



H E A L T H R I G H T S H O T L I N E
INDEPENDENT ASSISTANCE FOR HEALTH CARE CONSUMERS

January 23, 2005

Janee Marlan
Department of Managed Health Care
Office of Legal Services
980 Ninth Street, Suite 500
Sacramento, CA 95814

**RE: Health Rights Hotline Application for an Award of Advocacy and Witness Fees
Block Transfer Filings, Control No. 2003-0298**

Dear Ms. Marlan:

This is a response to the January 5, 2006 letter from Phoenix Vigil, Regulations Coordinator at the Department of Managed Health Care. Ms. Vigil was seeking additional information regarding the Health Rights Hotline's Application for an Award of Advocacy and Witness Fees for its participation in the rulemaking proceeding Block Transfer Filings, Control No. 2003-0298. Below are our responses to each of her requests:

1. Provide a statement regarding each staff member for whom fees are claimed stating the experience, skills and ability used to determine the hourly rate claimed

Shelley Rouillard—Expert, 25 years experience in consumer health and human services advocacy. Ms. Rouillard planned, designed, and implemented the Health Rights Hotline from its earliest stages and has served as Program Director since its inception. Her in-depth knowledge of health care systems stems from positions such as Chief of Health Policy for the CalPERS Health Benefits Program, Owner/Principal of Rouillard Consulting, and Director of Network Operations for First Health Group Corp. (now Coventry Health). She spent four years as legislative advocate for low income seniors and persons with disabilities for California Rural Legal Assistance Foundation. Ms. Rouillard holds a BA in Social Work from Rutgers University, received the California Office of the Patient Advocate's 2005 Patient Advocacy Achievement Award, and was a 2005 Leadership Fellow of the Sierra Health Foundation Health Leadership Program.

Elizabeth Landsberg—Managing Attorney, 7 years experience. Ms. Landsberg served as Supervising Attorney at the Health Rights Hotline from September 2000 through December 2005. She has supervised attorneys and paralegals providing advice and counseling for several hotlines. Before joining the Health Rights Hotline, she worked at an employment and women's rights public interest organization and as a law clerk to a Federal District Judge. She earned her law degree at the University of California, Berkeley, Boalt Hall in 1998 and was admitted to the California State Bar the same year.

Pramela Reddi—Staff Attorney, 2 years experience. Ms. Reddi joined the Health Rights Hotline as Staff Attorney/Policy Analyst in 2003. She has an extensive background in health care policy and administration, having served as a graduate student assistant for the California Office of Statewide Health Planning and Development and as a law clerk in the Summer Honors Program of the California Office of the Attorney General, Tobacco Litigation and Enforcement Section. Ms. Reddi also spent four years as an administrator of a community clinic and a year as a health care policy analyst for a private consulting firm. She earned her JD at the University of California, Davis, School of Law and was admitted to the California State Bar in 2003.

Vanessa Franco—Law School Graduate. Ms. Franco followed Ms. Reddi as Staff Attorney/ Policy Analyst in 2005. She has a background in public interest advocacy and publishing and earned her JD at Duke University School of Law in 2004. Ms. Franco was admitted to the California State Bar in November 2005.

2. Description of how HRH determined the market rate for each staff member for whom fees are claimed

The Health Rights Hotline determined the rates for its staff based on the number of years of general and specialized experience for each staff member for whom fees are claimed. In developing the rates, the Health Rights Hotline relied on a number of different sources.

Non-Attorney Advocates. To determine an appropriate rate for Ms. Rouillard's participation in the rulemaking proceeding, the Health Rights Hotline relied on three sources: 1) advocates at The Utility Reform Network (TURN) who participate in the Public Utilities Commission (PUC) Intervener Compensation Program; 2) several private health care foundations in California who routinely hire health care consultants; and 3) an independent consultant who locates expert witnesses for attorneys involved in health care litigation.

TURN shared how the organization determines its market rate for the work TURN does with the Public Utilities Commission (PUC). TURN's participation in PUC's intervener compensation program is similar to the Health Rights Hotline's participation in DMHC Consumer Participation Program; each area requires a fair amount of highly specialized training to master. The PUC notes that the experts consulted generally had a minimum of 10 years' experience and determined that the claimed rates tended to be consistent with the salaries paid to in-house experts. Among the factors that TURN considered when filing its hourly rate claims for experts were specialized training and experience, educational background, and qualifications compared to those of consultants relied upon by the utility companies. The range of fees awarded by the PUC for non-attorney advocates is \$110 to \$360 per hour.

Both the California HealthCare Foundation and The California Endowment contract with independent consultants for various projects and initiatives. In many instances, these consultants are health care policy experts with varying years of experience. The foundations report that their ranges for the consultant services are \$100-\$200 per hour depending on the project and the consultant's experience.

The Health Rights Hotline also talked with an independent consultant who locates expert witnesses for attorneys involved in health care litigation. She has had occasion to hire health care administrators to testify in court on health care cases. Based on her experience, expert witnesses who work in health care administration typically charge \$150-\$200 per hour for their services.

Given Ms. Rouillard's extensive experience and knowledge as a health care consumer advocate, the Hotline believes it is reasonable to request reimbursement at the rate of \$200 per hour.

Attorneys and Legal Graduates. To determine reasonable attorney fees for Ms. Landsberg and Ms. Reddi and law graduate fees for Ms. Franco, the Health Rights Hotline relied primarily on two sources: 1) the PUC's draft decision regarding rates paid for intervener attorneys and experts during each year from 2003 to 2005; and 2) a 2005 Declaration of Richard M. Pearl, Esq. in Support of Motion for Award of Reasonable Attorney's Fees. Mr. Pearl spent fourteen years as an attorney in federally funded legal services programs before going into private practice. For nearly 25 years, Mr. Pearl's practice has been a general civil litigation practice with an emphasis on cases and appeals involving court-awarded attorneys' fees. He is a member of the California State Bar's Attorneys Fees Task Force and has testified before the State Bar Board of Governors and the California Legislature on attorneys' fee issues. In short, Mr. Pearl is an expert on attorneys' fees.

In determining reasonable fees for attorneys, both the PUC and Mr. Pearl base the hourly amount for fees on time since admission to the bar. A separate, flat rate was used for paraprofessionals and legal staff members who had not yet gained admission to the bar (e.g., law clerks). Health Rights Hotline based its fee claims on the figures contained in the documents cited above. For a managing attorney with seven years of experience, the range of fees was \$320 to \$385 per hour. For a staff attorney with two years of experience, the hourly rate was between \$230 and \$385. Health Rights Hotline adopted the lower figure because no litigation was undertaken. Typical hourly rates for a law clerk/law school graduate were \$100 to \$240.

The Health Rights Hotline is requesting reimbursement at the rate of \$325 per hour for Ms. Landsberg, \$250 per hour for Ms. Reddi, and \$150 per hour for Ms. Franco.

3. Provide information showing that the Health Rights Hotline submitted an amended estimate as soon as possible when it learned that the total estimated amount had substantially increased

This application for an award of advocacy and witness fees is the first that the Health Rights Hotline has submitted to the Department. It is our understanding that this is the first request that the Department has received for compensation under the Consumer Participation Program. In preparing the submission, Hotline staff had to research the "market rates" for similar services, and had to calculate the number of hours each staff person spent on the Block Transfer Filing regulations. While some of that data was automated, we did not know what the total amount of the request would be until both elements had been researched and calculated. That occurred when we were preparing to submit our application for the award of fees.

As noted in my November 16, 2005 letter to the Department, when we prepared our initial estimate in May 2004, neither we nor the Department had any experience in estimating the amount of time we would be involved in the rulemaking process. Similarly, we had no idea what the “market rate” might be for each of the staff involved. Neither did we know that there would be more than one public comment period or that the Department would hold a hearing on the proposed regulations. As soon as we realized that the amount of the request substantially exceeded our initial estimate, we asked for the amended estimate. That realization occurred after we calculated the amount of time spent by each staff person and the hourly rate applied to each. When we realized that the amount being requested exceeded our original estimate, we submitted our amended estimate which happened to coincide with our submission.

I hope this answers the Department’s questions. Please contact me if you need any additional information.

Sincerely,

Shelley Rouillard
Program Director