

**ATTACHMENT A**

**RESPONDENT'S PETITION FOR RECONSIDERATION**

Roger A. Dreyer\*  
Joseph J. Babich\*  
Robert A. Buccola\*  
Christopher W. Wood  
Steven M. Campora  
Craig C. Sheffer  
Stephen F. Davids  
Hank G. Greenblatt\*

Of Counsel, John W. Jefferson

\* Certified Specialist in  
Civil Trial Advocacy by  
the National Board  
of Trial Advocacy

**DREYER | BABICH | BUCCOLA  
WOOD | CAMPORA, LLP**

Trusted and Experienced

20 Bicentennial Circle, Sacramento, CA 95826  
Phone: (916) 379-3500 | Fax: (916) 379-3599  
www.dbbwlaw.com

Auburn Office:  
(530) 889-1800

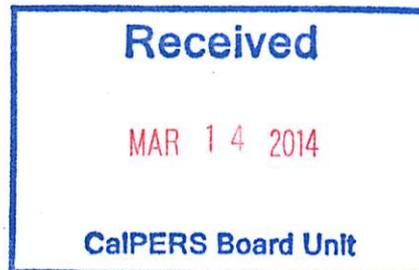
San Jose Office:  
(408) 275-1300

Stanley P. Flesman  
Joseph R. Yates  
Robert B. Bale  
Jonathan R. Hayes  
Catia G. Saralva  
Stacey L. Roberts  
Jason J. Sigel  
Noeml Esparza  
Justin M. Gingery  
Ryan L. Dostart  
Robert M. Nelsen  
Lisa J. Ventura  
Joshua T. Edlow  
Larry Q. Phan  
Christopher S. Costa  
Kelsey J. Fischer

March 13, 2014

**Sent via U.S. Mail & Facsimile: (916) 795-3972**

Cheree Swedensky, Assistant to the Board  
Executive Office  
California Public Employees' Retirement System  
P.O. Box 942701  
Sacramento, CA 94229-2701



Re: *In the Matter of the Application for Disability Retirement of MICHELE G. DEGUZMAN, Respondent, and DEPARTMENT OF HEALTH CARE SERVICES, Respondent*

Dear Ms. Swedensky:

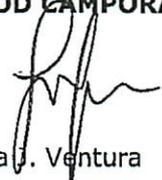
Enclosed please find Respondent's Petition for Reconsideration. The original documents will follow in the mail.

Please contact me if you have any questions or concerns.

Very truly yours,

**DREYER BABICH BUCCOLA  
WOOD CAMPORA, LLP**

By

  
Lisa J. Ventura

/LJV  
Enclosures

Cc: Gina M. Ratto  
Interim General Counsel  
Facsimile Only- (916) 795-3972

1 HANK G. GREENBLATT, ESQ. / SBN: 143415  
 LISA J. VENTURA, ESQ. / SBN: 284590  
 2 **DREYER BABICH BUCCOLA WOOD CAMPORA, LLP**  
 20 Bicentennial Circle  
 3 Sacramento, CA 95826  
 Telephone: (916) 379-3500  
 4 Facsimile: (916) 379-3599

5 Attorneys for Respondent  
 6

7  
 8 **BOARD OF ADMINISTRATION**  
 9 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**  
 10

11 In the Matter of the Statement of Issues  
 12 Against:

OAH Case No.: 2013030884  
 Case No.: 2013-0015

13 MICHELE [REDACTED],  
 14 Respondent,  
 15 and

**PETITION FOR RECONSIDERATION**

16 DEPARTMENT OF HEALTH CARE  
 17 SERVICES,  
 18 Respondent.

19  
 20 A Decision was filed in the above-entitled case on February 24, 2014. Respondent,  
 21 Michele [REDACTED], petitions for reconsideration of the Board Decision dated and mailed on  
 22 February 24, 2014.

23 The ALJ's decision, which the Board adopted as its own, turns on Respondent Michele  
 24 [REDACTED]'s failure to provide competent medical testimony to support her ongoing disability.  
 25 Ultimately, the Decision is critical of Ms. [REDACTED]'s failure to call her orthopedic surgeon,  
 26 Thomas Voegeli, M.D., to testify on her behalf. In lieu of incurring significant costs to call Dr.  
 27 Voegeli to testify, Respondent's medical records, specifically, her disability form created by  
 28 CalPers and signed under oath by Dr. Voegeli, should have been admitted into evidence and

1 considered by the ALJ with regards to Respondent's medical condition and ongoing disability.  
2 CalPers was in possession of all of Respondent's Kaiser records, furthermore, Joseph Serra,  
3 M.D. who was hired by CalPers, also reviewed Respondent's Kaiser records in formulating his  
4 opinion. Respondent contends that such medical records, including the disability form signed  
5 by Dr. Voegeli, supports her claim for disability and petitions for reconsideration since such  
6 evidence was not considered by the ALJ. Respondent contends that the disability form created  
7 and used by CalPers is an exception to the hearsay rule as it is a business record. (California  
8 Evidence Code section 1271) Furthermore, it was a document that was relied upon and  
9 considered by Dr. Serra, and upon which he was cross examined and offered opinions. CalPers  
10 cannot have it both ways in that Dr. Serra relies on such records to form his opinion, yet the  
11 documents themselves are not admitted into evidence.

12       When there is competent medical evidence available by way of medical records, the  
13 burden should not be on the member to incur significant costs to call her Kaiser doctor to  
14 prepare and testify at the hearing. In her written argument, Respondent previously provided  
15 this Board with Kaiser's cost sheet that outlines the costs that Respondent would incur in calling  
16 Dr. Voegeli to prepare and testify at the hearing. Respondent is not aware of any provision that  
17 allows her to be reimbursed for such costs, furthermore, Respondent is not aware of any law or  
18 statute that requires her to call her doctors to testify, yet that seems to be the overriding  
19 criticism here of Respondent. Respondent is only expected to submit "competent, objective  
20 medical evidence." (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689) Respondent  
21 petitions for reconsideration on the basis that the ALJ's proposed decision did not take into  
22 consideration medical evidence available, by way of Respondent's medical records. The ALJ's  
23 proposed decision rests solely on the testimony of Joseph Serra, M.D., hired by CalPers, who  
24 only met with Respondent on one occasion, versus Respondent's treating doctors that have  
25 been evaluating her for almost four years and have taken her to surgery. Respondent's medical  
26 records, including the disability form signed by Dr. Voegeli, should have been considered as  
27 medical evidence by the ALJ in preparing his proposed decision.

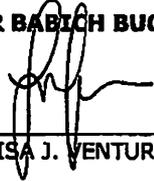
28

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  
26  
27  
28

Injustice remains for CalPers to demand, insist and expect that their member incur thousands of dollars in costs based on the refusal to admit documents that were considered by Dr. Serra and where an exception to hearsay exists.

DATED: 3/13/14

**DREYER BABICH BUCCOLA WOOD CAMPORA, LLP**

By: 

LISA J. VENTURA