ATTACHMENT C

RESPONDENT(S) ARGUMENT

RESPONDENT'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Steven J. Blancarte was the City Manager of the City of Irwindale. As such, he was the chief executive officer of the city, responsible to the elected City Council for administering all of its programs and appointing its staff. Irwindale is a small city, with only about 1500 inhabitants, but it has a large annual operating budget of approximately 55 million dollars.

As is the position of any City Manager, Mr. Blancarte's work was highly stressful. The small size of the electorate and the large budget created a highly charged political environment which Mr. Blancarte was required to navigate. He served at the pleasure of the City Council and could be terminated by a majority at any meeting. He was required to serve as the buffer between the City Council and City staff. Any complaints from the City Council, members of the public and representative of industry were ultimately his responsibility.

On June 10, 2001, he suffered tremendous pain in his chest and abdomen. He was rushed to the hospital where he was diagnosed with a descending or Type B aortic dissection, a delamination of the layers of the aorta, allowing the blood to flow through two seperate channels. The dissection ran from about his collarbone to his groin, the longest the doctors had ever seen on a living patient. In addition, the weakened tissue had ballooned into an aneurysm. As the Administrative Law Judge pointed out, it was a miracle Mr. Blancarte

survived.

Mr. Blancarte's doctors determined that surgery was not feasible, and that the only possible treatment was to place him on medication in an effort to reduce his blood pressure. They hoped thereby to relieve the stress on his aortic walls and lessen the risk of a rupture of the aneurysm, which would almost certainly kill him. They hoped to maintain his blood pressure with systolic in the 80's and a diastolic in the 60's.

Mr. Blancarte returned to work in July of 2001. Over the next four years, he monitored his blood pressure on instructions from his doctors. He found that, despite the agressive treatment with medication, it was impossible to keep his blood pressure as low as his doctors wanted. He found that his blood pressure would average 105/65, and during particularly stressful periods, it would go as high as 160/110.

Mr. Blancarte's doctors monitored the size of his aneurysm with CT scans. They discovered that it was expanding at a particularly rapid rate. By 2005, it had expanded to 6 centimeters, compared to a normal range of about 3 centimeters. In September of 2005, the Chief of Service of Kaiser Permanente's Regional Department of Cardiac Surgery met with Mr. Blancarte. The doctor told him that as a result of the growth of the aneurysm, he needed to reduce all the stress in his life and recommended surgery. The surgery available at the time was extensive and invasive, with a 5% chance that he would die as a result and a 10% chance that he would be paralyzed. Not liking those odds, Mr. Blancarte declined surgery at the time.[1] However, to reduce the stress which was causing the aneurysm to expand, he decided

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[1] Since then, surgical methods have improved and, at the time of the hearing, Mr.
(continued...)

to retire with the concurrence of his doctors.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that the respondent is substantially incapacitated from performing the usual and customary duties of his position. The injury or condition with is the basis of the disability must be permanent or of an extended and uncertain duration.

Respondent presented evidence that performing the ususal and customary duties of a city manager would kill him. It was undisputed that his position was highly stressful and rendered it impossible for Mr. Blancarte to keep his blood pressure as low as his doctors hoped. Expert medical testimony demonstrated that, as a result, Mr. Blancarte's aneurysm expanded at an alarming rate. If it continued to expand, it would burst, and he would die.

The medical evidence presented by staff did not contradict this. It showed a "well-documented" dissection of Mr. Blancarte's descending aorta, and a large aneurysm which could be expected to increase in size. It showed that, when examined after his retirement, Mr. Blancarte's blood pressure was low, although not as low as his doctors wanted it to be. Most importantly, staff's medical evidence did not address the stress of Mr. Blancarte's work. It is no wonder that the Administrative Law Judge credited respondent's evidence.

Staff contends that respondent's condition constitutes a risk or incapacitation,

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[1](...continued)
Blancarte had underdone the first step in a procedure to repair the aneurysm. (Contrary to the Administrative Law Judge's opinion, this procedure did not involve the dissection.) As the Administrative Law Judge noted, this hearing involves Mr. Blancarte's application for disability retirement in September, 2005.

rather than a present substantial incapacitation, and thus his incapacity is prospective or speculative in nature. They cite *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854.

Hosford involved a highway patrol sergeant who had suffered a back injury lifting an unconscious victim. This injury aggravated previous injuries suffered in two prior accidents. His treating doctor gave him an "excuse" to remain off work indefinitely due to subjective pain, subjective fear of injury, and because he was "going to law school, and I therefore suggest a possible retirement for him," even though no further treatment was necessary. The court concluded that he was substantially able to perform his normal duties. *Compare Quintana v. Board of Administration* (1976) 54 Cal.App.3d 1018, involving similar facts in which the trail court, exercising its independent judgment, determined that the Board had erred in denying a disability retirement. Of relevance here, the court wrote:

> "Throughout the hearing, and again in his briefs, Hosford relied and relies heavily on the fact that his condition increases his chances for further injury. As the Board correctly points out, however, this assertion does little more than demonstrate that his claimed disability is only prospective (and speculative), not presently in existence." *Id.* at 863.

Mr. Blancarte's condition is far from speculative. This is not a case in which Mr. Blancatre might or might not suffer some other injury in the future. Continuing to perform the duties of a city manager would cause his aneurysm to expand. Like an over-inflated balloon, one cannot predict the moment it would burst, but it is certain that it would. When it did, Mr. Blancarte would die.

The more relevant case is *Wolfman v. Board of Trustees* (1983) 148 Cal.App.3d 787.[2] That case involved a teacher who suffered from severe asthma and chronic bronchitis. She was required to take steroids, potent and dangerous drugs with adverse side effects of tiredness, weakness, susceptibility to diabetes, bleeding and hypertension. In her last year of teaching, she was required to increase her dosage and, even so, became increasingly ill. Her doctors advised her not to return to teaching because of the risk of worsening her condition due to her exposure to the rampant infections harbored by small children. The court found her disabled. It wrote:

> "*Although physically capable at the time of hearing to perform her duties, it would be medically unwise*. Her improved state was due to the discontinuance of her classroom contacts and a resultant decrease in the steroids she required. Reinstatement would initiate the vicious circle of infection leading to severe pulmonary attack and increased necessity for dangerous steroid therapy." *Id.* at 791 (Emphasis added)

It found her disabled from her usual and customary duties, because "[p]roximity to small children and their rampant infectious agents is not a remote occurrence nor an activity in which she indulges outside the classroom." *Ibid.* Nor was her condition "speculative" within the meaning of *Hosford.* The court wrote:

> "During her final years of employment she consistently reached a

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[2] Although *Wolfman* considered a disability under Education Code §22122, which it noted required a finding of "impairment," rather than the more stringent standard of "incapacity," the court concluded that Ms. Wolfman was disabled under the more stringent standard, and was a fortiori disabled under the less stringent statute.

> medically determinable stage of severity. It was not merely a prospective probability, but a medical certainty." *Ibid.*

Quoting *Quintana v. Board of Administration* (1976) 54 Cal.App.3d 1018, 1021, it concluded:

> "Wolfman suffers from a chronic disease, preventing her from effectively performing her duties as a teacher. . . '[T]he provisions for disability retirement are also designed to prevent the hardship which might result when an employee who, for reasons of survival, is forced to attempt performance of his duties when physically unable to do so.'" *Ibid.*

Like Ms. Wolfman, Mr. Blancarte suffers from a chronic condition which has "reached a medically determinable stage of severity," which is "not merely a prospective probability, but a medical certainty." Reinstatement would lead to uncontrollable high blood pressure and eventually his death. He is substantially incapacitated from performing his duties.

The Administrative Law Judge correctly analyzed the law and facts in his Proposed Decision. Respondent argues that the Board should adopt the Proposed Decision.