

To Robin Gelburd, President of FAIR Health, and the Leadership of FAIR Health:

You may be the most unexpected recipient of an open letter in this entire series.

FAIR Health did not create California's SB 623.

FAIR Health did not negotiate the compromise between Uber and California's Legal Lobby.

FAIR Health did not decide which medical providers would be affected, how medical liens would be treated, or whether part of a medical bill should become void and unenforceable.

But your name ... and your data ... now sit near the center of one of the most consequential provisions in the law.

SB 623 provides that, in covered cases involving lien-based providers, a plaintiff's recovery for past medical expenses generally cannot exceed the **70th percentile of FAIR Health billed charges, or the 70th percentile of a comparable commercially recognized billed-charge database**, for the same or similar service in the applicable geographic area.

And the statute goes further.

For covered lien-based bills, amounts above the statutory maximum can become **void and unenforceable**.

That is no longer merely using FAIR Health as one piece of evidence. **That is using a FAIR Health percentile to help establish a legal ceiling with consequences for the underlying medical receivable.**

And that raises questions I believe FAIR Health should answer publicly: Were you contacted or consulted before SB 623 became law? Were you asked whether your database was appropriate for this particular legislative use? Did FAIR Health recommend the 70th percentile? What is FAIR Health's position on what California has now done with your data?

And perhaps most importantly: **Are you willing to become part of a collaborative effort to surgically repair what SB 623 got wrong?**

I Have a History With FAIR Health, And It Makes This Even More Interesting

Many years ago, I identified FAIR Health as a potentially valuable database for personal injury chiropractors and other providers to review when evaluating whether their billed charges were supportable.

I was trying to educate providers. I wanted them to understand the importance of reasonable billing.

I wanted them to use legitimate third-party data rather than simply deciding what to charge based upon what another office down the street happened to bill.

And when I listed FAIR Health as one of the databases providers could review, **FAIR Health sent me a cease-and-desist communication concerning my reference to its name and database saying its database was not to be used for personal injury billing support.**

I respected that.

FAIR Health obviously cared about how its name, data and services were being characterized and used.

But that history makes today's situation particularly striking.

When one educator referenced FAIR Health as a resource for PI chiropractors to review, FAIR Health cared enough about the use of its name and database to contact me.

Now the **State of California has written FAIR Health directly into a statute affecting personal injury medical damages and the enforceability of healthcare receivables.**

So I think it is more than fair to ask:

What is FAIR Health's response now? I genuinely want to know.

Because the answer matters.

FAIR Health Has Built Its Reputation Upon Neutrality

FAIR Health has built something enormously valuable. You aggregate immense amounts of healthcare claims information. You organize billed charges and allowed amounts geographically. You create percentile benchmarks that can help consumers, insurers, healthcare providers, researchers, regulators and policymakers better understand healthcare pricing.

That transparency has tremendous value.

FAIR Health data can illuminate the marketplace.

It can provide context. It can identify ranges. It can permit comparisons. It can help parties make more informed decisions.

But FAIR Health itself has long made an enormously important distinction:

FAIR Health does not itself determine what constitutes the "usual and customary" rate or the "reasonable value" of an individual medical service in every circumstance.

That distinction is critical.

Because there is a tremendous difference between: **"Here is what the data show."** ... and ... **"Therefore, nobody may legally charge, recover or enforce more than this number."**

The first is data. **The second is policy.**

A Percentile Is a Measurement, Not a Moral Judgment

The 70th percentile does not mean charges above it are fraudulent. It does not mean they are unnecessary. It does not mean the provider acted improperly. It does not mean the service was worth less.

It does not automatically account for the complexity of the patient, the expertise of the provider, the circumstances under which care was delivered, the financial risk assumed, or the delay in receiving payment.

It means something much narrower: A particular charge occupies a particular position within a distribution of reported charges for a procedure in a geographic area.

That is useful information.

But the 70th percentile does not become inherently “**reasonable**” simply because a legislature selects it. Nor does the 71st percentile suddenly become inherently “**unreasonable**.”

That line was drawn by government. Not by mathematics.

And I want to know whether FAIR Health agrees with how its data are being used.

SB 623 Has Changed the Role of FAIR Health’s Benchmark

A FAIR Health benchmark can appropriately serve as information or evidence.

An insurer may consider it. A provider may consider it. An attorney may consider it when evaluating damages. An expert may consider it. A court may find it relevant. A regulator or policymaker may study it. A consumer may consider it.

But SB 623 goes considerably further.

It takes one percentile from that database and places it into a statutory framework limiting recoverable past medical expenses in a defined category of personal injury cases.

And where lien-based medical bills are involved, the consequences extend beyond merely limiting what gets shown to a jury.

The excess amount can become void and unenforceable.

That is fundamentally different.

So FAIR Health should answer: **Was your database designed to function this way as a statutory ceiling?**

And if not: **Are you comfortable with legislators using it that way?**

Robin, you are also an attorney. So you understand the impact.

FAIR Health Is the Expert in Payment Data, So What Should America Use?

There is an even larger question that deserves FAIR Health's expertise.

This debate is not going to remain limited to one California statute forever.

Around the country, courts, insurers, lawmakers, attorneys and providers repeatedly confront the same basic question: **How should the reasonable value of healthcare be evaluated in personal injury?**

That is not an easy question.

Provider billed charges can be criticized. Health insurance contracted rates reflect negotiated relationships. Medicare and Medicaid rates are government-created reimbursement systems. Workers' compensation schedules were created for different policy purposes. Cash rates represent another market.

Personal injury lien-based treatment involves yet another economic model.

And FAIR Health occupies a unique position because **healthcare charge and payment data are your area of expertise.**

So I am not merely asking FAIR Health to criticize what California has done.

I am asking FAIR Health to help provide a better answer. As what is now set for California may expand across the country, the country looking to FAIR Health and using its free database.

If FAIR Health should not be used, what should be used?

What data source, or combination of data sources, should courts, legislatures and stakeholders consider when evaluating reasonable medical charges?

Should there be multiple reference points? Should billed charges be considered alongside allowed amounts? Should government reimbursement schedules be included but appropriately weighted? Should geographic differences matter more? Should specialty, complexity and provider expertise matter more? Should the financial realities of delayed-payment healthcare matter and be incorporated? Should the appropriate analysis involve a range rather than one legislatively selected percentile?

FAIR Health is exceptionally qualified to help answer these questions.

And If FAIR Health Is the Right Database, Will You Keep It Accessible?

There is another practical issue.

If governments are going to embed FAIR Health into statutes... If courts are going to rely upon FAIR Health... If automobile insurers are going to cite FAIR Health... If attorneys are going to use FAIR Health... And if providers may have their charges limited or rendered partially unenforceable based upon FAIR Health...

Then the people whose financial rights are being affected need meaningful access to the same information.

That includes independent medical practices.

It includes small chiropractic offices. It includes physical therapy practices. It includes pain physicians. It includes surgeons and specialists.

And it includes patients.

If FAIR Health becomes part of the legal infrastructure governing PI medical bills across California, and perhaps eventually across America, I ask:

Will FAIR Health commit to continuing meaningful free access to the information necessary for affected providers and patients to understand the benchmark being used against them?

Because fairness requires more than saying: **“The database says this.”**

The affected provider should be able to see and understand the database too.

Otherwise, we risk creating a system in which government adopts a private benchmark, sophisticated institutional stakeholders can access and understand it, and small healthcare businesses must defend themselves against data they cannot meaningfully examine.

That would be profoundly problematic.

The Database Does Not Necessarily Measure the Economics of PI Healthcare

There is another issue FAIR Health should examine closely.

Personal injury medicine can involve an economic model fundamentally different from ordinary insured healthcare.

Consider the lien-based provider.

Treatment is delivered today. Employees are paid today. Rent is paid today. Equipment is purchased today. Malpractice insurance is paid today. Supplies are paid for today.

But the provider may wait a year. Two years. Often longer.

And there may be no guarantee of full payment.

Liability may be disputed. Coverage may be limited. The case may fail. Settlement proceeds may be inadequate. The provider may ultimately be pressured to accept a substantial reduction.

That provider is not merely delivering healthcare. **The provider is also financing healthcare.**

That risk and delay have economic value.

So the question is not whether FAIR Health has good data. **Clearly it does.**

The question is whether a commercial healthcare claims database fully captures the economics of a medical provider who agrees to treat an injured person today and potentially wait years to be paid.

That deserves analysis. Not assumption.

There Is a Difference Between Billed Charges and Allowed Amounts

FAIR Health and Robin you as an attorney as well know this perhaps better than anyone.

A billed charge is not the same thing as an insurer-negotiated allowed amount.

One reflects what providers charge. Another reflects negotiated in-network arrangements.

Medicare is different. Workers' compensation is different. Cash payment is different. Lien-based personal injury healthcare is different.

That complexity is precisely why no single number should casually be transformed into an unquestionable definition of **"reasonable value."**

Healthcare price data requires context.

My Concern Is Bigger Than SB 623

Today SB 623 applies to a defined category of California rideshare and related network-company cases.

But what happens once lawmakers become comfortable saying: **"We already have the answer. Use FAIR Health at the 70th percentile."**

Why limit it to rideshare cases? Why not every automobile accident? Why not premises liability? Why not other categories of personal injury? Why not other states?

And then comes the next question: **Why 70?**

Why not 60? Why not 50? Why not 80 or even 90?

Especially when, as I understand it: **FAIR Health incorporates medicare rates into its averages which drives them down by about 20%. FAIR Health uses only the first three digits of the zip code to bring in poorer economic areas which drives down the averages. FAIR Health takes years before it updates its data for the free site so missing cost of living and other market increases for potentially years.**

Is this all true? If not true, can you explain how FAIR Health is accurate? And if there are things done in the presentation of the data that brings the averages down, I ask the question:

Would FAIR Health agree that for personal injury the more appropriate percentile should be the 90th Percentile, not the 70th Percentile?

That is why FAIR Health has an institutional interest in this issue.

Not because FAIR Health should defend physicians. Not because FAIR Health should oppose automobile insurers. Not because FAIR Health should enter the politics of personal injury.

But because FAIR Health should protect the integrity of the meaning and use of its own data.

Do Not Let Neutral Data Become Political Cover

One of my greatest concerns is how easily FAIR Health can be invoked rhetorically.

A policymaker can say: **“We are not imposing an arbitrary fee schedule. We are simply using FAIR Health.”**

That sounds objective. Scientific. Neutral.

But the neutrality belongs to the **data**. The policy decision belongs to the policymaker.

Choosing the 70th percentile is a policy decision. Making it a ceiling is a policy decision. Determining which claims it applies to is a policy decision. Making the excess void and unenforceable is a policy decision.

Those choices belong to California.

FAIR Health should not allow those choices to be mistaken for FAIR Health’s own conclusions.

So What Is FAIR Health’s Position on SB 623?

That is the central question of this letter.

I am asking FAIR Health to respond publicly.

Were you contacted before passage? Were you consulted? Did you provide input?

Were you aware that California intended to use your 70th-percentile billed-charge data in this manner?

Do you believe FAIR Health is an appropriate benchmark for this purpose?

Do you believe the 70th percentile is the correct benchmark?

Do you support turning that benchmark into a statutory ceiling?

Do you support consequences that can affect the enforceability of the underlying medical bill?

If you disagree with what California has done, what approach would FAIR Health recommend instead?

And finally:

Will FAIR Health join the collaborative effort to surgically repair SB 623?

I Am Inviting FAIR Health to the Table

Throughout *The Great Betrayal*, my argument has not been that California should repeal every reform and return to the status quo.

I have consistently advocated what I call the **Surgical Strike**.

Preserve legitimate tort-reform objectives.

Attack unreasonable billing. Attack unnecessary treatment. Attack fraud.

Require transparency. Address inappropriate referral relationships.

Address abusive medical funding.

Permit appropriate limits upon what may be presented to juries when inflated medical specials are being used to distort verdicts.

But do not damage legitimate healthcare in the process.

FAIR Health can contribute something few other stakeholders can: **Actual expertise in healthcare charge and payment data.**

So I am inviting FAIR Health into the discussion.

Come to the table. Explain the data. Explain its strengths. Explain its limitations.

Tell California what it got right. Tell California what it got wrong.

And help us determine what an intellectually honest, nationally scalable approach to evaluating reasonable medical charges should actually look like.

My Request to FAIR Health

I am asking FAIR Health to do five things:

First, publicly state whether FAIR Health was contacted or consulted before SB 623 became law and what role, if any, it played.

Second, publicly clarify FAIR Health's position on California's use of the 70th percentile in SB 623.

Third, explain whether FAIR Health believes its database is appropriate for evaluating reasonable value in personal injury, and, if so, how it should properly be used.

Fourth, if FAIR Health believes another methodology would be better, tell policymakers and stakeholders what that methodology should be.

Fifth, become part of the collaborative Surgical Repair of SB 623 and help build a model that could work not merely in California, but across America.

And if FAIR Health is going to become a foundational benchmark used by government, courts and claims professionals, please also address access:

Will FAIR Health make sure providers, attorneys, courts and patients continue to have meaningful free access to the information being used to judge their bills?

Because the answer cannot simply be: **"Trust the database."**

The answer must be: **"Understand the database and its limitations."**

And nobody is better positioned to help America do that than FAIR Health.

FAIR Health did not create this controversy. But your data has now become part of it.

That gives FAIR Health an opportunity to do something important: **Not advocate for one stakeholder, but advocate for the integrity of the data itself.**

And if FAIR Health is part of the right answer, help us build a methodology that is transparent, accessible, economically sound, and fair to everyone.

Most importantly, **join us at the table.**

Because the Surgical Repair should not be written solely by Uber, the Legal Lobby, the Medical Lobby, automobile insurers, or politicians. It should include people who actually understand the healthcare charge and payment data upon which these decisions are being based.

FAIR Health, that means you.

You once cared enough about how I referenced FAIR Health to send me a cease-and-desist communication.

Today, the State of California has done something exponentially more consequential: **It has written FAIR Health directly into the economics of personal injury healthcare.**

So I respectfully ask: **What is FAIR Health's response to SB 623?**

And perhaps even more importantly: **Will you help us surgically repair it?**

Reform the Abuse. Preserve the Value. Protect the Patient.

And pursue the outcome every stakeholder should want:

Better Patient Outcomes.
Better Provider Outcomes.
Better Case Outcomes.
Better Claim Outcomes.

Respectfully,



Michael Coates, Esq.

President, Personal Injury Made Easy

PS: Robin and FAIR Health leadership, years ago FAIR Health cared enough about how I referenced your database as a resource for personal injury chiropractors to send me a cease-and-desist communication. Today, California has gone dramatically further by writing FAIR Health into SB 623 and attaching significant legal and economic consequences to the 70th percentile of your data. **Were you contacted or consulted before this happened? Do you agree with how your data are being used? If FAIR Health is not the right benchmark, what should California, and ultimately the rest of the country, use instead? If FAIR Health is the right benchmark, will you continue providing**

meaningful free access so the providers and patients affected by it can see and understand the same data being used to judge their medical bills? Most importantly, I invite FAIR Health to join the collaborative Surgical Repair. We don't need another side in this fight. **We need your expertise at the table.**