

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

PUBLIC HEARING
Monday, December 14, 2020
(Zoom Video Communications)

Winslow West
Moderator
DWC Legal

Nicole L. Richardson
DWC Legal

Maureen Gray
Regulations Coordinator

Vivian Prasad
Education Coordinator

Reported by: Gordana Vidovic, Official Hearing Reporter
Olivia D. Lizarraga, Official Hearing Reporter

1		<u>I N D E X</u>
2	Marshall Lewis	7
3	Diane Worley	10
4	Ashley Hoffman	12
5	Andrew Roberts	13
6	Gabor Vari	15
7	Steve Cattolica	16
8	Suresh Mahawar	18
9	Jill Torres	20
10	Robert Markinson	22
11	Spencer Chelwick	23
12	Joshua Pretsky	26
13	Joseph Tichio	29
14	Diane Przepiorski	30
15	Diane Weiss	32
16	Daniel Schainholz	34
17	Ron Perelman	35
18	Louis Rosen	37
19	Jonathan Ng	39
20	Diane Worley	41
21	Diane Weiss	42
22	Charles McDaniel	43
23	Marshall Lewis	44
24	Sangay Agarwal	47
25		

1 **MONDAY, DECEMBER 14, 2020**

2 (10:00 a.m.)

3
4 MR. WEST: Good morning, everyone. My name is Winslow
5 West. I'm an Industrial Relations Counsel for the Division of
6 Workers' Compensation. Before we begin today's Zoom public
7 hearing, I want to inform everyone that this is being recorded.

8 This is our latest conference call, Zoom public
9 hearing, for the Medical-Legal Fee Schedule. The Division is
10 proposing to make updates to the Medical-Legal Fee Schedule as
11 contained in Title 8, California Code of Regulations, 9793,
12 9794 and 9795.

13 I'd like to take a moment to introduce the other DWC
14 staff members on the line. I'm joined by George Parisotto, the
15 DWC's Administrative Director, and Dr. Raymond Meister, the
16 DWC's Executive Medical Director.

17 In addition, we have Nicole Richardson, the DWC's
18 counsel; Maureen Gray, the Division's Regulations Coordinator
19 and Vivian Prasad, the DWC's Education Coordinator. Our
20 Hearing Reporters today are Olivia Lizarraga and Gordana
21 Vidovic.

22 The purpose of this hearing is to receive comments on
23 the proposed amendments to the regulations, and we welcome any
24 comments you have about them. Please note we will not
25 question, respond to or discuss anyone's comments. Although we

1 may ask for clarification or ask you to elaborate further on
2 any points that you're presenting.

3 All of your comments, both given verbally here today
4 and those submitted in writing, will be considered in
5 determining what revisions, if any, we make to the proposed
6 regulations.

7 If you would like to speak during this hearing, please
8 send a chat to the announcer with your full name, the
9 organization you are affiliated with, if any, and contact
10 information.

11 If you are calling in for this meeting or are unable
12 to send a chat, please e-mail to dwcrules@dir.ca.gov. In the
13 e-mail, please include your information, and we will call on
14 you in the order we receive your request. Please also include
15 the words, "Request to speak" in the subject line of your
16 e-mail.

17 If you are calling in, please include the last four
18 digits of the telephone number you are using in your e-mail, so
19 that we will be able to identify you.

20 Maureen Gray, DWC's Regulations Coordinator, is taking
21 attendance. Please send an e-mail to dwcrules@dir.ca.gov or
22 chat with Nicole Richardson with your full name, the
23 organization you are affiliated with, if any, and contact
24 information in case we need to provide you with any updates.
25 We prefer an e-mail address. But if you don't have an e-mail

1 address, your phone number. In taking the attendance, we ask
2 that you make sure your screen name properly reflects your
3 actual first and last name. A screen name will not help us
4 identify you for transcript purposes.

5 In the Zoom application if you raise your hand, you
6 will not be called upon, and your hand will be lowered. Please
7 restrict the subject of your comments to the proposed
8 regulations. We ask that you limit your comments to three
9 minutes. You will receive a message asking you to unmute
10 yourself prior to your name being called. You must click on
11 the unmute message in order to speak. Please wait to speak
12 until you are called upon. Your time will begin after you are
13 unmuted, and you are called upon. You will receive a
14 one-minute warning when you have one minute left to speak. You
15 will be muted after you have spoken for three minutes, and then
16 the next person will be called.

17 I will call the names of those who have indicated they
18 wish to speak today in the order received, and I apologize in
19 advance if I mispronounce anyone's name.

20 All oral comments given today will be taken down by
21 hearing reporters.

22 When everyone on the list has had a chance to make
23 their public comments, I will check to see if anybody who has
24 joined and wishes to speak or if anybody else has additional
25 comments.

1 This hearing will continue for as long as there are
2 people on the line who wish to comment on the proposed
3 regulations, but it will close at 5:00 this afternoon.

4 If the hearing continues into the lunch hour, we will
5 take at least an hour break. If there is time at the end of
6 the succession of speakers, anyone who was cut off at the end
7 of the three-minute mark will receive a chance to make
8 additional comments. The additional comments will also be
9 limited to three minutes.

10 Finally, all written comments can be submitted by FAX
11 at the following number, (510) 286-0657 or to the following
12 e-mail address, dwcrules@dir.ca.gov. Written comments
13 submitted by FAX or e-mail will be accepted until midnight
14 tomorrow, December 15th.

15 For those who do not wish to speak today but want to
16 be notified of any subsequent changes or of the final
17 adaptation of the Medical-Legal Fee --

18 (Interruption in proceedings. All participants are
19 now in listen only mode.)

20 MS. RICHARDSON: Winslow, you have unmuted. Go back to
21 when you announce that --

22 MR. WEST: Was I muted?

23 MS. RICHARDSON: Yes. Go back to -- go back to announcing
24 how to do the written comment.

25 MR. WEST: All right. Written comments can be submitted

1 by FAX to the following number, (510) 286-0657 or to the
2 following e-mail address, dwcrules@dir.ca.gov. Written
3 comments submitted by FAX or by e-mail will be accepted until
4 midnight tomorrow, December 15th.

5 For those who do not wish to speak today but want to
6 be notified of any subsequent changes or of the final
7 adaptation of the Medical-Legal Fee Schedule, please provide
8 your complete name and e-mail address to the same address
9 mentioned above, dwcrules@dir.ca.gov. Any notice of changes in
10 the final notice of amendment to the Medical Fee Schedule will
11 be sent to everyone who requests that information.

12 With that, let me look at our list and call the first
13 speaker. All right. I see that Marshall Lewis, M.D., would
14 like to speak. Also, Diane Worley would like to speak. We
15 will start with Dr. Lewis.

16 MR. LEWIS: Good morning, everyone. I've reviewed the new
17 proposed Fee Schedule. I have a couple of problems with it,
18 and I'm just curious why we're changing the whole Fee Schedule
19 that existed previously, and why not if you're worried about
20 giving the doctors an increased Fee Schedule, why it just
21 didn't increase what it already existed. I sent the letter
22 dated December 7, 2020, regarding my feelings on this. And the
23 question I have is who came up with the \$3 a page for reading
24 records because I'd like to know what the backup is on that. I
25 never heard of anyone reading a page for \$3 as a professional.

1 I took the Western Institute of Legal Medicine Course and
2 certainly they get \$650 an hour, the attorneys. So I don't
3 know who would read pages for \$3 a page. I think it's an
4 inappropriate fee.

5 I have a young lady that works in Oaxaca, Mexico. She
6 gets 6 cents a word -- 6 cents a word for reviewing, doing
7 translation and a page usually has 100 words on it. It's
8 \$6 a page. That's in Oaxaca. And she could probably translate
9 a lot faster than I can read a page. Sometimes a page takes
10 you a long time to read. Sometimes it's got a lot of
11 information on it, with attorneys, and sometimes I could spend
12 15, 20 minutes on a page and certainly medical literatures and
13 records are difficult to read at times.

14 Also, I don't understand the fee of \$500 for a missed
15 appointment. If someone cancels an appointment eight days
16 before instead of six days before, the fee -- there's no fee,
17 or there is a fee of \$500. \$500 doesn't really cover expenses.
18 Everyone's expenses in the State of California have gone up,
19 and everyone is concerned about economics today. And we just
20 had 660 companies leave California in the last year. And now
21 major companies leaving Silicon Valley, like Oracle, and
22 Hewlett-Packard are clearing out and Tesla has cleared out.

23 I don't understand this. These are doctors that are
24 experienced in doing these reports. They should at least be
25 paid an appropriate amount. And I certainly feel the \$3 a

1 page -- and the other thing is 200 free pages of records. I
2 mean how can you read 200 free pages of records unless you are
3 just flipping the pages, if you have to actually read these
4 pages and discuss them as part of the report which --

5 MS. RICHARDSON: One minute remaining.

6 MR. LEWIS: -- which gives you an appropriate report. You
7 just can't read that fast, unless you're a speed reader, and
8 you have to make notes on these and dictate into your report
9 what you reviewed.

10 So I think that some of the fees that are being
11 discussed here are totally inadequate. I just don't understand
12 again the \$3 a page for reviewing records and free pages after
13 a certain amount. And, yeah, research. There is nothing in it
14 about research. We certainly want to correlate the certain
15 types of jobs, how they could be injured and whether or not
16 there is a correlation with the industrial injuries.

17 And the other thing I just wanted to mention is
18 medical records. The other points about medical records are,
19 we don't get them in an adequate amount of time sometimes.
20 Maybe the fee should be \$10 a page so the companies send us the
21 records on time, so we can review them. And if they don't put
22 extra pages in it, they don't have to be reviewed. I get pages
23 a lot of times on records that -- I make the appointment three,
24 four months in advance and --

25 MS. ROBERTSON: Mr. Lewis --

1 MR. WEST: Dr. Lewis reached his three-minute mark. So we
2 will now hear from Diane Worley from CAAA and after Diane
3 Worley we will hear from Ashley Hoffman.

4 Diane Worley next.

5 MS. WORLEY: Good morning, everyone. Thank you for the
6 opportunity to speak today. I'm Diane Worley, the Executive
7 Director of California Applicants' Attorneys Association.
8 We will be submitting written comments following the conclusion
9 of the hearing today.

10 As everyone agrees, an update of the Medical-Legal Fee
11 Schedule is long overdue. With the ongoing attrition and the
12 number of QME's remaining in the workers' comp system willing
13 to evaluate injured workers, it would be extremely shortsighted
14 to fail to have any plan in this Fee Schedule to reward
15 evaluators for doing complex work in the timely and thorough
16 fashion.

17 All parties will be negatively impacted by an
18 inadequate Fee Schedule, although injured workers will be
19 impacted the most. One thing that we noticed in reviewing the
20 recent proposal is nowhere is the unrepresented injured worker
21 considered in this regulatory proposal. This proposal now
22 includes significant burdens and requirements on the parties
23 seeking an evaluation, which in many claims is an unrepresented
24 injured worker.

25 Additionally, adequate QME, AME compensation is

1 critical to the ability to all parties to obtain substantial
2 medical evidence required to prove a claim. With these issues
3 in mind, there are three areas in the proposal that we will be
4 providing testimony and written comments on that we consider to
5 be extremely problematic.

6 First is in Section 9793, Definitions, Subsection G,
7 with regard to follow-up medical-legal evaluations. This
8 subsection has been amended to extend the time from nine months
9 to 18 months in which an evaluation performed by a QME is to be
10 considered a follow-up evaluation following the initial
11 examination. Nowhere in all of the meetings that I have
12 attended, hearings that I have attended, comment periods that I
13 have been a part of, has there been any public comment that
14 somehow there is a problem with the nine-month timeline in the
15 existing regulations.

16 We perceive this change to be nothing more than a
17 cost-cutting measure to satisfy the payors that they don't have
18 to pay again for an initial comprehensive medical-legal
19 examination until 18 months has passed. A lot can happen with
20 regard to the change in an injured worker's medical condition
21 in the 18 months, a lot.

22 We see no rationale or reason in the initial
23 statement of reasons or in any of the history in this
24 regulatory process for this change to be made. Therefore, we
25 urge that the existing nine-month time period be maintained and

1 the period not be extended.

2 The second proposal is with regard to the same
3 regulatory section, but Subsection N, and this is the --

4 MS. RICHARDSON: Diane, you've been muted.

5 MR. WEST: It appears that Ms. Worley has reached the end
6 of her three minutes.

7 Now we will hear from Ashley Hoffman, to be followed
8 by a phone-in caller Andrew Roberts whose phone number ends
9 with 8090. 8090.

10 So we will start with Ashley Hoffman.

11 MS. HOFFMAN: Good morning, Ashley Hoffman on behalf of
12 the California Chamber of Commerce. First, I want to
13 appreciate the DWC efforts in this arena. However, we do take
14 issue with the new Schedule. Specifically, we have -- we have,
15 the employers, we have grave concerns about, you know, rolling
16 out this new Schedule, without taking into thought other issues
17 that currently plague the system, such as issues of duplicative
18 records and what the agency plans to do as far as ensuring that
19 QME's are producing high-quality reports.

20 With the proposed page per Fee Schedule, we have
21 concerns, you know, about duplicative records, even if
22 employers are taking the opportunity to de-duplicate out
23 records, there's really no control or process in place to make
24 sure there are not thousands of duplicative records produced on
25 the other side, which we think could inflate record review

1 beyond the complexities of the case and cause disparate impact
2 between similar cases.

3 So again, we appreciate the agency's work on this, but
4 we would recommend, you know, making an increase to the current
5 system as it is now, and address issues of quality and
6 duplicative records before considering a rewrite, the entire
7 Schedule. Thank you.

8 MR. WEST: Thank you for finishing in the allotted time.
9 We will now hear from Andrew Roberts from ExamWorks, whose
10 phone number ends with 8090, followed by Gabor Vari.
11 Mr. Roberts, you're up.

12 MR. ROBERTS: Thank you, Mr. West, and thank you to the
13 Division. Good morning, this is Andrew Roberts with ExamWorks.
14 Again, good morning to the Division, to doctors, stakeholders,
15 and all interested parties. I would like to read a brief
16 statement this morning.

17 With the proposed Fee-Schedule change moving toward
18 implementation, and after years of collaboration and hard work,
19 we wanted to take this opportunity to say, thank you for giving
20 ExamWorks the opportunity to meaningfully partake in the process.
21 As a leading entity and stakeholder, we value the working
22 relationship we've developed with the Division, as well as the
23 opportunity to work with other stakeholders and interested
24 parties.

25 2020 certainly brought its share of challenges, so

1 we'd like to recognize the Division, physicians, and
2 stakeholders for their continued commitment in seeing this
3 through. We acknowledge the difficulties associated with
4 change, and that different entities or physicians have
5 different ideas as to what constitutes improvement.

6 As a multi-specialty group supporting a wide variety
7 of physicians throughout the state, we have spoken with nearly
8 all of them as to their thoughts and considerations. We have
9 also spoken with other industry professionals, practice
10 management groups, and leaders. For the past two years, a day
11 hasn't gone by in which we did not discuss the Fee Schedule.
12 As a result, we believe our perspective on the issue to be
13 comprehensive and sound. ExamWorks believes the proposed Fee
14 Schedule is a positive step in the right direction, and will
15 serve as the foundation for further constructive reform.

16 With continued work and collaboration, we are
17 confident in our ability to improve remaining areas in need.
18 Most important, we must remain focused on a balanced and
19 reasonable approach. ExamWorks has always taken a position of
20 doing what is best for the system globally, and will continue
21 to act as a positive catalyst, when possible.

22 As the new Fee Schedule is implemented and this
23 multi-phase process continues, ExamWorks appreciates the
24 opportunity to drive positive reform in its position as a
25 stakeholder. Again, we recognize the Division, physicians, and

1 the numerous industry professionals dedicated to improving the
2 system, and we certainly look forward to our continued work
3 together. Thank you.

4 MR. WEST: Thank you.

5 Now we will hear from Gabor Vari, and I do not have
6 any requests after Mr. Vari, so this will be a very short
7 public hearing, if I don't receive requests to speak.

8 Mr. Vari, you are up.

9 MR. VARI: All right. Thank you very much, Mr. West. I
10 appreciate the opportunity to speak. First, I'd like to say,
11 thank you very much for the opportunity to participate, not
12 only in this hearing, but also in prior stakeholder meetings.
13 I appreciate all of DWC efforts to move the Fee Schedule
14 forward in the right direction. CME has submitted written
15 comments to DWC in addition to the comments I will be providing
16 this morning.

17 CME is a large provider of QME practice management
18 services throughout California. As mentioned by other
19 speakers, we have spoken with our doctors about their concerns
20 about this proposal and about the right path forward for the
21 Fee Schedule.

22 In brief, I believe that overhauling the Fee Schedule
23 from its current format to the proposed flat-fee-per-page
24 format is a mistake. The current Fee Schedule accurately
25 captures complexity through its structure, and I am not aware,

1 CME is not aware of any data suggesting that the new proposed
2 Fee Schedule will accomplish our shared goal of providing
3 quality for injured workers.

4 In fact, the concern is that by emphasizing the page
5 count and converting to a flat-fee model, that we may
6 contribute to a decrease in report quality by incentivizing
7 speed. There is nothing in the new Fee Schedule that will
8 incentivize quality. Payors and many providers across the
9 board want a simple increase to the current Fee Schedule, which
10 would minimize the chance for unintended consequence. CME
11 appreciates the opportunity to contribute to this important
12 process, as well as the next steps going forward. Thank you
13 for your time.

14 MR. WEST: Thank you, Mr. Vari.

15 We received a request to speak from Steve Cattolica,
16 from California Workers' Compensation Services.

17 UNIDENTIFIED SPEAKER: Mr. West --

18 MR. WEST: After Steve, we'll hear from Suresh Mahawar.
19 Go ahead, Mr. Cattolica, sorry.

20 MR. CATTOLICA: No, that's okay. Thanks, Winslow. I
21 appreciate the opportunity.

22 I echo the sentiment that, you know, the current Fee
23 Schedule actually could be improved to the point where some of
24 the issues that we spent now a number of years trying to solve,
25 would abate. I, in fact -- CSIMS, in its original submission

1 to the Division back some years ago, made a similar comment in
2 its White Paper discussions, how that can take place. Not
3 withstanding, cost-of-living increase continues to be an issue.
4 It has really been the cause, in some respects, for some of the
5 issues that we have to tackle, and I would suggest the Division
6 take a close look at 5307.6, which allows the Division -- the
7 Administrative Director to adjust the Fee Schedule, the
8 Med-Legal Fee Schedule, every time the OMFS, the Official
9 Medical Fee Schedule, is amended. That gives him at least four
10 or five opportunities every year to adjust the rate.

11 The second thing, and more importantly, is how the
12 Division educates Maximus to review Independent Medical Review
13 requests, and my suggestion is that rather than -- even though
14 the Division has that responsibility, the Division implement a
15 process, and if it need be, put in Regulation, put it into
16 Regulation that the education process be done by a group of
17 people, perhaps a representative from the QME and AME
18 communities, as well as the Division's own staff and, perhaps,
19 an attorney that's willing to help. It cannot be that Maximus
20 only knows one interpretation of the Fee Schedule, nor the
21 nuances that would cause them to, perhaps, look at both sides
22 more appropriately.

23 Finally, with respect to the point with -- about
24 records --

25 MS. RICHARDSON: One minute remaining.

1 MR. CATTOLICA: I apologize for taking longer. I will
2 make sure that that comment is included in my written comments,
3 as well.

4 MR. WEST: You still have one minute left.

5 MR. CATOLICA: Oh, I do have a minute left; that's what
6 she said.

7 MR. WEST: One-minute warning.

8 MR. CATTOLICA: Gosh, well, let me start over. No, that's
9 not true.

10 I think there is a way that verification of records
11 can be done. I note that you would need to take a look at
12 Section 30 -- Regulation 35, which would expand outside the
13 scope of the Med-Legal Fee Schedule. I think you can do that
14 with an emergency Regulation that would allow cover sheets to
15 be more substantial, carry more weight, if you will, and,
16 perhaps, be the verification that a physician needs and the
17 payor might need to eliminate at least some of the controversy
18 with respect to what's billed for records on a per-page basis.

19 Going back to my original conversation or --

20 MR. WEST: I think that was the end of your time.

21 We will now hear from Suresh Mahawar, and that will be
22 followed by comments from Jill Torres, followed by comments
23 from Robert Markinson.

24 Mr. Mahawar, you are up now.

25 MR. MAHAWAR: Thank you for giving me the time.

1 You know, I see that the Fee Schedule kept in mind --
2 keeping in mind control the cost. And I believe that cost
3 control is sometime necessary; however, I feel that physician
4 has been targeted for very long time. So if there's a cost
5 control, it should be statewide and nationwide. In that, you
6 know, means, when we receive any payment, when we seek offering
7 our services, we have to pay for the services of full market
8 price.

9 I give you example that I have a septic system in my
10 back, in my home, and I call one of the plumber -- came down,
11 he charged me \$275 an hour. And the reason so, because those
12 kind of special services, you know, not everybody can perform.
13 So and then when I had hired a legal service, I had to pay \$650
14 an hour. So that's, you know, real challenge. And cost of
15 living, everybody knows, in California you could buy 14 years
16 ago, when the last payment was, is twice -- more than twice
17 now.

18 So if you look at the Fee Schedule -- current Fee
19 Schedule, it's probably within five to ten percent above the
20 level of current level. So I see that as a -- really not a
21 fair system. That's all I have to say.

22 MR. WEST: Thank you.

23 We will now hear from Jill Torres, followed by
24 Dr. Robert Markinson.

25 Ms. Torres, you're up.

1 MS. TORRES: Thank you for the opportunity to speak here,
2 and I appreciate everything the DWC is doing.

3 There a lot of issues that I have, but I would mostly
4 like to speak about the records. I feel that the way the
5 proposal is written now, it's placing an unfair burden on the
6 QME with regard to records. If I receive a duplicate record, I
7 need to look at each and every page of those records to
8 determine whether they are, in fact, duplicate records, and
9 that takes a great amount -- a great deal -- amount of time.
10 Sorting through the records take -- takes time.

11 If I receive records two days before the QME report is
12 due out, I don't believe that I should have the burden of
13 having to include those records in my original report. I
14 should be able to put those records and review them and issue a
15 Supplemental Report. The way it is written now in the
16 proposal, it appears that I would need to incorporate any
17 records into my report that are received before the report goes
18 out.

19 Truly, records should be received -- to give fairness
20 to the injured worker, records should be -- have to be received
21 within ten days before the evaluation, so that I would have
22 time to review them before the evaluation, not after. I have
23 no opportunity to question an injured worker about the records
24 and any disparity that may exist after.

25 I believe strongly that the issues with the

1 attestation is a problem. If there's no attestation, there's
2 no clarification on what I do. Do I not review those records,
3 if there's no attestation made by the parties? There are other
4 issues too, but I'm sure I'm running low on time at this point.

5 I also have problems with the unreimbursed
6 supplemental --

7 MS. RICHARDSON: One minute remaining.

8 MS. TORRES: I also have a problem with the unreimbursed
9 Supplemental Reports. I think that the issues need to be
10 clarified with that. If I neglect to put in causation or
11 apportionment, certainly I should have to issue a free
12 Supplemental Report. But just because something -- the parties
13 feel that I should have addressed something does not mean that
14 I should have to issue a free Supplemental Report, or face
15 possible disciplinary action. In my opinion, this is leaving
16 open a lot of -- a lot of abuse and a lot of friction between
17 parties. It should be the burden of the sending party to
18 notify the QME that a report is intended to be request of a
19 supplement -- of an unreimbursed Supplemental Report, and the
20 reason behind the need for an unreimbursed Supplemental Report.

21 MR. WEST: Thank you. We will now hear from Dr. Robert
22 Markinson, followed by Spencer Chelwick from Orthopaedic
23 Medical Group of Santa Ana, followed by Joshua Pretsky.

24 Dr. Markinson, you have the floor.

25 MR. MARKINSON: Thanks very much. Can you hear me? Are

1 you able to hear me?

2 MR. WEST: Yes. We can hear you. We can hear you. Go
3 ahead.

4 MR. MARKINSON: That is the spirit. Dr. Bob Markinson,
5 40 years of teaching on two faculties. I am a hand surgeon,
6 and really enjoy bringing up young people. The problem is none
7 of them are becoming hand surgery speciality AME's, QME's,
8 consultants or treaters. I would say that in 40 years I had
9 maybe one or two that have remained in California interested in
10 doing med-legal evaluations, otherwise they have either
11 departed the state, as many others are doing in an accelerated
12 fashion consequent to shutdowns, in a setting of 50 percent
13 decrease in nationwide physician income since the shutdowns
14 occurred in mid-March, in addition to mass evacuation and/or
15 retirement vis-a-vis physicians in California. I agree with
16 Dr. Gabor Vari regarding his concerns about the Fee Schedule.

17 And furthermore, issues of complexity. When you do a
18 complete hand examination, perhaps this patient would be
19 illustrative. This will be 94-plus measurements, as always
20 from neck to fingertips. That's profoundly complex. Every
21 single little angle, sensibility in all the nerves, cervical,
22 brachial plexus, all possible entrapment neuropathies, every
23 possible tendinopathy. People who have no access to care for
24 breast cancer now recurring, their lymphedema, following no
25 deceptions. People with hypothyroidism. People with Vitamin D

1 deficiency; 10 percent increases in body mass index consequence
2 to overeating during the shutdown. All of these factors are
3 constellation of thoughts spell complexity to me. And there is
4 no denying it. And when you have a reexamination, you often
5 have a patient who may have worsening intercurrent back pain
6 and other --

7 MS. RICHARDSON: One minute remaining.

8 MR. MARKINSON: -- other functionally limiting conditions.
9 So if anything, complexity is increasing as we have a shrinking
10 population of expert level, still in the trenches working
11 medical professionals. So I would say we have to think very
12 carefully about the past, present and potential future
13 populations of med-legal evaluators who know what they're doing
14 and, in my case, can put their knife behind it.

15 So it's a general, humble plea to really think very
16 quickly about whether we want to rush into things because
17 historically that's not worked out. Thank you.

18 MR. WEST: Thank you, Dr. Markinson. We will now hear
19 from Spencer Chelwick, followed by Joshua Pretsky.

20 You are up, Spencer.

21 MS. CHELWICK: Hello. All in all, I would like to first
22 thank you guys for the opportunity to speak today. I'm
23 speaking on behalf of the Orthopaedic Medical Group of Santa
24 Ana, West Coast Orthopaedics, and South Coast Orthopaedics. I
25 have five main issues with the Fee Schedule as currently

1 written. First, this Fee Schedule lacks appropriate
2 reimbursement for complex cases just as --

3 THE REPORTER: Ms. Spencer, this is the court reporter
4 speaking. Can I please get your spelling of your last name?

5 MS. CHELWICK: Chelwick, C-h-e-l-w-i-c-k.

6 MS. REPORTER: -c-a-k?

7 MS. CHELWICK: C-h-e-l-w-i-c-k.

8 THE REPORTER: -c-k. Okay. Can you please start again
9 because I need to get your information down, because then
10 otherwise --

11 MS. CHELWICK: You got it.

12 THE REPORTER: Start over, please. Thank you.

13 MR. WEST: Can you start her three minutes now please,
14 Timekeeper.

15 MS. CHELWICK: Thank you, guys. Okay. So thank you for
16 letting me speak today. Point one, this Fee Schedule lacks
17 appropriate reimbursement for complex cases. Just as an
18 example in our orthopaedic practices, professional athletes
19 require head to toe examinations, ratings of 18-plus body
20 parts, apportionment between numerous teams, and various
21 subsequent employers, as well. These examinations take
22 excessive time and necessitate additional reimbursement as they
23 often come with little to no medical records. Everything is
24 kept by the teams, and we just have to evaluate the patient.
25 So I just don't see medical records as a direct indicator of

1 complexity. I would suggest adding additional fees for complex
2 apportionment analysis in excess of two injuries or two
3 employers. An additional fee should be added for rating
4 analysis in excess of three body parts. And this would apply,
5 obviously, to other specialties. I'm just speaking from
6 orthopaedic perspective.

7 The main points regarding medical records as someone
8 mentioned before, I think it was Jill Torres, duplicate
9 records. The only way to know if a record is duplicate is to
10 actually review that record. So doctors need to be paid for
11 their review of these records.

12 Further, the service of medical records. Records must
13 be received before a patient is seen in the office in order to
14 be included in a face-to-face evaluation report. It's
15 unreasonable to expect records to arrive two days before the
16 report is due and expect them to be included or face an
17 unreimbursed supplemental. Which brings me to my third point
18 regarding the unreimbursed supplemental. The current language
19 as it stands is too vague. The only time this code is
20 acceptable is when a doctor makes an error and needs to amend
21 his initial reporting or if he leaves out a required portion of
22 the report for no reason.

23 The -- this code must be limited to only when a
24 physician is alleged to have violated 10682(b) without just
25 cause. There must be exceptions for when a patient is not yet

1 permanent and stationary as certain issues simply cannot be
2 addressed until a patient has reached MMI. There also must be
3 exceptions when a physician is not provided with appropriate
4 information in advance and cannot address certain portions.
5 Just because something is requested to be addressed doesn't
6 mean it is --

7 MS. RICHARDSON: One minute remaining.

8 MS. CHELWICK: So that code is obviously very concerning
9 for the physicians that I work with.

10 Regarding ML202 reevaluation, it should be left at the
11 current definition of within nine months. I don't understand
12 where that change is being made. Doctors see many patients
13 annually and cannot be expected to have a recall of 18-plus
14 months on specific cases.

15 Finally, just to speak to the COLA increase. I know a
16 lot of people have mentioned that, and I do think it should be
17 written into the new Fee Schedule so that issues like this do
18 not occur again and the fees continue to increase with regard
19 to inflation, and things like that.

20 So thank you very much for letting me speak today.

21 MR. WEST: Thank you, Ms. Chelwick.

22 We will now hear from Joshua Pretsky, who seems to be
23 the last speaker.

24 Mr. Pretsky, you're up.

25 MR. PRETSKY: Good morning and thanks for the opportunity

1 to offer some comments. I'm a psychiatry QME and AME in
2 Southern California. I've been so for about 20 years. I'm a
3 professor of psychiatry, clinical psychiatry at UCLA, and I'm a
4 solo practitioner with a minimal office staff in the conduct of
5 my QME evaluations and my work with injured workers. I'm also
6 a member of CSIMS and greatly appreciative to all the work that
7 CSIMS is doing in this regard. I'm particularly grateful to
8 Drs. Rosenberg, Fineberg and Vari. Dr. Vari has, in our
9 meetings has raised a number of issues regarding problems where
10 the regulations don't address disputes adequately and dispute
11 resolution, and I'm fully in support of those concerns that are
12 brought forth by CSIMS.

13 I want to highlight four matters that come to mind
14 that are particularly important, especially as a solo
15 practitioner with limited administrative time and resources.

16 With regard to the record page counts, there needs to
17 be -- I think the burden of the number of pages needs to be
18 established by the insurer and the one providing the pages and
19 not the doctor needing to count all the pages. There needs to
20 be some dispute resolution around page counts since that's a
21 real money per page at stake. And I reiterate Dr. Torres'
22 concern that that if we're provided again with further records
23 on a reevaluation that we be paid for all of those records
24 provided at the time of that reevaluation, whether or not they
25 do constitute duplicate records or not. There is no way to

1 establish whether they're duplicate records without doing so,
2 and it takes time.

3 With regard to unreimbursed reports, I am concerned
4 about being asked to address matters for --

5 MS. RICHARDSON: One minute remaining.

6 MR. PRETSKY: -- lack of reimbursement and that should be
7 established. With regard to the follow-up time for 202, I
8 agree. And certainly in psychiatry, a lot happens for a person
9 and I think that nine months should be the standard for that.
10 Eighteen months is just way too long. And it's very hard for
11 me to recruit my residents into this work because of the fees
12 and the lack of COLA. There's a problem here with a lack of
13 QME's, a shortage, and I cannot invite my students into the
14 field if they are not receiving adequate reimbursement for the
15 current day and age. And I want to invite them in and mentor
16 them, but this makes it nearly impossible.

17 Thank you very much for the opportunity to make my
18 comments.

19 MR. WEST: Thank you, Dr. Pretsky.

20 We have a request to speak from Joseph Tichio,
21 followed by a request to speak from Diane -- I will not attempt
22 to pronounce your last name -- from COA, followed by Daniel
23 Schainholz.

24 So, Dr. Tichio, you have the floor.

25 You have to unmute yourself, Dr. Tichio. He is listed

1 as Joe.

2 MS. PRASAD: Got it. Thank you.

3 MR. TICHIO: Okay. Is that better?

4 MR. WEST: We can hear you now, Dr. Tichio. Thank you.

5 MR. TICHIO: Okay. Thank you.

6 MS. REPORTER: Can I get a spelling, please?

7 MR. TICHIO: Yes. It's Tichio, T-i-c-h-i-o. Are we good?

8 MS. REPORTER: Yes. Thank you.

9 MR. TICHIO: Okay. Thanks. So, hi. I am Dr. Tichio.
10 I'm speaking on behalf of the medical-legal experts, and I
11 appreciate the efforts being made by the DWC to help improve
12 the QME process and the Reimbursement Schedule. I think the
13 proposed Schedule is a good step in the right direction, but
14 there are some issues that could lead to friction between the
15 providers and payors, and I want to bring up some concerns
16 around the pages of record review and how that's going to be
17 interpreted.

18 In regards to the declaration, I am not sure what
19 would happen when there's a discrepancy between the number of
20 pages provided for review and the number of pages on the
21 declaration itself. And I would like to see a clearer way to
22 resolve this potential dispute that's likely to occur. It's
23 easy to see 4,000 pages may be received but by accident, maybe
24 400 pages are declared. And a nice, clear way to resolve that
25 dispute, so it doesn't turn into a bigger issue, would be

1 helpful.

2 Also, in regards to reevaluation issues, what happens
3 when duplicate records are sent for reeval or supplemental
4 report. QME is supposed to spend the time indexing and
5 cross-checking these records, but they're not really getting
6 paid for that. The way it's worded, it seems that a payor
7 could send 2,000 pages, with 500 duplicates, and this would be
8 a lot of unpaid administrative work that the QME would be
9 expected to perform. And I hope those two issues can be
10 resolved as we move forward.

11 So that's it. I'll be brief. Thank you for the
12 opportunity to provide feedback on the proposed regulations. I
13 appreciate the work that's being put into this, and I hope my
14 comments can be taken into consideration with any of the
15 revisions to the regulations in the future. So thank you.

16 MR. WEST: Next up in the order is Diane from COA and
17 Diane Weiss. Dr. Weiss, my apologies. Your request came in
18 due to anomaly after Diane. So after Diane from COA, we will
19 hear from Diane Weiss, M.D., and then Daniel Schainholz.

20 So, Diane, from COA, you have the floor. That's
21 Diane, last name P-r-z-e-p-i-o.

22 MS. PRZEPIORSKI: Good morning, everyone. It's Diane
23 Przepiorski. Just for the court reporter's sake, it's
24 P-r-z-e-p-i-o-r-s-k-i.

25 I really appreciate the opportunity to make comments

1 on the Med-Legal Fee Schedule. As many of you know who were
2 part of the DWC task force, it's been really almost a year
3 since we concluded our discussions, and this proposal is
4 largely the work of that task force. Many -- I have to remind
5 everyone that we've been waiting a very long time for an update
6 to the Med-Legal Fee Schedule, over 14 years. So COA is very
7 much supportive of DWC's efforts to move forward with this flat
8 rate proposal.

9 I think one thing we all know who have been involved
10 in workers' comp arena for many years is that nothing is
11 perfect. When we enact changes in the worker's comp system,
12 and many of the issues that were discussed this morning will be
13 ongoing discussions, I'm sure. Primarily around the duplicate
14 records and the record review, to the one of you earlier
15 speakers, the task force did assume that the more complex cases
16 would have more medical records. If that is not -- ends up not
17 being the case with professional athletes and things, I'm sure
18 that the task force or the DWC would be open to revisiting that
19 issue because there is no doubt the complex cases really need
20 some thoughtful time and attention.

21 The fact that -- the task force did recommend that the
22 records be sent to the evaluator 15 days prior to the
23 evaluation. That did not make it in this last round of
24 regulatory changes. We still do believe that that sets the
25 stage for the evaluator, not only having the records ahead of

1 time, which is important, but knowing what issues need to be
2 addressed. So --

3 MS. RICHARDSON: One minute remaining.

4 MS. PRZEPIORSKI: -- so for today --

5 Thank you.

6 -- we urge the division to move forward with the much
7 needed update to the Med-Legal Fee Schedule. I don't think
8 anyone can deny that there's a severe access in the system for
9 the injured workers getting access to QME's and AME's, and we
10 are committed. We're committed to the payors and others who
11 have expressed concerns with the record review that we would be
12 willing to work with them on the solution. So today, we urge
13 the division to move forward, and we pledge to continue to work
14 with everyone to resolve other issues.

15 Thank you very much.

16 MR. WEST: Thank you for your comments. We will now hear
17 from Dr. Diane Weiss, followed by Dr. Daniel Schainholz.

18 Dr. Weiss, you're up.

19 MS. WEISS: Hi. I don't see myself, and I don't -- I
20 unmuted. Are you hearing me?

21 MS. RICHARDSON: Yes, we are.

22 MS. WEISS: Great. Okay.

23 MR. WEST: We can see you, and we can hear you, so go
24 right ahead.

25 MS. WEISS: I really do appreciate the need for all of the

1 work that's been done, and what the DWC has tried the best to
2 update the Fee Schedule. I also appreciate the reality of
3 human beings and frictions.

4 Medical-legal needs, in terms of complexity, I have
5 been doing this for more than 30 years in the system, and the
6 ROLDA and the Benson and the KITE that are demanded, as I can
7 understand it in the system, to settle cases, they require a
8 lot of thought.

9 And I'm a psychiatrist; sometimes there's no records,
10 and often the records that are sent do not have relevance or do
11 not contain information that's helpful. You have to talk to
12 the patient, get the patient to be comfortable. It takes time
13 to get the history. The history can be very involved with
14 non-industrial as well as industrial issues.

15 So then there's the issue about working, doing
16 administrative work, sorting pages, putting them in order,
17 taking out duplicates. People -- everyone that has mentioned
18 this is aware of the realities. A lot happens in nine months.
19 Certainly, 18 months is too long. So I am requesting that more
20 consideration be given to the needs of the system, that the
21 time has to be paid for. And I would support the
22 recommendations of CSIMS. Thanks for this opportunity.

23 MR. WEST: Thank you for your comment.

24 We will now hear from Dr. Daniel Schainholz, followed
25 by Ron Perelman, followed by Louis Rosen.

1 Dr. Schainholz, you have the floor.

2 MR. SCHAINHOLZ: Good morning. Am I audible?

3 MS. RICHARDSON: Yes.

4 MR. WEST: We can hear you.

5 MR. SCHAINHOLZ: So my specific issue with the proposed
6 flat-fee changes, is that it neither looks into the complexity
7 of the case, nor the complexity of the report that needs to be
8 written. The eye is, by far, the most complex organ in the
9 body. There is no differentiation between, say, an eye injury,
10 a nail injury to the eye, and common lower back pain. There is
11 a -- or in the proposal, it is my understanding that there are
12 rate multipliers provided for psychology and psychiatry,
13 because of the additional time necessary for both the report
14 preparation and time spent with the Applicant. This is at
15 least as true for an Applicant with catastrophic vision loss,
16 or for an Applicant who is feigning vision loss.

17 These are very complex cases, and a flat fee, in my
18 opinion, would not lead to efficiency, but rather mediocrity.
19 This is -- would cause damages to all parties. It causes
20 damages to the Applicant, who receives an inaccurate W.P.I.
21 rating because of the so-called added efficiency. It causes
22 damages to the defendant, because the opportunity to identify
23 occult disease or other causative factors is, essentially,
24 eliminated by the need to rush through such an evaluation.

25 The RAND study looked -- the RAND study, the -- the

1 Medical-Legal RAND study in 2018, upon which these decisions
2 appear to be based, was fundamentally flawed.

3 MS. RICHARDSON: One minute remaining.

4 MR. SCHAINHOLZ: First of all, it said there would be a
5 generalized increase in the rates, but that's for the least
6 complex cases and for those that are seen regularly. Eye cases
7 tend to come at the very end of the process, and the judges are
8 waiting, and the defendants are waiting, and the Applicants are
9 waiting for a final determination.

10 So I implore the DWC to look at the possibility of
11 providing an equitable rate modifier for ophthalmology. Thank
12 you.

13 MR. WEST: Thank you, Dr. Schainholz.

14 We will now hear from Ron Perelman, followed by Louis
15 Rosen.

16 MR. PERELMAN: Can you hear me?

17 MR. WEST: We can hear you.

18 MR. PERELMAN: Can you see me?

19 MR. WEST: Can't see you, but we can hear you.

20 MR. PERELMAN: Okay. Can you see me now?

21 MR. WEST: I can see you now. This is sounding like a
22 telephone commercial. Go right ahead, Dr. Perelman.

23 MR. PERELMAN: What -- I want to thank the DWC for
24 allowing me to speak. I've been doing this since about 1990,
25 seeing medical-legal cases, and I still continue to do it, but

1 it's getting more and more difficult. A few years ago, because
2 of all the problems with the complexity factors, the fraud,
3 certain physicians being prosecuted, et cetera, we decided that
4 complexity factors were just way too difficult, and we needed a
5 simpler system. We had a meeting with Mr. Parisotto at the
6 DW -- at the COA meeting about three years ago. We started
7 discussing this. We came up with this idea of a flat rate,
8 with a charge for medical records. And I still think that's
9 the best way to go.

10 I understand there are problems, and some cases are
11 more complex than others and, you know, that can be a problem.
12 But, usually the complexity goes along with the medical
13 records. I understand maybe in certain sports injuries, that
14 maybe not be the case, but we've been into this for at least
15 three years now, and we've been discussing this, and we need to
16 move on this, because we're losing QME's like crazy. And it's
17 just a very difficult situation, when you're worried about
18 fraud and things like that, that try to continue doing what
19 you're doing, so we need the system.

20 And the other thing we need is to be able to get the
21 records in advance, along with the attestation showing us
22 exactly what records are going to be reviewed because you can
23 get a page count -- whatever the page value is. \$3 is what's
24 been decided -- and multiply that, and then add to that the
25 basic fee, and you come out with a number that nobody can

1 dispute. It's right there in front of everybody --

2 MS. RICHARDSON: One minute remaining.

3 MR. PERELMAN: But that does take some work on the
4 defense. I'm sorry?

5 MS. RICHARDSON: One minute remaining.

6 MR. PERELMAN: One minute.

7 That does take some work on the defense, to provide us
8 with the records in advance and already marked up, so we know
9 exactly what we are to review.

10 Now, will there be duplicates? Of course. You know,
11 there are all these little problems I've heard everybody
12 discuss, but we need to overcome them with enough time and with
13 effort. But this is a starting point, and we do also need a
14 COLA so this doesn't happen again. Our last raise was in 2006;
15 and, really, that shouldn't happen. So please consider what
16 we've already been doing for the last several years, and we
17 need to move on this.

18 And the next question I would have is, if we do have
19 emergency adaptation, when would this Fee Schedule start?
20 Thank you.

21 MR. WEST: Thank you, Dr. Perelman.

22 We will now hear from Dr. Louis Rosen, who is
23 currently the last scheduled speaker. Dr. Rosen, you have the
24 floor.

25 MR. ROSEN: Hi there. I'll try to be brief.

1 I am a physician working in the field of physical
2 medicine and rehabilitation for the past 35 years. However, I
3 am a -- I am new to QME work, recruited over the past year.
4 And it's something I've always wanted to do, and I have a
5 chance now to do it in my career, so I'm kind of a newbie to
6 this.

7 I am -- I have come to realize in the, say, maybe a
8 dozen or 16 reports that I've done -- and that's about all I've
9 done in the past few months -- I realize the complexity
10 involved and the time involved to do a thorough, high-quality
11 report. And I just urge everybody not to oversimplify this
12 Medical-Legal Fee Schedule and not -- I'm alarmed at the idea
13 of throwing out complexity factors completely, or that there
14 won't be a COLA billed in. And, you know, I'm kind of a poster
15 child for somebody questioning whether it's worth it to stay in
16 this work, again, considering the amount of time I see that it
17 does take to generate a good-quality report. And -- but again,
18 I appreciate all the discussions that are going on. I hope
19 level heads prevail and that we can come to some good
20 agreement. Thank you.

21 MR. WEST: Thank you, Dr. Rosen.

22 We've received a request to speak from Dr. Jonathan
23 Ng. I think he's listed as, "Jonathan." During Dr. Ng's
24 comments, if there's anyone who felt they were cut off by the
25 three minute time limit, please send a request -- a chat

1 request to me or to the e-mail address, and we will let you
2 finish your comments for an additional three minutes, but only
3 if you feel it's absolutely necessary.

4 Dr. Ng, you now have the floor.

5 MR. NG: Could you hear me?

6 MR. WEST: We can hear you. We can't see you, but we can
7 hear you.

8 THE REPORTER: Can you please spell your last name.

9 MR. NG: "N" as in "Nancy. "G" as in "George."

10 THE REPORTER: N-G. Thank you.

11 MR. NG: So my name is Jonathan Ng. I've been doing this
12 since 1981. I've seen a lot of changes, and I've been told
13 that this is a done deal, so why even bother to say anything.
14 But I'll give you my two cents' worth. I think the only fair
15 way to pay people is, pay them by the hour. And I know this is
16 a dead end, but I just want to say my piece.

17 I think, like any other profession, paying by the hour
18 is a fair way to go, and it could be done in a very simple
19 fashion. I think you get rid of all the complexity factors.
20 People were playing games with that. I don't see why causation
21 is that complex, because that's part of the game. I think
22 review of literature is a waste of time with today's -- with
23 the search engines that we have. It's just moronic to say "I
24 will do research for more than two hours," so that factor
25 should go. There's no reason to do research more than two

1 hours. If you do research more than that, you shouldn't be
2 talking about it.

3 And in terms of how to verify the time, it's very
4 simple: The face-to-face time could be verified by the -- by
5 the Applicant. I mean, "How much time did Doctor spend with
6 you?" And, you know, that should be at the end of the report.

7 And then in terms of review of medical record, this
8 thing about \$3 a page, some people are laughing, rolling on the
9 floor, like me. I review 4,000 pages of record, and it might
10 take me just two hours. And sometime 200 pages would take me
11 hours to go through it, because it's so complicated. So this
12 thing about \$3 a page, it just doesn't make sense. And, you
13 know, I still think the hourly rate could easily be enforced.

14 MS. RICHARDSON: One minute.

15 MR. NG: Any -- any dispute could easily be resolved by
16 committee, by DWC, and several people look at it. It's not
17 that hard to figure out how much time is spent. I've seen
18 100 pages, pages of review of record, which is merely copying,
19 regurgitation of other people's record. That doesn't make
20 sense. So I urge you to consider that again, because I think
21 that's the only fair way to go. Give us an increase based on
22 cost of living, and just move on with it. You could get this
23 done tomorrow. Anyway, thank you for your time.

24 MR. WEST: Thank you, Dr. Ng. And thank you to everyone
25 who has commented so far. I received the request from Diane

1 Worley to add to her comments, followed by a second request
2 from Diane Weiss after her comments.

3 Diane Worley, you now have the floor.

4 MS. WORLEY: Thank you very much. I'm coming back with my
5 tail between my legs because apparently I don't know how to
6 pull my comments under three minutes. But just very briefly, I
7 want to touch on a couple of things that no one else has. The
8 record review sections, Subdivision N, provides that anyone
9 who's providing records to the physician must provide the
10 declaration under penalty of perjury with regard to the page
11 count. The language in this -- this new language is fraught
12 with frictional dispute consequences. What is an unrepresented
13 injured worker going to do if they don't know about this
14 section? They provide records, no report, because the doctor
15 doesn't get paid?

16 One of the physicians testifying said what do we do if
17 the declaration says it's 500 pages, but there's actually 1,500
18 pages. So I just think that this whole language should be
19 thrown out. Right now physicians have to provide a
20 declaration under, I believe, 9793.

21 I think the goal -- the goal of this proposal when it
22 is finalized should be threefold. One is do not drive out
23 existing QME's and don't -- make sure you attract new QME's.
24 Because as other doctors have already testified, it's very
25 hard to get new physicians to come into the system. It's not

1 attractive. The Fee Schedule is too low. And by increasing
2 frictional costs and difficulties with doctors getting paid,
3 you're going in the opposite direction.

4 The second thing is to go back to the table and look
5 at this from the eyes of someone who doesn't have a legal,
6 medical, or claims adjuster background and how are they going
7 to navigate this. And I think that that is something that
8 hasn't been factored into all of the discussions of the course
9 in the last couple of years.

10 But thank you again for the extra time and appreciate
11 this hearing. Thank you.

12 MR. WEST: Thank you, Ms. Worley.

13 Now we will hear from Dr. Weiss for her additional
14 comments.

15 MS. WEISS: Dr. Ng, and excuse me if I'm mispronouncing
16 his name, did capture I think what is really important. It
17 would be quite appropriate to just pay everyone by the time
18 that they spend. You cannot do a good report which is
19 necessary for the system helping the injured worker, weeding
20 out injured workers that should not be having their claim
21 maintained. You really need to give people a fair shake, and
22 you cannot know in advance from numbers of pages of records
23 how complicated a particular case is until you really get into
24 it. And, of course, you should be getting those pages in
25 advance. And all of the comments made, but I think that Diane

1 Worley, what she just said is also really an issue because the
2 people that I evaluate do not know anything about the system.

3 The idea is to be able to let the system move so the
4 cases can be settled in the correct way, and you really need to
5 spend the time on each individual case, what is being asked
6 for, what is necessary in order to do that.

7 So again I do much appreciate the opportunity to be
8 speaking. I think that to have the system improve and to allow
9 people to stay in the system, not leave the system, or to join
10 the system, this is what is required, an hourly rate.

11 MR. WEST: Thank you, Dr. Weiss.

12 We've received the request from Charles McDaniel to
13 make a comment. We've also received a request from Marshall
14 Lewis, and from Sanjay Agarwal.

15 We will start with Charles McDaniel. You now have the
16 floor.

17 MR. MCDANIEL: Hi. Good morning, everybody. Thank you
18 for making the time to allow us to make comments. I speak as a
19 relatively new QME. I think I got my license in 2016. So a
20 lot of people have raised points that I think are relevant to
21 me -- that I'm not going to continue being a QME, if I face
22 continued frustration.

23 And so, you know, overhauling the current Fee
24 Schedule, I think you're going to just end up with a laundry
25 list of new problems that you have to fix and other problems

1 that will take years and years to address. I think a number of
2 people have raised all of the problems with the proposed
3 flat-fee-per-page model. The current model that we've got
4 already encapsulates complexity, and I just think that if we
5 could adjust the rate to account for the number of years that
6 have been since there's been a rate adjustment, that would
7 probably be the wisest course.

8 I do want to make the comment that as people have --
9 or reinforce the comment that, as people have noted, that if
10 there's too much friction in the system and it is not
11 worthwhile to the clinicians, then people are no longer going
12 to be QME's. And to the extent that efficiency and, you know,
13 churning out fast reports is what's incentivized, then the
14 doctors that want to provide benefit to all the parties in the
15 system are not going to participate, because they're going to
16 see that as undermining their ability to help people. So thank
17 you for the opportunity to make comments.

18 MR. WEST: Thank you, Dr. Lewis. Dr. Marshall Lewis would
19 like to make another comment, followed by Sanjay Agarwal.

20 Dr. Lewis, you now have the floor.

21 Forgive me, Dr. McDaniel, for calling you Dr. Lewis.

22 MR. LEWIS: That's okay, might be better looking.

23 This is Dr. Lewis: I just want to say, I've been
24 doing this for about 30 years, maybe a little more, and I've
25 enjoyed doing them. You know, the problem is, I think, if you

1 want to raise rates, you don't change the whole system. I
2 mean, business people don't do that. They don't change
3 everything around; they increase the rate, \$300, \$350 an hour.
4 But to change the whole system around, you're just going to
5 find a whole bunch of new quagmires that you're going to step
6 into.

7 Number two, I think the physicians deserve 90 to 120
8 days' advanced notice, so they know if they want to keep doing
9 them. Like the last doctor on said he doesn't think he wants
10 to keep doing them. We're booking patients at the old rates.
11 If the rates are felt to be unaffordable to a lot of doctors,
12 they should at least have 90 to 120 days to know. And if cases
13 are booked at the old rates, they should be paid at the old
14 rates. And it's not fair to the doctor, not fair for any
15 system, to all of a sudden change rates as of a certain date,
16 and you don't get any advanced notification because people may
17 want to cancel the bookings that they have, especially if they
18 don't want to do them anymore. I think that's critical;
19 you understand?

20 To me, the whole thing was pretty simple. If you
21 want to increase rates, and you want to increase what someone
22 gets, if I want to increase the salary on one of my employees
23 -- and I carry a full office load, you know what I mean -- I
24 just increase their rate per hour. It doesn't become a big
25 complicated thing like change everything in the office,

1 including all the benefits and everything else. All right.

2 And I'm a little hands-on kind of guy. I mean, I do
3 everything from start to finish. I have someone that counts
4 pages. I have someone that types my reports in-house. You
5 understand? I think companies like ExamWorks who got into,
6 "No, everything's fine," I mean, they do a lot of stuff for the
7 doctors. I mean, you know, my understanding of the law is, the
8 doctor's supposed to review the records, not someone else. I
9 don't know what ExamWorks does exactly, because I've never
10 worked with them, but there are some companies that I believe
11 may have some other individuals reviewing the records, you
12 know. 76 years old, nothing surprises me anymore. But, I
13 don't know if they do that or not, I'm just stating that these
14 companies, these big companies --

15 MS. RICHARDSON: One minute remaining.

16 MR. LEWIS: -- obviously have different modus operandi on
17 how they operate. But I do think it's important that you give
18 the doctors advanced notice, 90 to 120 days, so they know if
19 they want to keep booking cases or not. There's a shortage of
20 QME's, and I think it might increase with this. There's no way
21 to do this, I think, at \$3. It's a ridiculous amount at \$3 a
22 page. I think the doctors also deserve backup, how we arrived
23 at that figure of \$3 a page, and what the backup was to make it
24 change from nine months to 18 months, because that is a little
25 crazy, to me. Thank you very much.

1 MR. WEST: Thank you, Dr. Lewis.

2 Before we move on to Sanjay Agarwal, I want to remind
3 the people who are joining us by phone, if you want to make a
4 comment, please send an e-mail to dwcrules@dir.ca.gov, and your
5 request will be relayed to me.

6 Now we will hear from Sanjay Agarwal, who appears to
7 be our last commentator today. Dr. Agarwal, you have the
8 floor.

9 MR. AGARWAL: Good morning. Thank you, everyone, for
10 giving us the opportunity be able to voice our feedback about
11 the proposed Fee Schedule changes. I've had the opportunity to
12 be a QME for about eight years, and I have enjoyed the process.
13 I think it's a wonderful opportunity to learn a different side
14 of the profession. And because of that, I've enjoyed my time
15 immensely. After reviewing the proposed Fee Schedule, I do
16 have some concerns.

17 I practice in the field of psychiatry, and psychiatry
18 is a very different field because we don't focus on one body
19 part. We typically focus on the brain and the mood. The issue
20 with psychiatry, of course, is that everything affects the
21 mood. It could be orthopedic injuries, neurological injuries,
22 harassment, abuse, stress, so on and so forth. So every case
23 is very different, even if they have the same diagnosis, say,
24 depression. What leads that individual to become depressed and
25 subsequently file a Workers' Compensation claim or whatnot can

1 vary substantially. So because of that, there's a lot of
2 additional complexity to each case; that is, simply, we have no
3 idea what we're walking into, when we see that Applicant.

4 Some cases are surprisingly easy, and some cases are
5 much more complex than what we anticipated. And because of
6 that, the amount of time that's necessary to actually do a full
7 history of present illness and do a proper bio-psycho-social
8 breakdown of the individual can also vary substantially. In
9 the field of mental health, I mean, it's very -- to be -- I
10 mean, it's impossible to have a one size fits all, because of
11 how much information we have to collect. Because of that, I am
12 opposed to the flat Fee Schedule, because it doesn't take that
13 into account.

14 MS. RICHARDSON: One minute remaining.

15 MR. AGARWAL: The other piece, of course, is the records.
16 And I believe Dr. Ng, if I'm pronouncing that correctly, said
17 it exactly right. There's time where I get 1,000 pages, but,
18 gosh, you know, I can review those pages in three hours. But
19 then I can get 150 pages, and most of those pages are, say,
20 depositions, dense mental-health records, and so on and so
21 forth. And when I get those kind of records, they take a lot
22 longer, because not only am I reviewing them in regards to
23 length and complexity, but I'm also having to pick out exactly
24 what all the potential factors are that could be affecting that
25 individual's mood and have to write them down, and then I have

1 to cross-reference that with the Claimant, if I have the
2 opportunity to review those records prior to actually even
3 interviewing the individual. And this is all critical, when it
4 comes down to apportionment, because we are expected to address
5 every one of those factors.

6 MR. WEST: Thank you, Dr. Agarwal.

7 I don't appear to have any more people wishing to make
8 a public comment. I'd like to thank everyone who has
9 participated in this process from the very beginning, from the
10 stakeholder meetings, up to making written comments or making
11 public comments here today. If we do not have anyone else who
12 wishes to make a verbal comment today, the time as I show it is
13 11:13, and we will now end this public hearing. It is now
14 closed. Thank you all.

15 MS. RICHARDSON: Can we give a minute to -- let's give two
16 minutes for people to, maybe, possibly consider.

17 (Pause in the proceeding).

18 MR. WEST: That would be fine. If you want to make a
19 comment, either send a chat, or send a request to the e-mail
20 box, and we will give you two minutes to make those requests.

21 MS. RICHARDSON: Yes, Dr. Agarwal did say he wanted to
22 finish, and we will let him finish.

23 MR. AGARWAL: Actually, it won't take much time. It's
24 probably another 30 to 40 seconds.

25 So again, I was simply speaking about the medical

1 records. Again, the 200 pages that are included in the flat
2 fee, those 200 pages could take ten hours, just depending on
3 the complexity of it. So again, there's just all of these
4 variables that we are not aware of prior to taking the case in
5 the situation where we are spending that much time habitually,
6 but not being properly compensated for it. I am worried about
7 the QME process going forward for all of us. That's it. Thank
8 you.

9 MR. WEST: For those of you who are interested, I am
10 still alive and vertical. Thank you for your concern. We do
11 not have any further requests. I show one minute remaining on
12 the two-minute warning. If you have anything that you would
13 like to say, now is the time to send a message to that effect,
14 either by chat, or to the e-mail box. It is now 11:15. We
15 have received no further requests. Our two minutes are up, so
16 I am now officially closing this public hearing. Thank you all
17 for your participation.

18 (Whereupon the public hearing concluded at 11:15 a.m.)
19
20
21
22
23
24
25

* * * *

R E P O R T E R ' S C E R T I F I C A T E

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

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

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

Signed and dated at Long Beach, California, this 21st day of December, 2020.

Gordana Vidovic

GORDANA VIDOVIC
Official Hearing Reporter

Olivia Lizarraga

OLIVIA D. LIZARRAGA
Official Hearing Reporter