AM LIEN SOLUTIONS

A LIMITED LIABILITY CORPORATION

Med-Legal Copy Service Dispute Resolution Training

Key decisions – copy service

- Colamonico v. Secure Transportation

- En banc decision
- It is the Lien Claimants/Petitioners burden to prove their services were reasonable AND necessary
- Defendants failure to object to bill or send Explanation of Review NO longer waives all defenses
- Defendants can dispute the reasonableness or necessity of a medical-legal expense

We recommend following the dispute process in the previous section; however this new decision does provide relief to defending against unreasonable services.

Key decisions – interpreting market rate

- Maria Becerra, Applicant v. Slik Apparel, Employers Compensation Insurance Company, Defendants, 2019

"WCAB, rescinding WCJ's decision, returned matter to trial level for further proceedings regarding market rate of lien claimant's interpreting services as defined in 8 Cal. Code Reg. § 9795.1(e), when market rate evidence submitted by lien claimant at trial was insufficient to establish market rate because it only included information from accounts which were paid in full by defendants and none where lien claimant accepted less than full payment"

- Source: Lexis Nexus

Key decisions – 4903.8(d) Lien declaration

- Fernando Calderon, Applicant v. Matharu Assisted Living, State Compensation Insurance Fund, Defendants, 2019 [Petition for Writ of Review filed 10/25/2019]

"WCAB affirmed WCJ's finding that lien claimant failed to timely file Labor Code § 4903.8(d) lien declaration and, therefore, was not entitled to recover on its 11/7/2012 lien, when lien claimant did not file declaration until 11/15/2017"

- Source: Lexis Nexus

Training Agenda

- Definitions
- Resources
- Copy Service Liens DOS before 7/1/2015
- Copy Service Liens DOS on or After 7/1/2015
- Copy Service Petition for Non IBR Determination
- Best Practices / Recommendations
- Conclusion

Definitions

Medical-Legal Expense (ML)

§ 10451.1. (b) (1) “medical-legal expense” shall mean any cost or expense incurred by or on behalf of any party for the purpose of proving or disproving a contested claim, including but not limited to:……

(D) All costs or expenses for copying and related services

Definitions

Contested Claim (§ 9793 (b) (1) – (4))

A “contested claim” includes any of the following:

1) Where liability for claimed benefit has been rejected;

2) Where claim has become presumptively compensable per LC 5402;

3) Where there has been failure to respond to demand for payment of compensation after expiration of statutory time periods; or

4) Where the claims administrator has accepted liability for a claim and a disputed medical fact exists (ie: dispute over TD/PD, Denied UR Requests)

QUICK STORY ABOUT THE $250 IMR COPY SERVICE invoice that went on to cost over $2,000

Code	Description	Charge
WC 020	Review and Confirm **NEWLY FOUND RELEVANT MED-LEGAL** Medical Records for the Independent Medical Review Office/Maximus §9792.10.5. (b)(3), Electronic Transmission of Medical Records to DWC/Maximus §9792.10.5. (b) (3) Reg. 9990 & CCP 2020.440 Printed Copy to Applicant's Attorney of Medical Records for Independent Medical Review /Maximus §9792.10.5. (b) (3) Reg. 9990 & CCP 2020.440 Printed Copy to Claim Adjuster of Medical Records for Independent Medical Review /Maximus §9792.10.5. (b) (3), Reg. 9990 & CCP 2020.440 Shipping/Delivery to Applicant Attorney **In respect to the services described, there was no violation of Labor Code section 139.32**.	$250.00
	Total	**$250.00**

1. Claim accepted. RFA submitted for Cervical Discectomy and Fusion ; Post Op PT 2x8 was denied by UR on 4/6/2016. IMR application submitted on 5/2/2016.
2. Claims Examiner receives copy service invoice for:

Invoice Submitted 6/16/2016 – DOS 5/10/2016

EOR & Objections

An EOR was not sent to provider within 60 days of receipt of bill. The bill was objected to on 11/21/2017. The ML provider responded on 2/13/2018 with this “objection”

Dear Adjuster:

We are in receipt of 11/21/2017 objection to payment for the services provided.

Please note that we hereby timely object to your objection as required by Labor Code §4622(4)(c) as your objection is based on a valid non-fee schedule reason.

We object to your objections based on the following:

This was a request to copy records by the Applicant Attorney for the purposes of Independent Medical Review therefore qualifies as a Med legal.

There is a clear directive per **§ 9792.10.5** that the Claimant and/or the Claimant's Attorney "shall" provide relevant medical records within 15 days to the IMRO. As defined by Labor Code, " 'Shall' is mandatory and 'may' is permissive." **(Lab. Code, § 15; Morris v. County of Marin (1977) 18 Cal.3d 901, 904 [42 Cal.Comp.Cases 131] (Morris)**; (Lab. Code, § 15; Smith v. Rae-Venter Law Group (2003) 29 Cal.4th 345, 357 ("As used in the Labor Code, 'shall' is mandatory").)

[redacted] did not issue a subpoena as one was not required. Please see CCR 9980 (b) (provided below) which clearly says subpoena or authorization.

(b) "Copy and related services" means all services and expenses that are related to the retrieval and copying of documents that are responsive to a duly issued subpoena or authorization to release documents for a workers' compensation claim.

Labor Code § 4620(a) provides: "For purposes of this article, a medical-legal expense means any costs and expenses incurred by or on behalf of any party . . . which expenses may include X-rays, laboratory fees, other diagnostic tests, medical reports, **medical records**, medical testimony . . . for the purpose of proving or disproving a contested claim." Please see attached paperwork.

Under LC §4622 you have 60 days from the date of this letter to file a Petition for Determination of Non-IBR Medical Legal Dispute, or pay the current balance due of $190 per fee schedule. Should you fail to file the Petition or fail to pay the balance due, we will file the petition, including a request for attorney fees and penalties and interest.

Sincerely,

Review of Facts

1. The objection from Claims Administrator was late and not relevant. Reason for non payment was “this is an accepted claim and your services were not authorized”
2. After 2/13/18 objection is sent by ML provider, they try to negotiate balance. They still haven’t filed a Petition. CE says “your SOL expired on 11/10/2017, it’s too late for you”
3. ML provider files a Petition for Non IBR Determination in October of 2018 and submits ALL evidence including AA referral sheet
4. A copy of the Maximus Independent Medical Review Final Determination Letter is also included as evidence

Evidence

- The Independent Medical Review Final Determination Letter from Maximus confirmed the provider did submit medical records that were not submitted by the Claims Administrator

Provider Name	Dates of Service From	Dates of Service To
Abraham Ishaaya MD	01/07/2016	01/11/2016
Advanced Pain Specialists of Southern California	09/29/2015	04/12/2016
Brian P Jacks MD	04/14/2016	
Douglas Industrial Medical Clinic	02/12/2016	02/17/2016
Kamran Hakimian MD	07/25/2014	
Liberty Pacific Long Beach	12/12/2015	
Moshe H Wilker MD	12/18/2015	05/02/2016
OrthoMed LLC	01/14/2016	03/02/2016
Physical Therapy Notes	02/12/2016	04/13/2016
Primex Clinical Laboratories	01/11/2016	
Rehabilitation Associates Medical Group	12/15/2015	
Robert C Blaine DPM	07/23/2015	
Robert Horner MD	10/15/2015	
Roger Sohn MD	01/27/2016	
Ronald Glousman MD	10/07/2015	04/04/2016
Sein Chiropractic	05/28/2014	
United Medical Imaging at Maywood	12/11/2013	
Vital Imaging Medical Group	09/23/2013	03/26/2016

Provider

Provider Name	Dates of Service From	Dates of Service To
Comprehensive Outpatient Surgery Center	01/13/2016	02/24/2016
Moshe H Wilker MD	12/18/2015	03/15/2016
United Medical Imaging	12/11/2013	

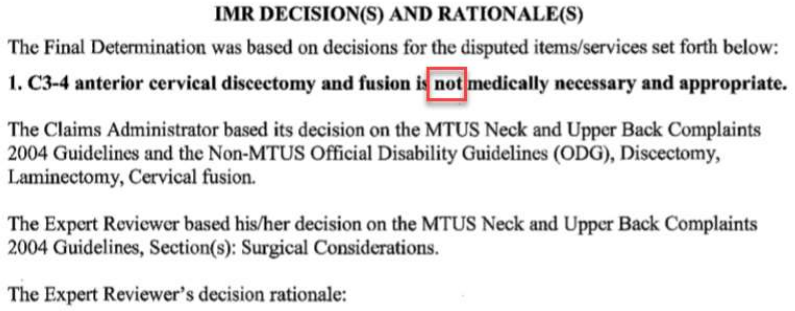
Liability / Settlement

- $250 Original Charge
- $25 Penalty
- $42.56 Interest
- $400 Costs to Prepare Petition and DOR
- $1,5000 Request for Sanctions
- $500.00 – Cost of Defense Vendor to Appear at MSC and resolve

- Total Potential Liability = $2,717.56
- Total Settlement plus defense fees = $1,092.56

In the Interest of Closure

Maximus ended up UPHOLDING this very expensive and not medically necessary procedure



IMR DECISION(S) AND RATIONALE(S)

The Final Determination was based on decisions for the disputed items/services set forth below:

1. C3-4 anterior cervical discectomy and fusion is not medically necessary and appropriate.

The Claims Administrator based its decision on the MTUS Neck and Upper Back Complaints 2004 Guidelines and the Non-MTUS Official Disability Guidelines (ODG), Discectomy, Laminectomy, Cervical fusion.

The Expert Reviewer based his/her decision on the MTUS Neck and Upper Back Complaints 2004 Guidelines, Section(s): Surgical Considerations.

The Expert Reviewer's decision rationale:

Morale of the Story

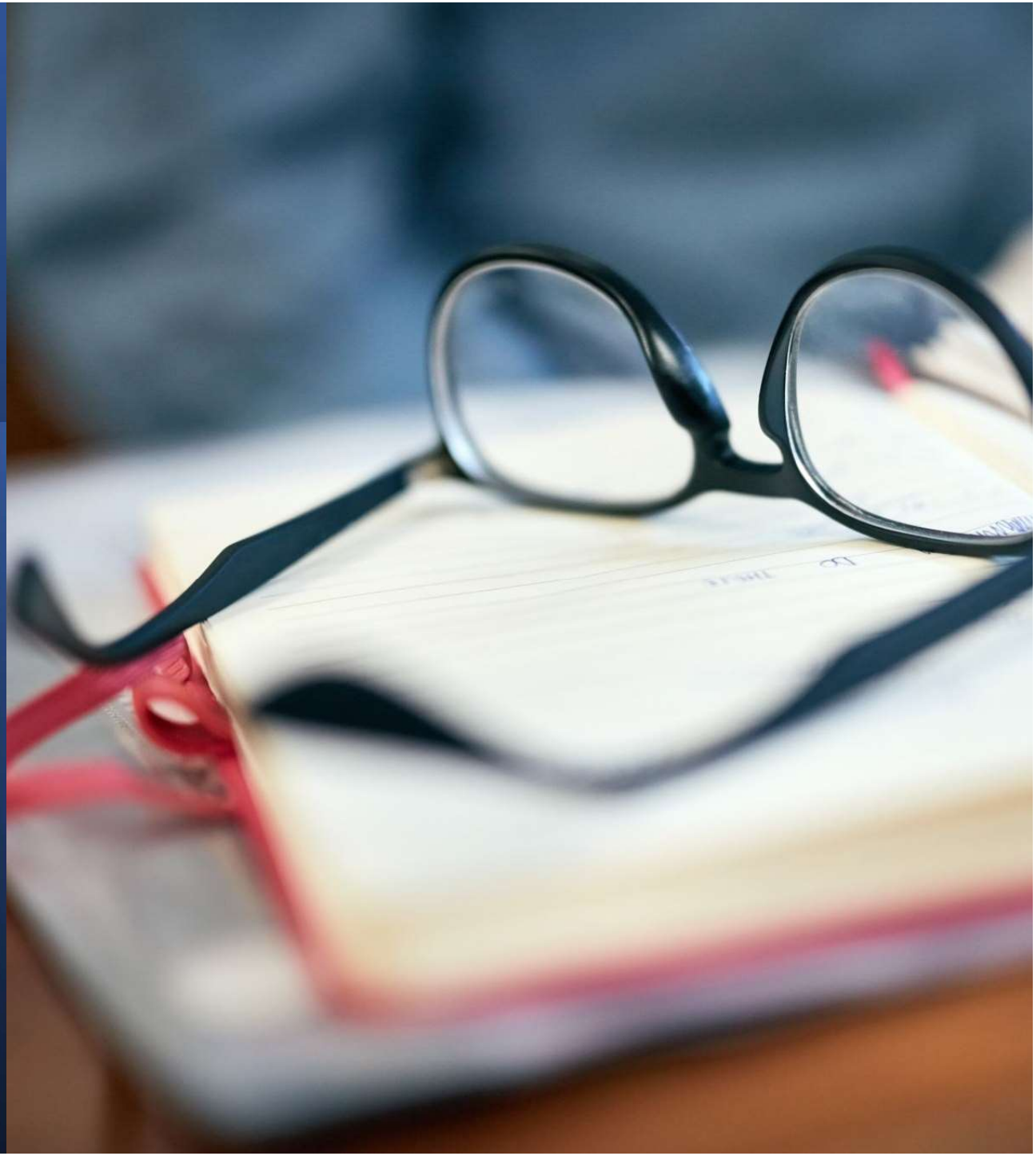
- Process copy service invoice charges for IMR submissions through bill review
- Do not ignore them or object unless it's on an explanation of review that meets all requirements under LC 4622(c) and there is a specific reason.
- Not all are legitimate charges but they do need to be investigated timely.
- If new records were submitted, pay the bill ACCORDING to the copy service fee schedule

This concludes our quick story which is actually based on a true story.

COPY SERVICES IMR Submission Rule

- Copy service would be allowable ***only*** for the documents that are not part of what the claims administrator is required to submit.
- You would need to see proof of what they provided to Maximus with a proof of service
- If they just submit a bill possible EOB Reason Codes are:
  - 1) The bill may not allowable as a Medical-Legal charge.
  - 2) Submit Copy Service Referral Form and Proof of Documents Submitted to IMR for reconsideration.
  - 3) Final review of this bill will be completed upon receipt of “Documents Reviewed” section of the Maximus IMR Final Determination Letter

Back to definitions



Definitions

Medical-Legal Expense Disputes are Not Subject to Independent Bill Review (§ 9793 (c) (1))

We are going to look at this in two parts - Part 1 of 2

1) IBR applies solely to disputes directly related to the amount payable under an OMFS in effect on the date the goods or services were provided…..

Note: The title of this section is a bit misleading. A valid ML expense dispute is subject to IBR when it is properly reviewed and paid. Explanation of Review is mandatory in this scenario. If the only issue is the fee schedule on a timely payment IBR DOES apply.

Definitions - (§ 9793 (c) (1)) Part 2 of 2

1) …Other ML expense disputes between a defendant and a ML provider are non-IBR disputes. These include:

A) Threshold issues that would defeat a ML expense claim (AOE/COE not considered a "threshold" issue);

B) Whether ML expense was incurred to prove or disprove a contested claim;

C) Whether the ML expense was **reasonably**, actually, and **necessarily** incurred;

D) An assertion by ML provider that defendant waived any objection to the amount of the bill because defendant did not comply with LC 4622, 4603.3, and 4603.6

E) An assertion by the defendant that the ML provider has waived any claim to further payment because the provider did not comply with LC 4622, 4603.3, and 4603.6

Non-IBR disputes are resolved by following the regulations for filing a Petition for Determination of Non-IBR Medical-Legal Dispute.

This process involves filing a concurrent DOR and a WCAB appearance (Status Conference or Mandatory Status Conference)

This process is not an option for the defense

The next slides will take you through the rules and procedures

LC 4622, 4603.3, and 4603.6

Definitions and Rules

Definitions - LC 4622 (c)

LC4622 (c) - If the employer denies all or a portion of the amount billed (non OMFS) in effect on the date of service, the provider may **object** to the denial within 90 days *of the service of the explanation of review*. If the provider does not **object** to the denial within 90 days, neither the employer nor the employee shall be liable for the amount that was denied.

If the provider objects to the denial w/i 90 days of the service of the explanation of review, the employer shall file a petition and a declaration of readiness to proceed with the appeals board within 60 days **of service of the objection.**

Definitions - Service

Does “service” as used for the purpose of this Labor Code = A Proof of Service?

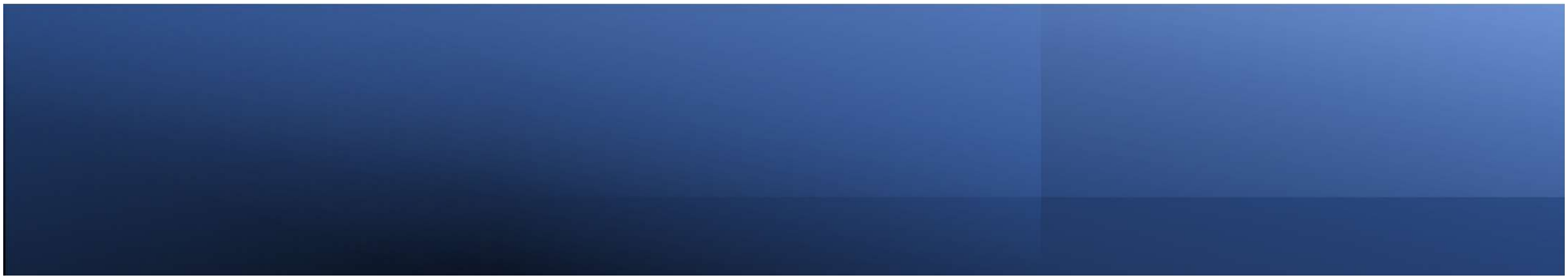
- provider may **object** to the denial within 90 days *of the service of the explanation of review*.

- If the provider objects to the denial w/i 90 days the employer shall file a petition and a DOR within 60 days **of service of the objection.**

HCRG recommends sending your ML Explanation of Reviews with a Proof of Service to avoid different interpretations of this rule.

Ironically there is no definition for a providers “objection” to the employers explanation of review!

Speaking of the employer's explanation of review! What exactly is it supposed to include?



Definitions - LC 4603.3

(a) Upon payment, adjustment, or denial of a complete or incomplete itemization of medical services, an employer shall provide an explanation of review in the manner prescribed by the administrative director that shall include all of the following:

(1) A statement of the items or procedures billed and the amounts requested by the provider to be paid.

(2) The amount paid.

(3) The basis for any adjustment, change, or denial of the item or procedure billed.

(4) The additional information required to make a decision for an incomplete itemization.

(5) If a denial of payment is for some reason other than a fee dispute, the reason for the denial.

(6) Information on whom to contact on behalf of the employer if a dispute arises over the payment of the billing. The explanation of review shall inform the medical provider of the time limit to raise any objection regarding the items or procedures paid or disputed and how to obtain an independent review of the medical bill pursuant to Section 4603.6 .

A Closer Look at LC 4606.3 (5)

"If the denial of payment is for some reason other than a fee dispute, the reason for the denial" = Give the provider a specific reason or risk your EOR's being found noncompliant.

LC 4606.3 (5) – Examples

Recommended reasons for denial of payment:

1) This code is for an additional electronic set within 30 days of retaining the records from <location name>. Submit your bill with the order form from the requestor and proof of delivery for reconsideration of payment
2) The records you obtained from <location name> were previously sent to <AA name> on <date>. This date of service is not allowable.

Non-Recommended reasons for denial of payment:

1) The photo copy services that you are billing for was not authorized by Claims Administrator
2) The claim is denied. Treatment was not authorized.

Definitions - LC 4603.6

1) This labor code applies to the regular IBR process, which as we covered earlier is applicable IF there was a fee schedule in place (DOS ≥ 7/1/15) and payment was made for the goods or services the ML provider is disputing

2) This IBR process is binding

3) The determination of the IBR shall be deemed a determination and order of the AD.

Example from a Case Decision

Copy Service companies will argue “lack of EOR” = “Waiver of Objection” to the “Amount Billed”

Upon receipt of invoices from entities seeking reimbursement for medical-legal costs, a defendant is required to notify a provider if it "contests the reasonableness or necessity of incurring these expenses, and shall indicate the reasons therefor." (*Lab. Code § 4622(e)(1)*; *Cal. Code Regs., tit. 8, § 10451.1(f)(1)*.) An employer objection to a medical-legal expense shall be made within 60 days on the ***explanation of review*** form required by *Labor Code section 4603.3* . (*Lab. Code, § 4622(a)(1)*.) In *Otis v. City of Los Angeles (1980) 45 Cal.Comp.Cases 1132 (Appeals Board en banc)*, the Appeals Board interpreted former section 4601.5 which required a defendant to make a specific and non-conclusory written objection to the reasonableness of any medical-legal bill within 60 days of its receipt. If the defendant failed to do so, it was precluded from raising the reasonableness of the medical-legal cost. **[*10]** While the medical-legal cost provisions of section 4601.5 were repealed by the Legislature in 1984 (Stats. 1984, ch. 596, § 3) and were replaced by *sections 4620 et seq*, the reasoning of the *Otis* decision continues to be sound. (*Hurtado, supra* at 1640.)

Copy Service – Pre 7/1/2015 Arguments

- Our best argument pre 7/1/2015 is “Whether the ML expense was **reasonably**, actually, and necessarily incurred” ;
- Reasonableness of Fees
- The lien claimants' burden is to prove reasonableness and necessity AT the time the expenses were actually incurred
- WCJ’s have the authority to deny payment for services that were not necessary at the time of expense

Copy Service ≥ 7/1/15 – 30 Day Rule

8 CCR § 9982

- If the injured worker or his representative makes a request for copies to the employer, insurer, or claims administrator, the records are due within 30 days or the requester has the right to use a copy service.
- If the records are produced within 30 days, the copy service may not charge the employer, insurer, or claims administrator for the copies. [Labor Code § 5307.9]
- If the claims administrator fails to serve a copy of a subpoena to the injured worker, the injured worker may use the copy service for obtaining the same records under subpoena. [Labor Code § 4055.2]

SUGGESTION

AS SOON AS YOU RECEIVE AN APPLICATION FOR ADJ OR NOTICE OF REP FROM AA MAKE CONTACT AND ARRANGEMENTS TO EXCHANGE CLAIMANT FILE!

Document all efforts to contact AA during this process

If the 30 days pass and the copy service provider can prove a request was made all bills must be processed according to the regulations and flowchart in this training presentation

Copy Service ≥ 7/1/15 – What's Allowed

- Records relevant to an injured worker's claim.

Copy Service Fee Schedule

Billing Code	Fee	Short Descriptor	Detail
WC020	$180	Flat Fee	Global fee, except for sales tax & "+" items
WC021	$75	Cancelled Service	Post subpoena/authorization but before records produced
WC022	$75	Certificate of No Record	
WC023	+ .10	Per page	Pages in excess of 500
WC024	$20	Records from EDD	
WC025	$30	Records from WCIRB	
WC026	$5	Additional electronic set	C/A liable for one addtl set if ordered w/i 30 days of subpoena & copy retained
WC027	$30	Additional electronic set	C/A liable for one addtl set if ordered after 30 days of subpoena & copy not retained
WC028	+ $10.26	X-Ray & scan sheet	Differ from OMFS X-ray & scan codes & fees
WC029	+ $3	CD of X-rays & scans	

Copy Service ≥ 7/1/15 – What's Not Allowed

- Records provided to AA by claims administrator within 30 days
- Copies provided by any person or entity that is not a registered professional photocopier. [Bus. & Prof. Code § 22450]
- Records previously obtained by subpoena or authorization by the same party and served from the same source (there are some exceptions)
- Subpoenaed records obtainable from the WCIRB or EDD that can be obtained without a subpoena at lower cost. (Then why is there a fee schedule for it!)

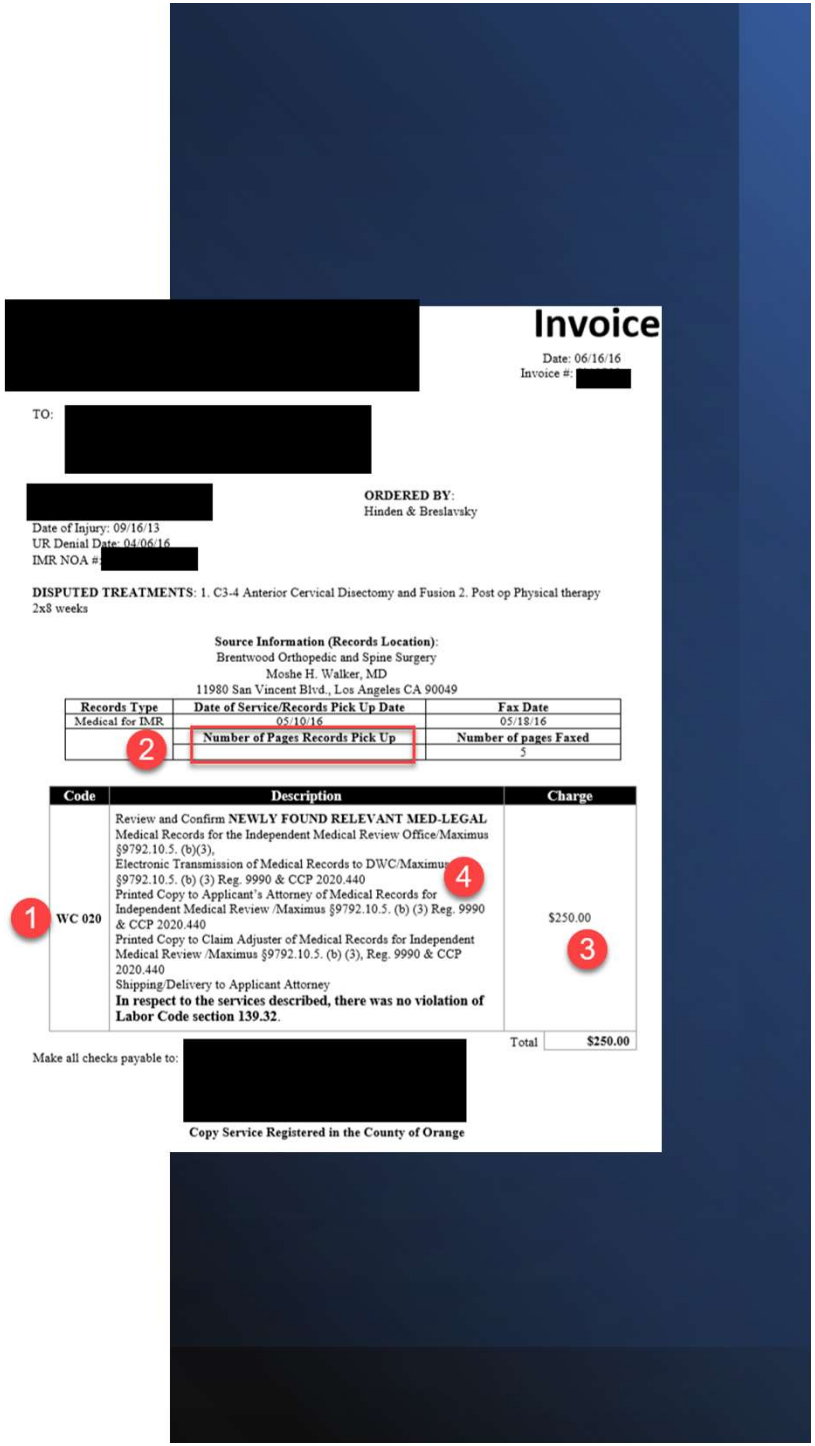
COPY SERVICE DECISIONS

- Claudia Escamilla, Applicant v. Sanchez Family Corporation d/b/a McDonalds, California Restaurant Mutual Benefit Corporation, Defendants (4/20/2017)
- Ramon Franco, Applicant v. Verizon/Frontier Communications, Sedgwick (5/1/2017)
- Juan Garcia vs. Six Pac Recycling Corp; Insurance Company of the West
- Colamonico v. Secure Transportation - En banc decision

Alternate endings to our $250 IMR copy service bill

Actual Invoice

1. WC 020 is a flat fee of $180
2. The number of pages wasn't listed. This looks like 5 pages were faxed?
3. No explanation for the $250 charge.
4. Description is templated
5. Invoice did not comply with the regulations



[redacted]

Invoice

Date: 06/16/16
Invoice #: [redacted]

TO: [redacted]

[redacted]

ORDERED BY:
Hinden & Breslavsky

Date of Injury: 09/16/13
UR Denial Date: 04/06/16
IMR NOA #: [redacted]

DISPUTED TREATMENTS: 1. C3-4 Anterior Cervical Disectomy and Fusion 2. Post op Physical therapy 2x8 weeks

Source Information (Records Location):
Brentwood Orthopedic and Spine Surgery
Moshe H. Walker, MD
11980 San Vincent Blvd., Los Angeles CA 90049

Records Type	Date of Service/Records Pick Up Date	Fax Date
Medical for IMR	05/10/16	05/18/16
	Number of Pages Records Pick Up	Number of pages Faxed
		5

2

Code	Description	Charge
1 WC 020	Review and Confirm **NEWLY FOUND RELEVANT MED-LEGAL** Medical Records for the Independent Medical Review Office/Maximus §9792.10.5. (b)(3), Electronic Transmission of Medical Records to DWC/Maximus §9792.10.5. (b) (3) Reg. 9990 & CCP 2020.440 4 Printed Copy to Applicant's Attorney of Medical Records for Independent Medical Review /Maximus §9792.10.5. (b) (3) Reg. 9990 & CCP 2020.440 Printed Copy to Claim Adjuster of Medical Records for Independent Medical Review /Maximus §9792.10.5. (b) (3), Reg. 9990 & CCP 2020.440 Shipping/Delivery to Applicant Attorney **In respect to the services described, there was no violation of Labor Code section 139.32.**	$250.00 3
		Total **$250.00**

Make all checks payable to: [redacted]

Copy Service Registered in the County of Orange

SUMMARY

MEDLEGAL PROVIDER'S INITIAL BURDENS

1. A medlegal provider has the initial burden of proof that:

a. it complied with Lab. Code §§ 4620 and 4621. See Colamonico (en banc)

i. Burden includes providing a proof of the date their invoice was served to Defendant, especially if they're seeking payment of penalty or interest.

ii Copy service burden includes proving that it sent Defendant/DA a letter requesting records at least 30 days before providing copy services. (Labor Code § 5307.9)

b. the purported medlegal expense was reasonably, actually, and necessarily incurred. i.e., If there was no disputed issue/contested claim at the time, it could not be considered "medlegal." (Rule 10451.1(b))

2. If you determine it is not a medlegal claim, standard defenses will apply.

MEDLEGAL PROCESS (Lab. Code § 4622, Rule 9792.5.5)

1. Defendant has 60 days to pay or object to a medlegal invoice (with EOR per Lab. Code § 4603.3).
    a. Only if partial payment is made will the provider's SBR-1 requirement be triggered.
    b. b. If no payment is made, the process becomes non-IBR. (Lab. Code § 4622 (a), (b))

2. Provider has 90 days to do one of the following, or the bill is deemed satisfied (Lab. Code §4622(b)):
    a. submit SBR-1 after receipt of EOR with partial payment (Rule 9792.5.5 (c)(1)(B); or
    b. b. object to the non-payment (no standardized form). (Lab. Code § 4622 (c))

MEDLEGAL PROCESS (Lab. Code § 4622, Rule 9792.5.5)

3. Upon receipt of provider's timely objection to the nonpayment, Defendant shall file a Petition for Determination of Non-IBR Medical-Legal Dispute concurrent with a DOR within 60 days. (Lab. Code § 4622(c), Rule 10451.1 (c)(2)(A)) iii. Sanctions are allowed against Defendant for failure to file this petition. (Rule 10451.1 (g))

4. 4. Upon receipt of Provider's timely SBR-1, Defendant has 14 days to provide a second EOR; 21 days to make additional payment. (Lab. Code § 4622(b)(3), Rule 9792.5.5 (g) and (h))

5. If Provider contests the second EOR, Provider must request IBR within 30 calendar days as provided in Lab. Code § 4603.6.

RULES WHEN CALCULATING DEADLINES

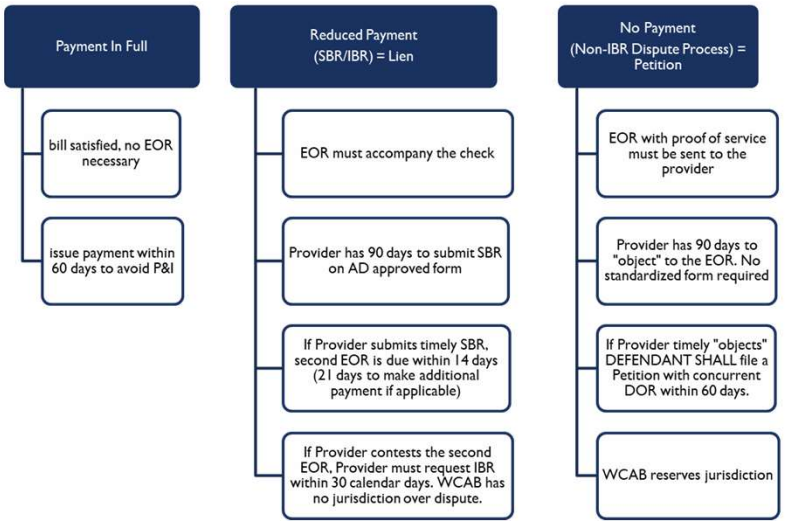
1. 5 days added for mailing (8 CCR § 10507(a)) a. This means if your deadline is 14 days, your time starts when received (5 days after the SBR-1 was mailed, or Defendant's acknowledged "received" date, whichever is earlier).

2. When a deadline falls on a weekend or holiday for which the WCAB is closed, the deadline is extended to the next business day. (8 CCR § 10508) a. This means you should always look at a calendar and go back in time to determine if the deadline fell on a weekend or holiday. b. Where an authority states "calendar days," that is an exception to this rule.

NO WAIVER OF DEFENSES

DEFENDANT'S FAILURE TO RAISE A CERTAIN DEFENSE HERE IS NOT A BAR TO RAISING IT LATER IN LITIGATION. (COLAMONICO AT 5:3)

DEFENDANT'S FAILURE TO TIMELY ACT DOES NOT BAR A DEFENSE TO THE AMOUNT OF THE BILL. REASONABLENESS OF CHARGES IS STILL PROVIDER'S BURDEN. (COLAMONICO AT 7:3-17)



1. Implement a compliant Med-Legal Bill Review Program
2. Send Explanation for Reviews
3. We recommend incorporating a Proof of Service

BEST PRACTICES

Questions & Thank you

AM LIEN SOLUTIONS
A LIMITED LIABILITY CORPORATION

- If you have any questions, please feel free to contact:

- Zazil Mijares
- Operations Manager
- AM Lien Solutions
- Office: 714-482-6283
- Email: zmijares@amliensolutions.com

- www.amliensolutions.com