 MR. STARKESON: Did you submit the written statement?

23 MR. SORICH: I have it with me, sir.

24 MR. STARKESON: You are going to submit it?

25 MR. SORICH: Yes, I am.

1 MR. STARKESON: Thank you.

2 MR. SORICH: The proposed amendment fails to comply with
3 the standards of authority, consistency, and necessity.
4 According to the Administrative Procedure Act, in order to have
5 appropriate authority an amendment must be based on an
6 underlying statute that permits the adoption of the amendment.

7 And as you have heard, Labor Code Section 5307.1 is
8 cited as authority. That Labor Code section requires the
9 Administrative Director to adopt a fee schedule for all
10 workers' compensation medical services including air ambulance
11 services. That statute does not permit this Division to
12 exclude certain services from the fee schedule. Only the
13 legislature can create that exclusion. It is not within the
14 authority of the administrative agency.

15 Second standard, consistency. According to the
16 Administrative Procedure Act, an amendment must not be in
17 conflict with a statute. The amendment in fact is in conflict
18 with Labor Code Section 5307.1, because that Labor Code section
19 establishes a fee schedule for all workers' compensation
20 services. The adoption of this amendment would create an
21 inconsistency with the regulation and the statute.

22 The third standard, necessity. According to
23 Government Code Section 11349.1, necessity is defined to mean a
24 substantial evidence for the need for an amendment to
25 effectuate the purpose of a court decision.

1 In the Initial Statement of Reasons for the regulation
2 the Division under the subject of Necessity says:

3 This subdivision is necessary to allow the
4 Division of Workers' Compensation to avoid the
5 hazards and costs of litigation against the
6 Division which would seek to enjoin enforcement
7 of Section 9789.70.

8 However, there is no court decision at this time that
9 compels the Division to adopt the proposed amendment.
10 Therefore, this amendment does not comply with the regulatory
11 standard of necessity.

12 In terms of compliance with rulemaking procedures, the
13 Administrative Procedure Act requires that the adoption of the
14 amendment must be published in the California Regulatory Notice
15 Register 45 days prior to a hearing. As far as we can tell,
16 this amendment has never been published in the register, and,
17 therefore, the validity of this proceeding is in question.

18 As you heard from a previous speaker, there is an
19 argument that this proceeding does not have to comply with the
20 notice requirements because it falls within the exception under
21 subsection (g) of Section 11340.9 of the Government Code.
22 However, that exception provides for regulation that
23 establishes or fixes rates. That exception does not apply to
24 the proposed amendment, because the amendment does not
25 establish or fix rates for air ambulance service providers. In

1 fact, the proposed amendment would do completely the opposite.
2 It would exclude certain air ambulance services from the
3 established rates, so that exception that applies to fixing the
4 rates does not apply to this amendment.

5 I would be very happy to answer any questions or
6 provide any clarification.

7 MR. STARKESON: No, we don't have any questions. Thank
8 you very much.

9 And if you wish to submit any additional material, of
10 course, you have until 5:00 p.m. today.

11 There are three more people who have signed in on the
12 official sign-in sheet. Mr. Jeff Rush, CSAC.

13 Does Mr. Jeff Rush wish to speak?

14 MR. RUSH: Yes.

15 MR. STARKESON: Please step forward. If you would
16 identify your organization.

17 MR. RUSH: You bet.

18 **JEFF RUSH**

19 MR. RUSH: My name is Jeff Rush. I work with the CSAC
20 Excess Insurance Authority. We are the largest provider to
21 property casualty insurance services to public entities in the
22 country. We have well over a thousand members in California
23 including over 50 of the state's counties, over 60 percent of
24 its cities, numerous school districts and other special
25 districts, parks and recreation, health care services among

1 them.

2 I won't reiterate the comments that were made
3 previously in opposition to implementation of the regulation.
4 I would like to instead focus on a statement from the Initial
5 Statement of Reasons, that being that "these proposed
6 regulations will not have a significant adverse impact on
7 business." Our members are in the business of serving the
8 public. I would like to speak to that significant impact that
9 it will have on them.

10 In taking a couple of examples for charges that our
11 entity faces and our members face, the first instance I would
12 like to cite is from San Bernardino County when CALSTAR charged
13 over \$33,000 above and beyond the OMFS. And in speaking to
14 folks at the county, that \$33,000 would pay approximate half of
15 the annual cost of a deputy sheriff salary.

16 Moving on, we also provide excess insurance services
17 to the fire agency self-insurance system who sustained a charge
18 of \$31,000 for a single incident. These charges, again, are
19 above and beyond the fee schedule. And in looking what that
20 \$31,000 would purchase for that member for an entity providing
21 fire services, we're similarly looking at the half of the
22 annual salary of a starting firefighter. Additionally, it
23 would provide approximately 17 to 20 outfits for firefighters,
24 that being their jacket, their gear for fireproof purposes, or
25 approximately 100 helmets or pairs of boots for them to

1 utilize.

2 The last instance I would like to cite is right here
3 in the Oakland area from the East Bay Regional Parks District.
4 They had an incident where one of their injured employees was
5 transported, and the charges were \$20,000 above and beyond the
6 fee schedule for a transport that was approximately 12 miles.
7 And in speaking yesterday with the risk manager, I asked what
8 would this \$20,000 be able to purchase the park district in
9 these difficult economic times if it weren't paying for
10 services above and beyond the fee schedule which the state has
11 already adopted. He indicated that that would be able to pay
12 for the partial cost of the repair of a playground. It would
13 also be able to take an existing playground and make it fully
14 compliant with the ADA regulations. And maybe in one of the
15 most striking examples, it would be utilized to transport as
16 many as 300 children from an inner city, such as Oakland, to
17 attend recreational activities or even an overnight activity at
18 one of their campsites.

19 So I can't speak for what's considered significant
20 regarding the one-and-a-half million dollars that SCIF pays or
21 the approximately quarter million dollars of any other insurers
22 in this state pays in charges above and beyond the fee
23 schedule, but I would like to say the examples I've outlined do
24 constitute a very significant, adverse impact on public
25 entities in California, on counties, cities, schools, parks,

1 and other entities that are ill-prepared in this climate to
2 provide the costs for services above and beyond what is
3 reasonable and necessary.

4 We regularly and willfully pay for the reasonable and
5 necessary costs in accordance with the fee schedule, but when
6 the public is asked to bear the burden of costs, which are
7 above and beyond, it creates a significant, undue hardship.
8 For these reasons we respectfully request that the DWC not
9 proceed to adopt regulation 9789.70(c).

10 Are there any questions?

11 MR. STARKESON: No, we don't. But thank you, Mr. Rush.

12 MR. RUSH: Thank you.

13 MR. STARKESON: Next person who signed in -- I can't ready
14 his name exactly, but it looks like Jason Schmelzer.

15 MR. SCHMELZER: You got it, actually.

16 MR. STARKESON: Please come forward.

17 **JASON SCHMELZER**

18 MR. SCHMELZER: Thank you. Jason Schmelzer with the
19 California Coalition of Workers' Compensation. We are an
20 association of employers across the state: small, medium,
21 large, public sector, private sector alike.

22 And I think we've heard a lot from attorneys on both
23 sides, and I'm not an attorney, so I'm not going to argue
24 either of those folks. So I thought I would maybe see if the
25 Division were willing to answer a few questions from the podium

1 instead of reverse.

2 MS. OVERPECK: You know, we actually don't respond to
3 public questions at this particular forum, so I'm very
4 uncomfortable with that particular request. If you want to
5 send us comments, maybe that would be a better way of dealing
6 with it.

7 MR. SCHMELZER: Thank you. That's fine.

8 I wanted to respond then to a few statements that were
9 made. The gentleman from CALSTAR did mention that the Official
10 Medical Fee Schedule was below their costs.

11 I don't think any employer has taken the position that
12 they wouldn't be interested in talking to the Division and the
13 air ambulance folks about how to measure the accuracy of that,
14 and maybe look at ways to augment the fee schedule to make sure
15 that CALSTAR and other air ambulance services are being paid in
16 a manner that is fair, just like every other provider in the
17 State of California. We would open up that offer to these
18 folks, if they were willing to do so.

19 It is seeming as though the Division may get sued no
20 matter what they do in this situation, so I don't envy your
21 position because it's a difficult one. I think what we would
22 request as employers and payors in the system is simply that
23 you attempt to protect the employers in the State of California
24 from increased medical costs, which was the intent behind the
25 reforms that caused air ambulance to be put into the fee

1 schedule.

2 The attorney for CALSTAR or the air ambulance services
3 mentioned that prior to the fee schedule being applied,
4 insurers paid the normal cost. If you remember back to 2002,
5 2003, and 2004, that was exactly the problem that the
6 legislature was trying to address when they put in the cost
7 control measures that resulted in the decreased payments to
8 CALSTAR.

9 And I wanted to mention one other issue. The attorney
10 for the air ambulance has also mention that 5307.1(a) allowed
11 the Division to amend and revise the schedule as necessary. I
12 guess I would ask the Division, not literally, whether or not
13 this is actually necessary. There seems to be a healthy, legal
14 debate on both sides. On the Initial Statement of Reasons
15 essentially states that one of the reasons for doing this is to
16 avoid litigation. That seems unlikely regardless of what you
17 do.

18 So in this situation where there's legal ambiguity and
19 there's statute requiring the Division to include all services
20 in the fee schedule, we would ask you, I guess, to maintain the
21 current course, leave them in the fee schedule. As we
22 mentioned, we would be happy to talk to them about what the
23 rate is or should be and let the courts work it out.

24 Thank you.

25 MR. STARKESON: I did have one question of you, sir. Do

1 you have any estimate as to how much your clients that are
2 privately self-insured companies pay for air ambulance
3 services?

4 MR. SCHMELZER: We don't. My understanding is that it is
5 not substantially different from what Mr. Rush said.

6 MR. STARKESON: Thank you.

7 The last person that signed in on the sheet is
8 Mr. Bill Bryant.

9 Does Mr. Bryant wish to speak?

10 **BILL BRYANT**

11 MR. BRYANT: Good morning. My name is Bill Bryant. I'm a
12 consultant. I represent the California Air Medical Services.

13 First, I would like to thank the agency for all of its
14 efforts it's been going under for several months in evaluating
15 this new regulation, and suffice it to say we appreciate it and
16 approve and support the proposed regulations.

17 I'm not an attorney, so I'm going to spare you all the
18 legal wrangling going on here, but I want to assure you you are
19 doing the right thing.

20 For about -- I'm not an attorney, but I'm quite
21 familiar with the way this has played out in several states,
22 many states, actually, around the country.

23 For about 20 years there's been a long and consistent
24 history of rulings by the Federal Aviation Administration, the
25 U.S. Department of Transportation, State OIGs, and state and

1 federal courts that have all agreed that air ambulances are
2 indeed licensed air carriers and are protected by the Airline
3 Deregulation Act. So I think everybody in this room probably
4 knows that frankly, but they're all playing some legal games
5 that are trying to convince you that the right course of action
6 is not to do what you proposed, but rather let this thing work
7 its way through the court system, generating millions of
8 dollars of fees for the state, for the air ambulance providers,
9 and for the insurance companies, all of which won't save a
10 single life and won't provide any health care to anybody. So I
11 applaud you for your efforts. I think you're going down the
12 right course.

13 And I would like to talk about the cost for a second
14 that was just raised by the last couple of speakers. I don't
15 really -- I'm not aware of any studies that demonstrate how
16 much a life costs or how much a life is worth, but that's what
17 we do. That's what air ambulance providers around the state do
18 is we provide a life-saving service. It's just not available
19 any other way.

20 With the exception of City and County of
21 Los Angeles, who have their own helicopters, the rest of the
22 state is protected by private air ambulance providers.
23 Historically in California, as with the rest of the country,
24 these were all provided by hospital-based systems who frankly
25 commonly operated them at a loss. They would absorb a million

1 or two dollar loss per year and consider it a marketing tool,
2 flying billboard, call it what you will. They would offset it
3 by the inpatient revenue and the public service that they --
4 the goodwill from the public service they provided.

5 Well, Medicare changed the way they paid for that
6 service back in 2000 and actually it got phased in. Until 2004
7 hospitals had gotten paid full cost reimbursement for Medicare
8 despite their charges. So their charges could have been
9 artificially low, in fact they were commonly, Medicare would
10 pay them their full cost in excess of the charges.

11 When Medicare stopped doing that in 2000, per a
12 requirement in the Balanced Budget Act of 1997, hospitals got
13 out of the business. Currently, there's only, I believe, two
14 hospitals left in California that do that, the rest of them
15 have been picked up by nonprofit entities and for profit
16 companies, independent air ambulance operators like CALSTAR.

17 CALSTAR was actually started by a bunch of hospital,
18 hospitals providers here, as an independent to start with, and
19 they've picked up the slack for a lot of hospital programs that
20 have gotten out of the business. Most people here are probably
21 familiar with UC Davis Med Center. About three years ago, I
22 believe, they got out of the business. They were one of the
23 oldest in California, providing a service for the greater
24 Sacramento area, and they got out of the business. Thank
25 goodness CALSTAR is here.

1 It's not a cheap service. It's not cheap to operate.
2 What you have to do is you buy a helicopter that's about five
3 or six million bucks, you staff it 24 hours a day, seven days a
4 week, with a very experienced pilot and two medical attendants,
5 either a nurse and paramedic or two nurses, and you stand by
6 ready for calls. We don't have any control over our volume.
7 We don't call ourselves. We don't self-dispatch.

8 Two kinds of services we provide, the first are
9 emergency responses to accident scenes. It's not us that
10 calls. It's the highway patrol, the fire department, the first
11 responders on the scene who, in about 2 percent of the time,
12 realize that this patient is sick enough that they need to get
13 transported by helicopter right now to the trauma center or
14 risk dying. That's what we're talking about. We're talking
15 about probably 2 percent of the ambulance transports in the
16 state as well as the nation, and they're the ones that are the
17 most at most risk determined by someone besides us of which
18 ones are subject to save lives.

19 And we do it. We transport all payors. We transport
20 all patients without regard to their ability to pay. We have
21 all these high-fixed costs to operate the helicopter and to
22 keep it ready and available, and then we transport and don't
23 even know if the patient has any insurance or any ability to
24 pay after the fact, so we have to set our charges in a way that
25 will cover for those that don't have any extra payments.

1 Hospitals, just by comparison, when they treat
2 unfunded patients, there's a couple of state and federal funds
3 that are available to them to recover those costs called DSH
4 payment from the feds and a Maddy fund from the state. We're
5 not eligible for that. So air ambulance providers are
6 required, if they want to stay in business, to charge enough to
7 offset the costs of doing business and to stay solvent. It's
8 expensive. There's absolutely no question about that.

9 But I would like to ask the gentleman that spoke a
10 couple speakers about -- somebody from East Bay Parks and a
11 couple other examples he gave us. What did the patient think?
12 What did the patient think about saving their life? Is that a
13 worth while thing for them do? Is that a worth while \$30,000
14 expenditure? And what was the hospital bill? I mean, hospital
15 bills usually make the air ambulance pale in comparison.

16 So it's a very high-fixed cost business, and we have
17 to spread that cost amongst those that can pay.

18 And prior to 2004, workers' comp paid like any other
19 insurance company, that's it paid basically its full charges.
20 Unlike hospitals, air ambulances don't gross their charges up 2
21 or 300 percent and then discount to insurance companies. As a
22 matter of fact, it's very rare for an air ambulance company to
23 offer a contracted discount to insurance companies at all. So
24 I encourage you not to get stuck in comparing hospitals and the
25 way they bill versus private air ambulance companies.

1 And in -- so then 2004 the fee schedule was put into
2 place and most but not all insurance companies leaped on that
3 opportunity to pay less and said, sorry, that's all we have to
4 pay. So now look at the situation we're in. What effect does
5 that have on the rest of the payors and the rest of the
6 individuals?

7 If you have a set amount of fixed cost you have to
8 spread out over your volume, and suddenly some of the payors
9 don't want to pay anything if they're indigents, and now
10 workers' comp comes in and pays less than not only your charges
11 but less than costs, all you're left to do is to shift the
12 prices higher for those that can pay or that must pay.

13 Ironically, some of the same insurance companies,
14 different division, maybe different representation, but you're
15 shifting the costs over. That's just the way of healthcare
16 works. And I think that's really brought home by this example
17 of the letter that I picked up from your office yesterday of a
18 complaint or an opposition from North County Fire Protection
19 District where they're -- they were trying to relate to you the
20 financial impact this would have on them and said that an air
21 ambulance charged them \$42,000, but they only had to pay six.
22 What does that tell you? What it tells you is that they're not
23 paying the costs. They're not even paying a fraction of the
24 costs.

25 And if this stays in place -- again, the only answer

1 that air ambulance companies have the ability to do is to shift
2 those costs even higher. So I think you've got to take a look
3 at the big picture. I think you have, and I appreciate your
4 efforts.

5 MR. STARKESON: Thank you, Mr. Bryant.

6 MR. BRYANT: Any questions?

7 MS. OVERPECK: No.

8 MR. STARKESON: Anybody else wish to speak to this issue?
9 Yes. Someone raised their hand in the back. Please come
10 forward.

11 If you have a business card, would you give it to the
12 reporter. If you don't -- are you Mr. Chris Orman?

13 MR. ORMAN: Orman, yes.

14 MR. STARKESON: Apparently he just signed in.

15 MR. ORMAN: I'm the letter writer he referred to. And --

16 MR. STARKESON: And please speak into the microphone.

17 MR. ORMAN: Okay. How's that?

18 MR. STARKESON: That's fine.

19 **CHRIS ORMAN**

20 MR. ORMAN: I'm here to give some conflicted testimony.
21 On the one hand I can testify firsthand of the value of air
22 ambulance services. We call them out in the field of
23 emergencies, and they truly do save lives and decrease
24 injuries.

25 In the case of our firefighter, his injuries were

1 lessened because he didn't have to go on a protracted, very
2 long, very bumpy ambulance to the hospital. The air ambulance
3 ride got him there, and his neck injury was decreased or not
4 exacerbated by the road trip, so they do provide a very
5 valuable service. They're incredibly expensive, and oftentimes
6 families we know of firsthand are left with huge bills to pay
7 afterwards and have to do fund raisers and community events to
8 pay off the air ambulance bill.

9 Air ambulances have evolved, as has been said, from --
10 basically you've seen the MASH TV show, how air ambulances
11 worked in Vietnam and trauma would -- the likelihood of
12 surviving trauma would be increased if you could get that
13 patient to an operating room as quickly as possible. Air
14 ambulance has evolved over time, and it's not the same business
15 that, in my opinion, that the regulation of 1978 was
16 addressing. It's something new. It's something that has
17 evolved from even the hospital based, very much more dynamic,
18 but largely unregulated.

19 I don't think that probably you're going to be doing
20 anything different than you've proposed to do, I suspect. And
21 I think that the fix is probably going to have to be
22 legislative in this regulation of air ambulances nationwide.

23 But the cost are very, very burdensome. And for us, a
24 small little tiny JPA that we are able to pay our bills and
25 with, of course, the economic times we're seeing decreased in

1 our equity. I'm in a joint powers agreement with my fire
2 district and two other fire districts which also run an
3 ambulance company, and we certainly can relate to the fact that
4 not everyone pays, and insurance only pays so much. But that
5 is where workers' comp needs to be. We need to negotiate some
6 other deal here. But the way we're headed, if we had more than
7 one or two of these in a couple of year time, it could
8 devastate our workers' comp JPA.

9 So that is all I have.

10 MS. OVERPECK: Thank you.

11 MR. STARKESON: Thank you, Mr. Orman.

12 Are there any other speakers who wish to speak to the
13 regulations here?

14 (No response.)

15 MR. STARKESON: There being none, there being no one
16 apparently ready to testify further, the hearing is now going
17 to be closed. You will have the opportunity to file written
18 comments, and that will stay open until five o'clock this
19 afternoon, and those written comments should be delivered to
20 our offices, Division of Workers' Compensation Offices on the
21 17th floor of this state office building here at 1515 Clay
22 Street in Oakland.

23 So on behalf of the Administrative Director, Carrie
24 Nevans, I extend our thanks for your attendance and the
25 valuable input you have given us this morning.

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Thank you. The hearing is closed.

(Proceedings adjourned at 11:05 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, Kimberlee Miller, Official Hearing Reporter for the State of California, Department of Industrial Relations, Division of Workers' Compensation, do hereby certify that the foregoing matter is a full, true and correct transcript of the proceedings taken by me in shorthand on the date and in the matter described on the first page thereof.

Kimberlee R. Miller
Official Hearing Reporter
Workers' Compensation Appeals Board

Dated: April 15, 2010
Sacramento, California
/s/