ATTACHMENT C

RESPONDENT'S ARGUMENT

ORIGINAL

KAMALA D. HARRIS
Attorney General of California
ALICIA M. B. FOWLER
Senior Assistant Attorney General
MICHAEL E. WHITAKER
Supervising Deputy Attorney General
State Bar No. 154582
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2092
Fax: (213) 897-1071
E-mail: Michael.Whitaker@doj.ca.gov

Attorneys for Respondent Department of California Highway Patrol

Received
JUN - 4 2014
CalPERS Board Unit

BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

IN THE MATTER OF THE ACCUSATION (INVOLUNTARY REINSTATEMENT FROM INDUSTRIAL DISABILITY RETIREMENT) OF **ANGELA DEAN,** RESPONDENT, AND **CALIFORNIA HIGHWAY PATROL,** RESPONDENT.	Case No. 2012-0760 OAH Case No. 2013010502 **RESPONDENT DEPARTMENT OF CALIFORNIA HIGHWAY PATROL'S ARGUMENT AGAINST ADOPTION OF PROPOSED DECISION**

Respondent Department of California Highway Patrol (CHP) submits the following argument against the adoption of the Proposed Decision by the Board of Administration for the California Public Employees' Retirement System (CalPERS).

The CHP objects to the adoption of the Proposed Decision because Administrative Law Judge Karl S. Engeman (ALJ Engeman) did not review and consider the CHP's Closing Brief

which was filed and served on or about March 11, 2014.[1] Apparently, ALJ Engeman only reviewed and considered the CHP's Reply Brief as noted on page 1 of the Proposed Decision. Moreover, the Proposed Decision, itself, demonstrates that ALJ Engeman did not consider the CHP's Closing Brief because he did not address all of the arguments and issues advanced by the CHP including whether reinstatement from industrial disability retirement is a two-step process under Government Code sections 21192 and 21193. In addition, there is no discussion in the Proposed Decision concerning whether an offer by an employer under Government Code section 21193 is necessary before reinstatement can be effectuated. In this matter, there is evidence that the CHP did not convey to Respondent Angela Dean the requisite offer under Government Code section 21193. Therefore, Respondent Dean is not eligible for reinstatement to her former peace officer position with the CHP.

By failing to consider the arguments and issues presented in the Closing Brief, the CHP has been deprived of due process and prejudiced. Accordingly, the CHP requests that CalPERS reject the Proposed Decision. Further, the CHP requests that CalPERS remand the matter to the Office of Administrative Hearings so ALJ Engeman can review and address the issues and arguments proffered by the CHP in the Closing Brief, and can prepare another Proposed Decision for CalPERS's consideration.

Dated: June 2, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
ALICIA M. B. FOWLER
Senior Assistant Attorney General

MICHAEL E. WHITAKER
Supervising Deputy Attorney General
Attorneys for Respondent Department of California Highway Patrol

LA2013607808

[1] A true and correct copy of the CHP's Closing Brief is attached as Exhibit 1.

Exhibit "1"

KAMALA D. HARRIS
Attorney General of California
ALICIA M. B. FOWLER
Senior Assistant Attorney General
MICHAEL E. WHITAKER
Supervising Deputy Attorney General
State Bar No. 154582
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2092
Fax: (213) 897-1071
E-mail: Michael.Whitaker@doj.ca.gov

Attorneys for Respondent Department of California Highway Patrol

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

IN THE MATTER OF THE REINSTATEMENT FROM DISABILITY RETIREMENT OF **ANGELA DEAN,** RESPONDENT, AND **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL,** RESPONDENT.	Case No. 2013010502 **RESPONDENT DEPARTMENT OF CALIFORNIA HIGHWAY PATROL'S CLOSING BRIEF** **HEARING:** Date: December 19, 2013 ALJ: Karl S. Engeman

TABLE OF CONTENTS

Page

Introduction 1

Statement of Facts & Procedural History 2

Argument 3

I. Reinstatement from Industrial Disability Retirement is a Two-Step Process under Government Code Sections 21192 and 21193 3

II. CalPERS did Not meet its Burden in Establishing that Dean is Not "Still Incapacitated Physically or Mentally for Duty" 4

A. Peace Officer Minimum Standards are At-Issue in Assessing Whether Dean is Not "Still Incapacitated" for Duty 4

B. If Peace Officer Minimum Standards are Part of a CHP Officer's Usual and Customary Duties, then CalPERS's Evidence did Not Show Dean to be Free from any Physical, Emotion or Mental Condition 9

C. CalPERS did Not Proffer Sufficient Evidence that Dean was able to Perform the Usual duties of a CHP Officer as of December 2013 11

D. Dean is Unable to Perform all of the Usual and Customary Duties of a CHP Officer according to Dr. Minor 12

III. There was No Offer to Reinstate as Required by Section 21193 14

Conclusion 15

TABLE OF AUTHORITIES

Page

CASES

Barajas v. Oren Realty & Development Co.
(1997) 57 Cal.App.4th 209 9

Beckley v. Board of Admin.
(2013) 222 Cal.App.4th 691 ..... 12, 13

Commission on Peace Officer Standards & Training v. Superior Court
(2007) 42 Cal.4th 278 ..... 6, 15

County of Riverside v. Superior Court
(2002) 27 Cal.4th 793 5

Dyna-Med, Inc. v. Fair Employment & Housing Com.
(1987) 43 Cal.3d 1379 9

Gomes v. County of Mendocino
(1995) 37 Cal.App.4th 977 8

Haywood v. American River Fire Protection Dist.
(1998) 67 Cal.App.4th 1292 3

Hulings v. State Dept. of Health Care Servs.
(2008) 159 Cal.App.4th 1114 7

In re Willie Starnes
(2000) PERS Dec. No. 99-03 8

Mansperger v. Public Employees' Retirement Sys.
(1970) 6 Cal.App.3d 873 9

Mary M. v. City of Los Angeles
(1991) 54 Cal.3d 202 5

Phillips v. County of Fresno
(1990) 225 Cal.App.3d 1240 8

Pitts v. City of Sacramento
(2006) 138 Cal.App.4th 853 7

Sager v. County of Yuba
(2007) 156 Cal.App.4th 1049 ..... 6, 7, 9, 13

Sara M. v. Superior Court
(2005) 36 Cal.4th 998 4

TABLE OF AUTHORITIES
(continued)

Page

REGULATIONS/STATUTES

Cal. Code Regs., Title 2,
§ 172.4 6
§ 172.5 6
§ 172.6-172.8 6

Cal. Code Regs., Title 11,
§ 1950 et seq. 6
§ 1954 11
§ 1954, subd. (a) 6
§ 1954, subds. (c)-(d) 11
§ 1955 11
§ 1955, subd. (a) 6
§ 1955, subd. (c) 11
§ 1955, subd. (d) 11

Gov. Code
§ 1031 ..... passim
§ 1031, subd. (f) 5, 6
§ 18935 6
§ 21192 ..... passim
§ 21193 ..... passim
§ 31725 8

Veh. Code
§ 2268 12

INTRODUCTION

The Board of Administration of the California Public Employees' Retirement System (CalPERS) has the burden of proof to establish that Respondent Angela Dean (Dean) should be reinstated from industrial disability retirement under the Public Employees' Retirement Law (PERL). First, CalPERS must establish that Dean is no longer incapacitated from performing the usual duties of her prior position with Respondent Department of California Highway Patrol (CHP) under Government Code section 21192. Second, CalPERS must prove that, under Government Code section 21193, the CHP has made an offer to reinstate Dean to her peace officer position. CalPERS has failed on both counts.

For purposes of Government Code section 21192, CalPERS's expert witness's opinion regarding whether Dean is still physically incapacitated is faulty when compared to the opinion of Dean's expert witness, John Champlin, M.D. With Dean's long history of debilitating orthopedic conditions involving her back, knees and shoulders, CalPERS did not demonstrate that she could perform the CHP's 14 Critical Physical Activities. In fact, CalPERS relies upon stale evidence. Dr. Frank Minor examined Dean in December 2011 for about an hour and 15 minutes. He has not seen or examined her since December 2011, two years before the evidentiary hearing in this matter. Without current and competent evidence regarding Dean's physical functioning, CalPERS has not established that Dean is no longer incapacitated. Furthermore, because peace officer minimum standards were not applied, CalPERS has not shown that Dean is not " still incapacitated, physically or mentally." CHP posits that peace officer minimum standards do and should apply for two simple reasons: officer safety and safety of the public. Exempting CalPERS from proving that Dean meets minimum standards creates an undue risk of harm.

Even if CalPERS met the requirements of Government Code section 21192, it has not met the requirements under Government Code section 21193 Simply put, CalPERS has failed to proffer evidence to establish that the CHP has offered to reinstate Dean. On the other hand, CHP produced uncontroverted evidence that no offer has been made to Dean.

CalPERS has not produced sufficient, competent evidence to meet both steps of the reinstatement process under the PERL. Consequently, the CHP's appeal of CalPERS's decision, that Dean should be reinstated to her prior peace officer position, should be sustained.

STATEMENT OF FACTS & PROCEDURAL HISTORY

Dean is a former peace officer employed by the CHP. (Exh. 105.) Dean applied for industrial disability retirement through CalPERS, and CalPERS granted her industrial disability retirement effective March 2001. (Exh.1.) Based upon the industrial disability retirement decision, Dean was separated from civil service effective March 6, 2001. (Exh. 106.) Since March 2001, Dean has not been a peace officer in California. (Exh. 11.)

In June 2012, based upon medical information obtained from an examination performed by Frank Minor, M.D. in December 2011 (Exh. 5), CalPERS determined that Dean was no longer substantially incapacitated from performing the job duties of a CHP officer, and initially determined that Dean should be reinstated to her former peace officer position. (Exh. 2.) Subsequent to receiving the June 2012 notice from CalPERS, Dean appealed the reinstatement decision. (Exh. 3.) The CHP also appealed CalPERS's initial reinstatement decision. (Exh. 4, p. 5:8-9.)

An evidentiary hearing was conducted in this matter before the Office of Administrative Hearings (OAH) on December 19, 2013. The OAH received into evidence Exhibits 1 through 11 introduced by CalPERS. CHP proffered Exhibits 100 through 112 which were admitted, and the OAH received into evidence Exhibits A, B, H through T offered by Dean. Dr. Champlin, Dr. Minor, CHP Sergeant Brent Carter, CHP Analyst Sharil Smith, and Dean testified at the hearing.[1]

[1] A true and correct copy of the hearing transcript is attached to this brief as Exhibit A. The hearing transcript will be cited to as "TR" in this brief.

ARGUMENT

I. REINSTATEMENT FROM INDUSTRIAL DISABILITY RETIREMENT IS A TWO-STEP PROCESS UNDER GOVERNMENT CODE SECTIONS 21192 AND 21193[2]

The first step of the reinstatement process is governed by Government Code section 21192 (Section 21192) which states in part that:

> The board, or in case of a local safety member, other than a school safety member, the governing body of the employer from whose employment the person was retired, shall also cause the examination to be made upon application for reinstatement to the position held at retirement or any position in the same class, of a person who was incapacitated for performance of duty in the position at the time of a prior reinstatement to another position. The examination shall be made by a physician or surgeon, appointed by the board or the governing body of the employer, at the place of residence of the recipient or other place mutually agreed upon. Upon the basis of the examination, the board or the governing body shall determine whether he or she is still incapacitated, physically or mentally, for duty in the state agency, the university, or contracting agency, where he or she was employed and in the position held by him or her when retired for disability, or in a position in the same classification, and for the duties of the position with regard to which he or she has applied for reinstatement from retirement.

In other words, CalPERS must first establish that Dean is no longer incapacitated from performing the usual duties of a CHP officer. The second step in the reinstatement process requires that the CHP offer to reinstate Dean to her former position as a CHP officer. Government Code section 21193 (Section 21193) states in part that:

> If the determination pursuant to Section 21192 is that the recipient is not so incapacitated for duty in the position held when retired for disability or in a position in the same classification or in the position with regard to which he or she has applied for reinstatement and his or her employer offers to reinstate that employee, his or her disability retirement allowance shall be canceled immediately, and he or she shall become a member of this system.

Thus, only when both steps are fully met will a former employee be reemployed into his or her former position, or a position to which he or she seeks reinstatement. (See generally *Haywood v. American River Fire Protection Dist.* (1998) 67 Cal.App.4th 1292, 1305 ["if an employee on disability retirement is found not to be disabled any longer, the employer **may** reinstate the employee, and his disability allowance terminates"].)

---

[2] For the sake of brevity, Government Code sections 21192 and 21193 may be referred to as the "Reinstatement Statutes" in this brief.

The CHP's interpretation of Section 21193's requirement, that an offer of reinstatement must be rendered before a former employee may be reemployed, is supported by CalPERS. First, in the letter of June 5, 2012, to Dean, CalPERS states:

> Actual re-entry into employment must be arranged between you and the Department of California Highway Patrol. Please contact the Department of California Highway Patrol personnel office to arrange your return to the position. The Department of California Highway Patrol must notify CalPERS regarding your reemployment date to minimize the possibility of an overpayment of retirement benefits paid to you. **To complete the reinstatement action**, the Department of California Highway Patrol must also submit a membership document verifying your entry into compensated employment.

(See Exh. 2, emphasis added.) This language is confirmation of CalPERS's position that the reinstatement process requires more than the single step of determining whether Dean is still incapacitated under Section 21192. Second, CalPERS alleges in the Accusation that Section 21193 is "pertinent to this appeal and are relevant to disability retirement." (Exh. 4, 2:7-4:8.) The CHP's interpretation of section 21193's requirements is reasonable, especially when CalPERS has used similar understandings of the statutory language in correspondence to Dean and in the subject Accusation.[3] Therefore, without question, the reinstatement issue before this tribunal is two-fold under the PERL.

II. CALPERS DID NOT MEET ITS BURDEN IN ESTABLISHING THAT DEAN IS NOT "STILL INCAPACITATED PHYSICALLY OR MENTALLY FOR DUTY"

A. PEACE OFFICER MINIMUM STANDARDS ARE AT-ISSUE IN ASSESSING WHETHER DEAN IS NOT "STILL INCAPACITATED" FOR DUTY

> [Peace] officers occupy a unique position of trust in our society. They are responsible for enforcing the law and protecting society from criminal acts. They are given the authority to detain and to arrest and, when necessary, to use deadly force. As visible symbols of that formidable power, an officer is furnished a distinctively marked car, a uniform, a badge, and a gun. Those who challenge an officer's actions do so at their

[3] "Ultimately, the interpretation of a statute is a legal question for the courts to decide, and an administrative agency's interpretation is not binding. Certainly the Judicial Council's interpretation of a statute, as reflected in the Rules of Court, is not binding on the courts, and we will invalidate a rule if it is contrary to statute. But we have also said that when a statute is susceptible of more than one interpretation, we will consider an administrative interpretation of the statute that is reasonably contemporaneous with its adoption. 'Consistent administrative construction of a statute over many years, particularly when it originated with those charged with putting the statutory machinery into effect, is entitled to great weight and will not be overturned unless clearly erroneous.'" (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1011-12, citations omitted.)

> peril; anyone who resists an officer's proper exercise of authority or who obstructs the performance of an officer's duties is subject to criminal prosecution.

(*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 206.) Because peace officers hold a special position in our society and wield tremendous power, the Legislature, in part, has mandated that all peace officers meet minimum standards including being free of any physical, mental or emotional condition that might impair their ability to safely carryout their duties. One of the issues in this matter is whether those minimum standards codified under Government Code section 1031 apply to the reinstatement of a peace officer following industrial disability retirement. But CalPERS contends that peace officer minimum standards are irrelevant to determining whether "Dean is no longer substantially incapacitated from the performance of her duties as an Office for CHP" under Section 21192. (Exh. 4, 5:1-2.) CalPERS is misguided.

First, "[e]ach class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards: . . . (f) **Be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer**." (Gov. Code, § 1031, subd. (f), emphasis added [hereinafter, "Section 1031"].) "This statute reflects the public's interest in high quality law enforcement personnel." (*County of Riverside v. Superior Court* (2002) 27 Cal.4th 793, 798.) *County of Riverside v. Superior Court* is instructive on the broad application of Section 1031. The Supreme Court acknowledged that Section 1031, in particular background investigations under subdivision (d), may be applied to new applicants and to existing peace officers seeking transfers to another law enforcement agency or a new position within the same agency. (See *County of Riverside, supra,* 27 Cal.4th at pp. 798-799.)[4]

The Third District Court of Appeal confirmed that Section 1031 applied to applicants seeking to become peace officers and to peace officers who have had a gap in service and wish to

[4] Sergeant Brent Carter testified that the CHP applies minimum standards to peace officers throughout their careers, and applies the standards to individuals who have a break in service such as Dean. (TR 158:15-21; 160:16-161:5.)

return to duty, like Dean. (See *Sager v. County of Yuba* (2007) 156 Cal.App.4th 1049, 1058-1059.) The *Sager* court further stated:

> [T]he section 1031 standards must also be maintained throughout a peace officer's career. Section 1031 reflects a *minimum* set of standards for allowing a new recruit to become a peace officer and it would be illogical to conclude the Legislature believed those standards disappeared once an officer began working.

(*Id.* at p. 1059, emphasis in original.) In summary, the appellate court held that "the [Commission on Peace Officer Standards and Training (POST)] standards, which flesh out the section 1031 standards, are 'a matter of continuing education[.]' In our view the section 1031 standards are incorporated by law into every peace officer's job description." (*Id.* at p. 1059.)[5] Further, "[S]ection 1031 applied as a matter of law to Sager's fitness, and the POST standards were conceded to be relevant by [Sager's doctor]. In fact, they are incorporated into Sager's job description, and therefore her ability to comply with them forms an important part of her 'usual' duties." (*Id.* at p. 1057, emphasis omitted.)

"A public agency must enforce the criteria for peace officers in Government Code section 1031 at the time of hire, prior to a transfer between agencies, and also possibly when an employee changes positions within the same agency. [Citation.] Moreover, peace officers must certify

---

[5] POST "is an agency created within the California Department of Justice that is charged with establishing standards of physical, mental, and moral fitness for peace officers." (*Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 285; see also Historical and Statutory Notes, 51D Pt. 1 West's Ann. Pen. Code (2012 ed.) foll. § 13500, p. 367 ["vocational training and the enforcement of state laws are matters of statewide interest and concern"].) To that end, POST has promulgated regulations mandating that every POST-participating law enforcement agency, such as the CHP, ensure that an agency's peace officers comply with the minimum standards set forth in Section 1031. (See, e.g., Cal. Code Regs., tit. 11, § 1950 et seq.) Further, POST has adopted regulations related specifically to those minimum standards associated with a peace officer's physical and mental fitness. Those regulations, in part, state that "every peace officer candidate shall be evaluated to determine if the candidate is free from any emotional or mental condition that might adversely affect the exercise of the powers of a peace officer [Government Code § 1031(f)], and to otherwise ensure that the candidate is capable of withstanding the psychological demands of the position." (Cal. Code Regs., tit. 11, § 1955, subd. (a) [Psychological Evaluation].) Similarly, Regulation 1954, states that "every peace officer candidate shall be evaluated by a licensed physician and surgeon . . . to determine if the candidate is free from any physical (i.e., medical) condition that might adversely affect the ability to exercise peace officer powers [Government Code § 1031(f)]." (Cal. Code Regs., tit. 11, § 1954, subd. (a) [Medical Evaluation].)

Also, Civil service regulations provide that "a qualified professional shall meet the criteria set forth in Government Code Section 1031, subdivision (f)." (Cal. Code Regs., tit. 2, § 172.5; see also Cal. Code Regs., tit. 2, §§ 172.4 & 172.6-172.8; Gov. Code, § 18935.)

compliance with the criteria that the Commission on Peace Officer Standards and Training promulgates (citations) both as a matter of continuing education and **after a break in active status.**" (*Pitts v. City of Sacramento* (2006) 138 Cal.App.4th 853, 857, fn. 4, emphasis added.)

In *Pitts*, the plaintiff was a peace officer who suffered a shoulder injury and was found by a hearing officer to not be substantially incapacitated from performing her usual duties. Following the hearing officer's decision, the plaintiff sought reinstatement to her former position. But the City of Sacramento insisted that she pass certain tests including a psychological evaluation. The plaintiff refused and argued that she should be reinstated without any conditions. The Court of Appeal disagreed and noted the plaintiff could not demand an unconditional reinstatement to active status as a peace officer. (*Id.* at pp. 856-857; but see *Hulings v. State Dept. of Health Care Servs.* (2008) 159 Cal.App.4th 1114, 1125 [Section 1031, subdivision (d) which requires background investigations is not applicable to a peace officer mandatorily reinstated to his former position following a rejection during probation from a different peace officer position].)

Thus, contrary to CalPERS's opinion, there is legal authority to support the application of peace officer minimum standards to the reinstatement process.

> If [CalPERS's] position is correct, an officer who lost his moral compass would be immune from these standards and only subject to a moral character standard if the applicable job description in that department reiterated that standard as a defined duty of that classification of officers. That absurd result highlights the flaw in [its] position.

(*Sager, supra*, 156 Cal.App.4th at p. 1059.) Even in *Hulings*, the appellate court reiterated that "the standards set forth in Government Code section 1031 must be maintained throughout a peace officer's career." (*Hulings, supra*, 159 Cal.App.4th at 1125, fn. 3.)

Second, CalPERS's reading of Section 21192 is flawed. The plain language of the statute indicates that the inquiry is not limited to Dean's orthopedic conditions. Section 21192 requires CalPERS "to determine whether [Dean] is still incapacitated, physically or mentally, for duty." There is no language limiting CalPERS's inquiry to just the condition that led to the disability retirement. The statutory standard requires looking at the whole person in terms of a person's physical and mental state to determine if that person can perform all of the usual duties of a position to which he or she would be reinstated to.

In arguing that Section 1031 is inapplicable to the reinstatement process, CalPERS will rely on *In re Willie Starnes* (2000) PERS Dec. No. 99-03, but *Starnes* is faulty for many reasons. For example, all of the cases CalPERS relied upon in *Starnes,* except for *Phillips v. County of Fresno* (1990) 225 Cal.App.3d 1240, do not discuss Section 1031. (See *Gomes v. County of Mendocino* (1995) 37 Cal.App.4th 977, 985 ["A decision is authority only for the point actually passed on by the court and directly involved in the case"].) The *Phillips* court touches upon Section 1031, but its discussion is dicta at best. (*Phillips, supra*, 225 Cal.App.3d at p. 1257.) The sole issue in *Phillips* was whether Government Code section 31725 governs the procedures to be followed by a county when a retirement board and an employing agency disagree about a peace officer's eligibility for retirement. (*Id.* at p. 1250.) In addition, the *Phillips* court does not address the interplay between the Reinstatement Statutes and Section 1031, and is factually distinguishable.

Phillips, a County of Fresno deputy sheriff, was on medical leave when he applied for disability retirement. The County retirement board denied his application for disability retirement finding that he was not substantially incapacitated. Thus, because the application was denied, Phillips requested to return to full duty. Phillips was never separated or dismissed, and continued to be employed as a peace officer. (*Id.* at pp. 1244-1248.) On the other hand, Dean voluntarily separated from state civil service when her application for industrial disability retirement was granted by CalPERS. Accordingly, unlike Phillips, Dean is a former peace officer, and she has no effective employer-employee relationship with the DOJ.

Third, to not apply Section 1031 fully to the reinstatement of a former peace officer who disability retired may lead to absurd results. According to CalPERS, a peace officer like Dean who retires due to an orthopedic injury is entitled to reinstatement under Section 21192 if that physical disability has resolved as evidenced by a physical examination. Yet, under that assessment alone, CalPERS would not have learned that the former peace officer developed psychological problems during his or her retirement, such as major depression, because the former peace officer would not have been subjected to a psychological evaluation. The absurdity lies in the result that the peace officer may be reinstated under Section 21192, but still be incapacitated from performing his or her job as a peace officer due to the major depression. If

Section 1031 had been fully applied to the reinstatement process under Section 21192, then CalPERS would have uncovered the major depression and would have been obligated to assess whether the peace officer could perform the his or her usual duties notwithstanding the disorder.

Finally, "the words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387; see also *Barajas v. Oren Realty & Development Co.* (1997) 57 Cal.App.4th 209, 216-217.) The statutory schemes under Sections 1031 and 21192 should be harmonized because they touch upon a common issue and effectuate a similar public policy goal that peace officers be fit before they commence active duty. (See, e.g., *Sager, supra,* 156 Cal.App.4th at p. 1061.) Peace officers such as Dean must be capable of carrying out their duties without harm to themselves, other officers or the public. It is axiomatic that public and officer safety is vital when persons are authorized to carry firearms and may use deadly force.[6] Therefore, no peace officer should be reinstated following industrial disability retirement without first determining whether he or she meets the minimum standards under Section 1031.

B. IF PEACE OFFICER MINIMUM STANDARDS ARE PART OF A CHP OFFICER'S USUAL AND CUSTOMARY DUTIES, THEN CALPERS'S EVIDENCE DID NOT SHOW DEAN TO BE FREE FROM ANY PHYSICAL, EMOTION OR MENTAL CONDITION[7]

In *Mansperger v. Public Employees' Retirement Sys.* (1970) 6 Cal.App.3d 873, the court of appeal held that "'incapacitated for the performance of duty' . . . means the substantial inability of the applicant to perform [her] usual duties." If peace officer minimum standards are part of a

---

[6] "The County *should not have to wait until harm occurs* before taking action to have Sager retired due to her mental disability. It is not the appropriate public policy to wait until Sager *actually* shoots the other woman in the courtroom, kills herself on duty, overreacts to a perceived threat or loses her temper in a dangerous situation to conclude that she is mentally unfit for duty." (*Sager, supra*, 156 Cal.App.4th at p. 1061, emphasis in original.) In reaching that position, the appellate court rejected Sager's argument that actual, rather than potential, harm is required in finding a peace officer unfit for duty.

[7] The OAH sustained objections to questions posed to Dr. Minor by the CHP, and thus, the CHP was not permitted to fully develop evidence in relation to this issue. (See, e.g., TR 85:5-88:2; 103:12-19.) The CHP contends that the rulings were erroneous and prejudicial to its defense of this matter.

CHP officer's duties, CalPERS was required to show that Dean is substantially "free from any physical, emotional or mental condition that might affect the exercise of" peace officer powers before determining that she is not still incapacitated. But CalPERS did not make that showing.

Dr. Minor conducted an "orthopedic medical evaluation" of Dean. (Exh. 5.) He did not perform a comprehensive physical exam to determine if Dean had any physical condition which prevented her from performing the usual duties of a CHP officer. Dr. Minor's December 2011 examination of Dean fell short because he did not:

- Review or order x-rays of Dean (TR 82:3-7);
- Order a MRI of Dean, but reviewed a MRI of Dean from the late 1990s (TR 82:11-16; 82:21-23);
- Conduct any examination or tests of Dean's head (TR 83:18-19);
- Conduct any examination or test of Dean's eyes (TR 83:20-21);
- Conduct any examination or test of Dean's ears despite Dean complaining about "buzzing or noise" in her ears (TR 83:22-23; TR 84:7-85:4; Exh. 5);
- Conduct shoulder or strength tests (TR 89:9-10);
- Request Dean walk heel to toe (TR 89:11-12);
- Request Dean to squat (TR 89:13-14); and
- Request Dean to duck walk (TR 89:15-16).

In addition, to those deficiencies, Dr. Minor did not conduct an independent assessment of Dean's answers to a health questionnaire he had her complete. He neither confirmed the existence of reported maladies nor determined if other maladies existed which could preclude Dean from performing the usual duties of a CHP officer. He just "took her for her word." (TR 90:18-92:15; Exh. 11.)

Equally important, CalPERS did not proffer any evidence that Dean underwent a mental or psychological examination by Dr. Minor or any other health care provider. Without that evidence, CalPERS has not established that Dean is free from any emotional or mental condition that might affect the exercise of peace officer powers should she return to the CHP.

In contrast to what Dr. Minor did or what was asked of him by CalPERS, physical examinations and psychological evaluations contemplated under Section 1031, which are utilized to establish if a person is "free from any physical, emotional or mental condition that might affect the exercise of" peace officer powers, are comprehensive. (See Cal. Code Regs., tit. 11, §§ 1954-1955.) POST has developed a "Medical Screening Manual for California Law Enforcement," and adopted a standard report for a physician to complete as part of a physical examination. (See Cal. Code Regs., tit. 11, § 1954, subds. (c)-(d).) Similarly, the psychological screening criteria noted in Regulation 1955 is comprised of 10 dimensions and there are numerous areas of inquiry within each dimension. (See Cal. Code Regs., tit. 11, § 1955, subd. (d).) All areas of inquiry must be addressed by a retained psychologist or psychiatrist before reaching a determination about the mental or emotional fitness of a person seeking to be a peace officer. (Cal. Code Regs. tit. 11, § 1955, subd. (c).)

Dr. Minor's evaluation as proffered by CalPERS pales in comparison to the evaluations contemplated under Section 1031 and the corresponding POST regulations. His opinion that Dean is not still incapacitated is completely void of any reference to or reliance upon peace officer minimum standards. But if peace officer minimum standards are applicable, then the finding that Dean is not still incapacitated is unproven because Dr. Minor's examination was severely limited in scope and deficient in many respects.

By failing to commission comprehensive physical and psychological evaluations through Dr. Minor or any other health care provider, CalPERS has not met its burden to show that Dean is "free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer." CalPERS's evidence does not come close to making the required showing because the ability to comply with minimum standards is part of a CHP officer's usual and customary duties.

C. CALPERS DID NOT PROFFER SUFFICIENT EVIDENCE THAT DEAN WAS ABLE TO PERFORM THE USUAL DUTIES OF A CHP OFFICER AS OF DECEMBER 2013

Assuming arguendo that under Section 21192 CalPERS is only required to ascertain whether the orthopedic condition which caused the retirement still exists, CalPERS's evidence

that Dean is not "still incapacitated" is nevertheless flawed. When Dr. Minor testified in December 2013, his medical opinion about Dean was already stale and of no weight.

Here, Dr. Minor examined Dean once in December 2011 for about 1.25 hours. (TR 79:8-16; Exh. 5.) Because he had examined Dean in December 2011, Dr. Minor admitted at the December 19, 2013 hearing that he did not know if she had a current physical condition that could impact her ability to perform the usual and customary duties of a CHP officer, or whether Dean had a current condition, physical or mental, which could impact her ability to exercise peace officer powers. (TR 79:17-80:1.) And he further acknowledged that he did not know if she is still incapacitated from performing duties of a CHP officer because he had not examined her since December 2011. (TR 80:2-7.)

Dr. Minor's admissions are highly problematic for CalPERS in light of Dean's testimony that she had two surgeries after the December 2011 evaluation by Dr. Minor. Dean testified that she had surgery in March 2012 for a Femoral Hernia, and surgery in August 2013 for a Rotator Cuff injury. (TR 168:11-18; 170:16-20; 171:1-7.) How do those injuries or surgeries impact Dean's ability to carry out the usual and customary duties of a CHP officer? Is she not incapacitated notwithstanding those surgeries? Would the rotator cuff injury or the Femoral Hernia prevent Dean from being able to fulfill the duties of a CHP officer? Because CalPERS did not produce expert testimony to answer those questions, there can be no credible finding that Dean is no longer incapacitated under Section 21192.

D. DEAN IS UNABLE TO PERFORM ALL OF THE USUAL AND CUSTOMARY DUTIES OF A CHP OFFICER ACCORDING TO DR. MINOR

"Any member of the Department of the California Highway Patrol, as specified in Sections 2250 and 2250.1, shall be capable of fulfilling the complete range of official duties administered by the commissioner pursuant to Section 2400 and other critical duties that may be necessary for the preservation of life and property." (Veh. Code, § 2268.) "Thus, under Vehicle Code section 2268, a CHP officer must be able to perform all of the job duties of an officer—and . . . the "14 critical tasks" reflect those duties." (*Beckley v. Board of Admin.* (2013) 222 Cal.App.4th 691,

699.) The *Beckley* court further held that "the ability to perform all tasks required of a CHP officer is part of the 'usual' duties of his job." (*Id.* at p. 700.)

The facts underlying the *Sager* case are instructive here. In *Sager*, a deputy sheriff challenged the County's adoption of an ALJ's finding that she should be retired due to a mental condition. Plaintiff Sager had a number of issues over the course of her career which raised concerns about her mental status, including threats to a woman she believed was having an affair with her husband, a suicide attempt, complaints about personnel issues, emotional control, anger management and negative relationships with her peers and supervisors. (See, e.g., *Sager, supra*, 156 Cal.App.4th at pp. 1051-1052, 1054.) "Sager may be able to serve warrants, drive a patrol car and do many of the other tasks listed on her "class specification" job description, as she asserts, but if the evidence shows she is not able to maintain *mental fitness,* that is, control her anger, work with other officers, and make sound judgments, then she is not performing the duties described above *in the proper manner.*" (*Id.* at p. 1059, emphasis in original.)

Sergeant Carter testified that a CHP officer's usual and customary duties include removing obstacles from a roadway, subduing combative persons, and descending a 40-foot embankment. (TR 154:24-156:3.) In addition, Sergeant Carter testified that a CHP officer must be able to extract multiple victims, weighing 200 pounds each, from a vehicle involved in an accident. (TR 156:4-156:24.) The officer must also be able to lift, carry or drag a 200-pound victim for a distance of 50 feet. (TR 156:25-157:6.) If a person cannot perform those tasks regardless of how infrequent the tasks may be necessary to perform, then he or she cannot fulfill the full complement of duties assigned to a CHP officer, and thus cannot be a CHP officer. (TR 157:7-10; 157:22-158:7; Exh. 109.) Being able to carry out the full duties of a CHP officer is essential to ensuring public and officer safety. (TR 157:11-21; 158:8-14.)

Dr. Minor testified that full duty for a CHP officer means that the officer can perform the "14 critical areas." (TR 112:20-24.) But he admitted he did not review or utilize the CHP's "Officer 14 Critical Physical Activities" in conjunction with his examination of Dean. (TR 93:1-9; 125:2-4; Exh. 109.) His failure to refer to the 14 critical activities calls into question his opinion that Dean is no longer incapacitated. Nevertheless, Dr. Minor conceded that if Dean

experienced an exacerbation of her neck and back pain, she "would not be able to" extract two 200-pound victims from a vehicle. (TR 63:5-22.) And according to Dr. Minor, Dean would not be able to extract a third victim from a vehicle if she were having problems with her neck and back. (TR 63:23-64:2.)

Further, Dr. Minor did not require Dean to wear a gun belt, which weighs 25-35 pounds, during the December 2011 examination. (TR 64:9-19.)[8] Nevertheless, he testified that wearing a gun belt would make carrying out the duties of a CHP officer more difficult for Dean. (TR 64:20-65:1.) But Dr. Minor later testified that Dean could perform the essential duties of a CHP officer even while wearing a gun belt and despite suffering from Sciatica. He thought she could do so because she had "excellent flexibility." However, he admitted that Dean's flexibility was measured without her wearing a gun belt. (TR 80:11-82:2.)

Dr. Minor's opinion about Dean's capability to perform the usual and customary duties of a CHP officer including the 14 critical activities upon close scrutiny is wanting. He testified that she could not perform certain tasks, but at the same time he claims she is not incapacitated under Section 21192. That chasm is too far and wide to be logically reconciled. If she cannot fulfill all of the duties, then she is simply still incapacitated.

III. THERE WAS NO OFFER TO REINSTATE AS REQUIRED BY SECTION 21193

As argued above, the second step in the reinstatement process requires that the CHP offer to reinstate or reemploy Dean to her former position as a CHP officer pursuant to Section 21193.

Here, CalPERS failed to produce any evidence that the CHP offered to reinstate Dean. In fact, the CHP did not offer Dean reinstatement as a CHP officer. (TR 145:1-23; 146:5-19; Exh. 112.) Consequently, the second step in the reinstatement process has not been met, and Dean is not entitled to reinstatement under the PERL.

///

///

///

[8] Dean told Dr. Minor that wearing a gun belt causes her back pain. (TR 65:9-12; 167:22-24.)

CONCLUSION

> It is undisputable . . . that the public has a far greater interest in the qualifications and conduct of law enforcement officers, even at, and perhaps especially at, an 'on the street' level than in the qualifications and conduct of other comparably low-ranking government employees performing more proprietary functions. The abuse of a patrolman's office can have great potentiality for social harm.

(*Commission on Peace Officer Standards & Training, supra,* 42 Cal.4th at pp. 297-298.) Yet, if CalPERS's position is correct, then a former peace officer, who retired because of orthopedic conditions, can return to work despite having other conditions such as radial neuropathy or schizophrenia. That former peace officer would be able to return to his or her position once the orthopedic conditions have resolved. But a cop returning to work with a fine back, but unable to use a gun or is suffering from mentally instability, is neither ideal nor sanctioned under the law. Being free from any physical or mental condition which may affect the exercise of peace officer powers is paramount to public safety, as well as for the protection of other peace officers. That is especially critical because peace officers carry firearms and are authorized to use lethal force.

Yet, apart from the fatal shortcomings pertaining to Dr. Minor's opinion about Dean's ability to perform all of the usual and customary duties of a CHP officer, peace officer minimum standards set forth under Section 1031 and the POST Regulations were not applied to determine if Dean, who has not been a peace officer for over a decade, is "still incapacitated , physically or mentally, for duty." Peace officer minimum standards must be applied to all those who seek to be peace officers regardless of their prior experience as peace officers in California, or their retirement status.

If applied aptly, minimum standards are comprised of robust inquiries into the physical and psychological well-being of individuals. Those inquiries are notably vital when peace officers seek to return to duty following industrial disability retirement. The exacting and varied inquiries under Section 1031 are aimed toward determining whether a person can carry out the arduous duties of a peace officer. The inquiries are exhaustive because neither the public nor fellow officers can afford to learn after a catastrophic incident occurs that a person should not have been reinstated as a peace officer. In comparison, CalPERS's inquiry regarding whether a retiree remains incapacitated following disability retirement is limited and not focused on the special

requirements of being a peace officer. That inquiry does not encompass both physical and psychological examinations governed by standards adopted by POST.

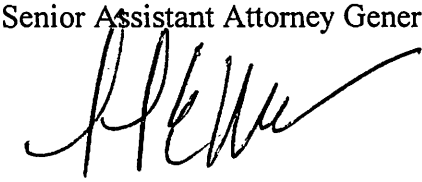
Here, CalPERS should have proffered evidence that Dean satisfied all of the minimum standards under Section 1031, including being free of any physical, emotional or mental condition that might adversely affect the exercise of peace officer powers. But it did not do so.

Dean should not be reinstated to her former position as a CHP officer and removed from industrial disability retirement status. CalPERS has simply not met its burden under the PERL. There is **insufficient** evidence to find that she is not incapacitated under Section 21192, and there is **no** evidence that she has been offered reinstatement by the CHP in accordance with Section 21193. Thus, the CHP respectfully requests that its appeal be sustained.

Dated: March 11, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
ALICIA M. B. FOWLER
Senior Assistant Attorney General



MICHAEL E. WHITAKER
Supervising Deputy Attorney General
Attorneys for Respondent Department of California Highway Patrol

DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **In the Matter of the Reinstatement from Industrial Disability Retirement of:**
No.: **2013010502**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 11, 2014, I served the attached **Respondent Department of California Highway Patrol's Closing Brief** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Rory J. Coffey, Senior Staff Counsel
California Public Employees' Retirement System
Lincoln Plaza North
400 "Q" Street, Room 3340
Sacramento, CA 95811
E-mail Address:
rory_coffey@calpers.ca.gov

Angela Dean
7605 Catfish Street
Silver Springs, NV 89429
E-mail Address:
stingray13485@sbcglobal.net

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 11, 2014, at Los Angeles, California.

Yvette Wright
Declarant

Signature

LA2013607808
61217825.doc

Exhibit “A”

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

IN THE MATTER OF THE REINSTATEMENT FROM INDUSTRIAL DISABILITY RETIREMENT OF: ANGELA DEAN, Respondent, v. CALIFORNIA HIGHWAY PATROL, Respondent.	OAH NO. 2013010502

Office of Administrative Hearings

Sacramento - General Jurisdiction

2349 Gateway Oaks Drive, Suite 200

Conference Room B

Sacramento, California 95833

Thursday, December 19, 2013

9:00 a.m.

Dawn A. Timberlake,
C.S.R. #11629

A P P E A R A N C E S:

ADMINISTRATIVE LAW JUDGE:

KARL ENGEMAN
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833

FOR THE RESPONDENT, CalPERS:

MORY J. COFFEY,
Senior Staff Counsel, Legal Office
Lincoln Plaza North, 400 Q Street, Room 2240
Sacramento, CA 94229-7704
P: (916) 795-3639
E: mary_coffey@calpers.ca.gov

FOR THE RESPONDENT, California Highway Patrol:

MICHAEL E. WHITAKER,
Supervising Deputy Attorney General
Office of the Attorney General
300 South Spring Street, Suite 1700
Los Angeles, CA 90013
P: (213) 897-2096
E: Michael.Whitaker@dol.ca.gov

FOR RESPONDENT, Angela Lean:

ANGELA LEAN,
In Propria Persona
7605 Catfish Street
Silver Springs, NV 89429

ALSO PRESENT: ERIC LEAN

/ / /

INDEX OF EXHIBITS:

EXHIBIT:		I.D.	EVID.
1	CalPERS letter to Angela Lean dated March 7, 2001	17	1[illegible]
2	CalPERS letter to Angela Lean dated June 5, 2011	17	1[illegible]
3	Appeal dated June 1[illegible], 2011	17	1[illegible]
4	Accusation, Notice of Hearing and Proof of Service	17	1[illegible]
5	Report of Frank W. Minor, dated December 6, 2011	51	140
6	Report of Frank W. Minor, M.D., dated January 17, 2011	73	140
7	Job-Specification, Officer California Highway Patrol (CHP)	75	140
8	CHP 14 Critical Activities		140
9	Integrity Staffing Solutions letter dated June 15, 2011 to CHP		140
10	CV of Frank Weber Minor, M.D., message document	95	140
11	Patient Questionnaire	120	140

/ / /

INDEX OF EXAMINATIONS:

WITNESS:	PAGE:
JOHN JOSEPH CHAMPLIN	
Direct Examination by Mr. Lean	16
Cross-Examination by Mr. Coffey	2[illegible]
Cross-Examination by Mr. Whitaker	34
Recross Examination by Mr. Coffey	41
Voir-Dire Examination by The Court	4[illegible]
FRANK WEBER MINOR, M.D.	
Direct Examination by Mr. Coffey	46
Cross-Examination by Mr. Whitaker	6[illegible]
Cross-Examination by Mr. Lean	10[illegible]
Voir Dire Examination by The Court	10[illegible]
Continuing Cross-Examination by Mr. Lean	10[illegible]
Redirect Examination by Mr. Coffey	13[illegible]
Recross Examination by Mr. Whitaker	13[illegible]
Recross Examination by Mr. Lean	13[illegible]
SHARIL SMITH	
Direct Examination by Mr. Whitaker	141
Cross-Examination by Mr. Coffey	147
SERGEANT BRENT CARTER	
Direct Examination by Mr. Whitaker	151
Cross-Examination by Mr. Coffey	161
Redirect Examination by Mr. Whitaker	163
ANGELA LEAN	
Direct Examination by Mr. Lean	165
Cross-Examination by Mr. Coffey	171

/ / /

INDEX OF EXHIBITS:

RESPONDENT CALIFORNIA HIGHWAY PATROL submits the following list of Exhibits:

EXHIBIT:		I.D.	EVID.
100	Letter to Frank W. Minor, M.D., from the California Public Employees' Retirement System dated October 6, 2011	1[illegible]	1[illegible]
101	Letter to Frank W. Minor, M.D., from the California Public Employees' Retirement System dated December 5, 2011	1[illegible]	1[illegible]
102	Letter to Frank W. Minor, M.D., from the California Public Employees' Retirement System dated January 10, 2012	1[illegible]	1[illegible]
103	Letter to Frank W. Minor, M.D., from the California Public Employees' Retirement System dated March 1[illegible], 2012	1[illegible]	[illegible]
104	Letter to the California Public Employees' Retirement System from Frank W. Minor, M.D., dated March 16, 2012	1[illegible]	1[illegible]
105	Notice of Appointment/Termination dated March 15, 2001	1[illegible]	1[illegible]
106	Notice of Personnel Action Report of Separation issued March 1[illegible], 2001	1[illegible]	1[illegible]
107	California State Personnel Board Specification, Officer, California Highway Patrol	1[illegible]	1[illegible]
108	California Highway Patrol Officer Task Statement	1[illegible]	1[illegible]
109	California Highway Patrol Officer 14 Critical Physical Activities	1[illegible]	1[illegible]
110	Officer, California Highway Patrol, California State Personnel Board Specification	1[illegible]	1[illegible]
111	Applicant Health Questionnaire Cadet California Highway Patrol	1[illegible]	1[illegible]

INDEX OF EXHIBITS:

Respondent California Highway Patrol submits the following list of exhibits (cont'd)

EXHIBIT:		I.D.	EVID.
111	Memorandum to the California Public Employees' Retirement System from R.E. Sisley re Denial of	10	11

- - -

INDEX OF EXHIBITS:

EXHIBIT:		I.D.	EVID.
A	Dr. Champlin's report dated 10/16/13	21	29
B	Medical Reports	21	29
H	Medical Reports	21	29
I	Medical Reports	21	29
J	Medical Reports	21	29
K	Medical Reports	21	29
L	Medical Reports	21	29
M	Medical Reports	21	29
N	Medical Reports	21	29
O	Medical Reports	21	29
P	Medical Reports	21	29
Q	Medical Reports	21	29
R	Medical Reports	21	29
S	Picture of patrol car	100	175
T	Copy of Highway Patrolman Magazine article	100	175

- - -

1 Sacramento, California December 19, 2013

2 PROCEEDINGS:

3 THE COURT: On the record in the matter of the
4 Restatement from Industrial Disability Retirement of Angela
5 Dean, Respondent, and California Highway Patrol, Respondents.
6 This is a matter before the Board of Administrative
7 Hearings. CalPERS Employees' Retirement System, Agency Case
8 No. 2012-0760 and Case No. 2013010502.
9 My name is Karl Engeman Administrative Law Judge
10 assigned to hear this matter. We are convened at the Office
11 of Administrative Hearings in Sacramento, California on
12 December 19, 2013.
13 Beginning with you, Mr. Coffey. The appearances of
14 counsel or the absence of counsel, a party.
15 MR. COFFEY: Good morning.
16 Rory Coffey, R-O-R-Y, C-O-F-F-E-Y, appearing on
17 behalf of California Public Employees' Retirement System,
18 CalPERS.
19 THE COURT: And for the California Highway Patrol?
20 MR. WHITAKER: Michael E. Whitaker on behalf of the
21 California Highway Patrol.
22 THE COURT: Thank you.
23 And off the record Ms. Dean told me that you intend
24 to represent yourself today; is that right, Ms. Dean?
25 MS. DEAN: Yes.

1 THE COURT: And did you understand that had you
2 wished and at your own expense you would have been
3 represented by a lawyer in these proceedings?
4 MS. DEAN: Yes.
5 THE COURT: And do you have someone assisting you
6 today?
7 MS. DEAN: Yes.
8 THE COURT: And who is that?
9 MS. DEAN: Eric Dean.
10 THE COURT: And how is he related to you, if at
11 all?
12 MS. DEAN: Husband.
13 THE COURT: Okay. Which at my invitation in some
14 off the record discussions Ms. Dean told me she intends to
15 move to exclude the witnesses this morning, any objection?
16 MR. COFFEY: A response, yes.
17 I would oppose that effort. It is my -- it has
18 been my experience that in support and in these O.A.H.
19 Hearings an expert is allowed to be present and hear the
20 testimony of opposing parties, comparable expert, if it
21 facilitates the presentation of evidence.
22 Otherwise, I take my notes of Dr. Champlin's
23 testimony, ask for a break to meet with Dr. Minor, and go
24 through trying to convey to Dr. Minor whatever it is that Dr.
25 Champlin testified to and I'm sure and in an inadequate or

1 not complete manner.
2 THE COURT: How about you Mr. Whitaker, what is
3 your position?
4 MR. WHITAKER: It has been my experience if a party
5 makes an objection to a witness being present whether expert
6 or not I think in a usual case, unless an extraordinary
7 circumstances, the Court honors the request and the
8 California Highway Patrol has no particular position on
9 excluding Dr. Minor from the proceedings. But I understand
10 the position that Ms. Dean is taking and would agree that's a
11 proper position for her to take and it's reasonable under the
12 circumstances.
13 THE COURT: Okay. I think there's truth in
14 everything that I've heard, so far Ms. Dean.
15 First of all, I agree with Mr. Whitaker. My
16 experience may be a little bit different than Mr. Coffey's.
17 Usually the parties agree to have the witnesses remain except
18 expert witnesses. I honor the request. The reason for
19 excluding the witnesses is to avoid a witness -- I'll use the
20 word "taint." Or maybe a better word or phrase is to be
21 affected by the testimony of another witness in listening to
22 the testimony of the other witnesses, but particularly in
23 these cases the experts are not in the dark about the
24 opinions expressed by experts that hold a contrary opinion.
25 By that I mean almost always in these cases the

1 expert witnesses have read the reports of other experts so
2 there's no mystery typically in terms of what it is they are
3 going to say, you know those reports are pretty standard.
4 Usually there's a history, there's a physical examination,
5 there's impression, diagnoses, and conclusions about the
6 ultimate relating to disability. In this case I don't know
7 if it serves anybody's interests to exclude the witness
8 experts when they already know those things.
9 What would you say to that?
10 MS. DEAN: I don't know I've never been to one of
11 these before.
12 THE COURT: I understand.
13 You have one or more medical experts you are going
14 to call is that right?
15 MS. DEAN: Yes.
16 THE COURT: And who is the medical expert?
17 MS. DEAN: Dr. Champlin, C-H-A-M-P-L-I-N.
18 THE COURT: C-H-A-M-P-L --
19 MS. DEAN: -- I-N.
20 THE COURT: Is Dr. Champlin present?
21 MS. DEAN: Yes.
22 THE COURT: And is that a man or a woman?
23 MS. DEAN: A man.
24 THE COURT: Has Dr. Champlin reviewed the reports
25 of the expert who's going to be called by CalPERS?

1 MS. DEAN: Yes.
2 THE COURT: Okay.
3 Mr. Coffey, has your expert reviewed Dr. Champlin's
4 report?
5 MR. COFFEY: Yes, to my knowledge. I have a copy
6 of a two-page document dated October 28, 2013. If there's
7 another document offered by Dr. Champlin, I'm not aware of it
8 and that document and I don't know how we're going to mark
9 that. Whatever exhibit it becomes has been reviewed by Dr.
10 Minor.
11 THE COURT: And is that the report that's going to
12 be relied upon by your expert in this case?
13 MS. DEAN: Yes.
14 THE COURT: Typically, what I'm saying is we might
15 draw a distinction between and somebody like me might draw a
16 distinction between percipient witnesses or lay witnesses,
17 somebody who says I'm there when the events occurred, here's
18 what I saw and so forth and opposed to the experts. And for
19 the very reason there is much less danger of affecting the
20 testimony of somebody who has really never committed him or
21 herself in the terms of an expert to a position and the
22 reason for a position.
23 So I guess what I'm saying is with all of that in
24 my mind what could you say to persuade me, even though that's
25 the case, they should still kick out the experts until they

1 have a chance to testify?
2 MS. DEAN: I don't know. If that's the way it
3 usually goes then I guess that's the way it usually goes.
4 THE COURT: I'm not standing on protocol. I want
5 to make it clear to you however it goes in other cases I'm
6 prepared to rule in your favor if it makes sense to do so. I
7 don't care how it's gone in other context.
8 MS. DEAN: Every trial I've ever been in they've
9 excluded witnesses.
10 THE COURT: Right.
11 MS. DEAN: And I guess so they couldn't hear what
12 the other witnesses were saying so it wouldn't be tainted,
13 so --
14 THE COURT: Have any of those trials included
15 expert witnesses?
16 MS. DEAN: Yes.
17 THE COURT: Okay. What else?
18 Anything else, Mr. Coffey, on the issue?
19 MR. COFFEY: No, your Honor.
20 THE COURT: Anything else, Mr. Whitaker?
21 MR. WHITAKER: No, your Honor.
22 THE COURT: Okay. As I say, I'm just not persuaded
23 that the concern that is a legitimate concern about witnesses
24 being influenced, affected by, I'll withdrawal the use of the
25 word "tainted" or "taint." I'm just not persuaded that

1 that's the case. And in sort of following up a point made by
2 Mr. Coffey, it might expedite things to have the witnesses
3 listen to the other side. Because one of the things if the
4 lawyers don't ask often times the question, I'll ask is where
5 do you disagree with the opinions expressed by the expert on
6 the other side? And why I like to ask that and one of the
7 things is having to preclude is what somebody said or didn't
8 say, okay?
9 MS. DEAN: Okay.
10 THE COURT: Okay. So with respect to any other
11 witnesses, any objection to the motion with respect to
12 percipient witnesses?
13 MR. COFFEY: No, your Honor.
14 MR. WHITAKER: No, your Honor.
15 THE COURT: So that will be the order.
16 Other than expert witnesses, percipient witnesses
17 will be excluded.
18 Okay. So let's go ahead and take --
19 MR. WHITAKER: One point for clarification with?
20 Respect to Sergeant Brent Carter who will be a percipient
21 witness but who is representing the Highway Patrol in this
22 matter.
23 THE COURT: And he's your agency member or
24 assistant, right?
25 MR. WHITAKER: Correct.

1 THE COURT: He can remain.
2 And you have an assistant, your husband.
3 And is there somebody that you want to remain in
4 the room other than the expert?
5 MR. COFFEY: Just Dr. Minor here. They don't give
6 me back up.
7 THE COURT: Me either.
8 So everybody else is going to have to step out of
9 the room and folks who have not testified that includes
10 everybody who might be a witness in the case.
11 Let me say two things. First of all, one of the
12 things is while you are outside of the room you are forbidden
13 to discuss the case outside even though if you are a witness
14 for someone else. And the other admonition I'll try to
15 remember to repeat after you testified, after you testify,
16 you are forbidden to discuss your testimony with anyone else
17 who might be a witness in this proceeding.
18 There are rooms along the corridor for people to
19 wait until you testified. We don't have anybody that fits in
20 those categories.
21 Okay. I think I should address on the record some
22 things addressed off the record.
23 You have, Ms. Dean, requested the right to record
24 these proceedings with a some kind of an audio tape recorder;
25 is that right?

1 MS. DEAN: Yes.
2 THE COURT: And I know the presiding judge
3 communicated to you over Mr. Coffey's objections that would
4 be all right as long as you understand there's one official
5 record, that's the record prepared by the court reporter and
6 you said you understood that; right?
7 MS. DEAN: I do.
8 THE COURT: And you talked about needing or asking
9 for the assistance of your husband and we discussed that.
10 And so anything else before we begin the
11 presentation of evidence?
12 MS. DEAN: No.
13 THE COURT: Mr. Coffey, how are we proceeding
14 today?
15 Well, we have an accusation so we don't have the
16 burden of proof and presentation of evidence question.
17 You'll be going first with your evidence?
18 MR. COFFEY: That would normally be the course,
19 your Honor. However, in conversation with Mr. Dean before we
20 got on the record she advised me Dr. Champlin is here and
21 intends to call him as part of her case. And I have no
22 objection to take him first so he can return to his practice
23 if that's what he intends to do with the remainder of the
24 day.
25 THE COURT: Is that correct?

1 MS. DEAN: Yes.
2 MR. WHITAKER: No objection, your Honor.
3 And when will we be taking care of the exhibits?
4 THE COURT: Can they wait until we have Dr.
5 Champlin in and out and we can go over these at some point in
6 the future or is it something you want to take care of right
7 now?
8 MR. WHITAKER: I don't know if they have some
9 exhibits that they want to have admitted that Dr. Champlin
10 will be testifying about. I do have a set of exhibits with
11 an exhibit list, both parties have stipulated to the
12 admissibility of those documents. I know Ms. Dean has a set
13 as well. However the Court feels.
14 THE COURT: Okay. If it won't take that long,
15 let's do that.
16 I have a set of exhibits probably with, it says
17 "Angela Dean." Let's see. Those are your exhibits?
18 MR. COFFEY: Correct, your Honor.
19 In the black-backed exhibit copy CalPERS exhibits,
20 Exhibit 1 through 4 are the jurisdictional documents and I
21 can offer those into the record at this time. I did try to
22 explain to Ms. Dean again before we went onto the record the
23 purpose of the jurisdictional documents.
24 THE COURT: Ms. Dean, let me add to whatever
25 explanation that Mr. Coffey provided that you mentioned that

1 you have had the experience of other litigation.
2 Unlike the Superior Court there's no method at the
3 Office of Administrative Hearings. There's no Court Clerk,
4 per se. So documents can be filed in the sense that we get
5 copies of documents, but typically the first time the
6 documents are made a part of the record are at the time of
7 the hearing today. So we refer to those as jurisdictional
8 documents and lay out the procedural requirements and the
9 net.
10 So do you have any objection to my receiving 1
11 through 4 to constitute the jurisdictional documents?
12 MS. DEAN: No.
13 THE COURT: Mr. Whitaker?
14 MR. WHITAKER: No objection, your Honor.
15 THE COURT: So 1 through 4 received.
16 And the others you will wait on?
17 MR. COFFEY: Yes, sir, your Honor.
18 THE COURT: Mr. Whitaker?
19 MR. WHITAKER: Yes.
20 I do have a set a documents, if I may approach?
21 THE COURT: You may.
22 MR. WHITAKER: I'll give the set to the Court, the
23 set of exhibits already been served on both parties. I have
24 not identified them or marked them with any particular
25 number. I'll reserve that for the Court's instruction.

1 THE COURT: Okay. Have you, Ms. Dean, with respect
2 to any exhibits that you intend to offer, and this is just a
3 housekeeping issue really in terms of how to designate the
4 exhibits, have you premarked any exhibits at this point?
5 MS. DEAN: I did.
6 THE COURT: Have you used numbers or letters?
7 MS. DEAN: Letters.
8 THE COURT: Okay. Great. That's the usual
9 fashion.
10 I'm trying to figure out what to give Mr. Whitaker
11 here. Let's see. Why don't we give Mr. Whitaker -- we'll
12 start you off with No. 100, how's that. That's 100 and go
13 from there so there's no confusion.
14 MR. WHITAKER: Okay.
15 THE COURT: All right.
16 MR. WHITAKER: Just for clarification, your Honor.
17 There are two documents on my exhibit list that are part of
18 CalPERS' document.
19 THE COURT: Okay.
20 MR. WHITAKER: And when we get to that in the list
21 I can identify that for the record.
22 THE COURT: Okay.
23 MR. WHITAKER: So you want me to just start to mark
24 or identify them as set forth in my list starting from 100?
25 THE COURT: Let's see. Yeah, I think it's a good

1 idea.
2 I'll go ahead and on your exhibit sheet and marking
3 for identification the letter to Frank Minor as your first,
4 Exhibit 100; is that right?
5 MR. WHITAKER: That's fine, your Honor.
6 THE COURT: And I'll follow the sequence you used,
7 all right?
8 MR. WHITAKER: Okay.
9 If we could, your Honor, so we go to the two
10 documents I'm not introducing.
11 So No. 1, the letter to Frank Minor dated December
12 5th 2011. No. 2 would be the letter to Frank Minor dated
13 January 10th 2012, that will be 102. Next 103, a letter to
14 Frank Minor dated March 2nd 2012. Next in order is letter to
15 CalPERS dated March 26th 2012, marked as No. 4. The next two
16 documents, the Notice of Appointment and Termination dated
17 March 19, 2001, it will be No. 105. The next notice of
18 Personnel Action Report of Separation issued March 22nd 2001,
19 it will be 106. The next document, your Honor, withdrawing
20 because it is CalPERS No. 7.
21 THE COURT: I've already marked it. Let's just
22 leave it marked as 107.
23 MR. WHITAKER: Okay. And do you still want me to
24 go through what I'm doing, your Honor.
25 THE COURT: It's not necessary, you don't have to.

1 At some point you will address probably all of them
2 or most of them.
3 I've gone ahead and marked them, as I said,
4 following your sequence 100 through 113.
5 MR. WHITAKER: Actually 112.
6 The last document continues on. It is a long
7 identification of the document.
8 THE COURT: I see.
9 MR. WHITAKER: It is a long identification of the
10 document, so 100 through 112.
11 THE COURT: Thank you.
12 MR. WHITAKER: Thank you, your Honor.
13 THE COURT: Okay. Thank you.
14 And you said there was a stipulation relating to
15 the admissibility of your exhibits?
16 MR. WHITAKER: Correct, your Honor, from both
17 parties.
18 THE COURT: Is that correct, Ms. Dean, you have no
19 objection to my receiving any of the exhibits identified 100
20 through 112?
21 MS. DEAN: Correct.
22 MR. COFFEY: Correct, as to authentication and
23 identification, your Honor. And if it gets to argument I may
24 have comments, but they can certainly be admitted into
25 evidence and received.

1 THE COURT: Received. Okay.
2 You want to do the exhibits or call Dr. Champlin?
3 MS. DEAN: The exhibits first.
4 THE COURT: Yes.
5 MS. DEAN: And I didn't know we had extra. Like
6 me, Mr. Whitaker and Coffey have some of the duplicate
7 exhibits so I took them out.
8 THE COURT: Okay. Not a problem.
9 MS. DEAN: May I approach?
10 THE COURT: Yes.
11 MS. DEAN: And so they are obviously now out of
12 order because we took some of them out.
13 THE COURT: That's okay.
14 MS. DEAN: Okay.
15 THE COURT: Okay. So you have marked for
16 identification A, B, H, K, L, M, N, O, P, R, and S, correct?
17 MS. DEAN: And under H they were stapled together
18 and we wanted to introduce them as separate ones, so H --
19 MR. WHITAKER: -- and J in the packet. And that's
20 the only one on which that happened.
21 THE COURT: Okay. So I'm going to mark all of
22 those for identification.
23 Are you offering these into evidence at this point?
24 MS. DEAN: Yes.
25 THE COURT: Any objection to any of the exhibits

1 identified received in evidence beginning with you, Mr.
2 Coffey?
3 MR. COFFEY: No objection as to A, no objection as
4 to B.
5 And the next exhibit was H, your Honor?
6 THE COURT: Yes.
7 MR. COFFEY: No objection.
8 Next was K?
9 THE COURT: Well, it goes H, I, J. They are all
10 stapled together, but three separate exhibits.
11 MR. COFFEY: I see. H, I, J.
12 THE COURT: Yes.
13 MR. COFFEY: No objection as to H, I, J. K, no
14 objection as long as it is received as administrative
15 hearsay. The same as to L, M, N, O, P.
16 Did we jump to R?
17 MR. WHITAKER: Your Honor, I have a Q.
18 MR. COFFEY: Is Q included?
19 No objection, your Honor.
20 They all appear to be medical reports and as long
21 as received as administrative hearsay, I have no objection.
22 THE COURT: Okay.
23 Mr. Whitaker, any objection to any of the documents
24 being received in evidence with the understanding that those,
25 that constitute hearsay would be received as hearsay?

1 MR. WHITAKER: No objection, your Honor.
2 THE COURT: Okay. So those are received with that
3 condition.
4 All right.
5 MR. DEAN: Your Honor, I have a question.
6 THE COURT: Yes.
7 MR. DEAN: I know we can't tag team, but can she
8 ask a set of questions and when she's done can I ask
9 questions after that?
10 THE COURT: Of the same witness?
11 MR. DEAN: Of the same witness.
12 THE COURT: Typically, no.
13 Mr. Coffey, any objection to that procedure being
14 followed with respect to their own witnesses?
15 What I'm really concerned about is
16 cross-examination that's where I don't like to allow that. I
17 typically don't allow that. What about with respect to their
18 own witnesses?
19 MR. COFFEY: I guess I don't have a heartfelt
20 concern, your Honor.
21 Although it would, I think, make for a clearer
22 presentation on the record as well as a clearer interaction
23 between questioner and witness if there is one individual.
24 Certainly Ms. Dean can consult with Mr. Dean at
25 breaks and if he has certain questions or areas he believes

1 need or should be covered it's entirely appropriate to have
2 that kind of assistance, but I think I guess if we have one
3 attorney per party you know there should be one person
4 speaking on behalf of Ms. Dean or questioning on behalf of
5 Ms. Dean.
6 THE COURT: Okay. What's your position,
7 Mr. Whitaker?
8 MR. WHITAKER: I have no objection, your Honor.
9 THE COURT: Why don't we do this.
10 Let's go ahead with the questions Ms. Dean will
11 pose with Mr. Champlin and let's see where we are. You may
12 not need it when the two of you consult.
13 Let's have your witness.
14 MS. DEAN: Dr. Champlin.
15 THE COURT: Doctor, before you sit down let's swear
16 you in.
17 JOHN JOSEPH CHAMPLIN,
18 Being called as a witness on behalf of the
19 Respondent, having been first duly sworn, was examined and
20 testified as follows:
21 THE COURT: Please be seated.
22 And once seated, would you please state your name
23 for the record and please spell the first and last name.
24 THE WITNESS: John Joseph Champlin; J-O-H-N,
25 J-O-S-E-P-H, C-H-A-M-P-L-I-N.

1 THE COURT: Thank you.
2 Okay. Proceed.
3 DIRECT EXAMINATION
4 BY MS. DEAN:
5 Q. Dr. Champlin, what is your basis of understanding of
6 what the duties of a C.H.P. officer are?
7 A. Well, I've been the primary treating physician in well
8 over a hundred C.H.P. injury cases.
9 I have early in my career, when I was a senior
10 resident at Davis, I was employed by Ergonomics a company
11 employed to do data for the P.O.S.T. Commission. I examined
12 hundreds of peace officers in the State of California,
13 performed stress E.K.G.s and ran them through a complex
14 series of obstacles. The P.O.S.T. Commission was charged
15 with determining what the physical requirements of being a
16 peace officer was at the time and I participated in
17 examination throughout the State of California in preparation
18 of that original raw data.
19 Since that time I have been a Qualified Medical
20 Evaluator who has evaluated various C.H.P. officers acting
21 both as a panel Q.M.E. and A.M.E., and primarily as a
22 treating physician for primarily injured officers.
23 Q. Okay. And you stated in your report that I could not
24 perform the duties of a C.H.P. officer, can you explain how
25 you came to that conclusion?

1 A. When I saw and evaluated you in October you asked me to
2 assess whether or not I felt there were specific duties that
3 you could not perform pursuant to the essential tasks of a
4 California Highway Patrol. In the course of my familiarity
5 and review of your records it was clear you had suffered a
6 number of injuries on a number of occasions, however you had
7 persistent findings which made me question whether or not if
8 you could perform certain tasks at all.
9 In other words, meaning the task of a Highway
10 Patrol Officer are different than many other peace officers,
11 frequently alone and remote situations without backup
12 reasonably available and you have to arrest suspects and
13 perform various other duties that perform certain physical
14 lacquer and you had deficits in your exam that made me
15 believe that you could not do specific duties that are
16 requirements, specifically numbness in the patella region of
17 both knees, the left knee being worse. Where if you had a
18 surgical scar resulting in a napraxia and significant
19 contusions of the automobile accident of 1997 why you had
20 persistent numbness of that area where you are not able to
21 kneel, areas with poor lighting to breathe, broken glass, and
22 other situations where sensation in your knees, in essence to
23 maintain your balance and maintain the control of the suspect
24 during the physical methods of arrest.
25 THE COURT: Okay. Were there questions that you

1 had specifically wanted to ask?
2 MS. DEAN: He was talking about Dr. Minor.
3 THE COURT: Mr. Coffey, cross-examination?
4 MR. COFFEY: Thank you.
5 Doctor, I will be with you in a moment.
6 CROSS-EXAMINATION
7 Q BY MR. COFFEY:
8 I'm Rory Coffey. And as I indicated I represent
9 CalPERS in this matter.
10 Have you been retained by California Public
11 Employees' Retirement System, CalPERS, to perform evaluations
12 of a CalPERS member, any CalPERS member, for purposes of
13 determining whether they are entitled to a disability
14 retirement?
15 A. No.
16 Q. Before being asked by Ms. Dean to participate in this
17 matter, her appeal, have you testified in any other matters
18 in say the past two years involving the issue of whether the
19 individual does qualify, is eligible, for a PERS disability
20 retirement?
21 A. No, I haven't testified in any PERS cases. Other agency
22 cases, yes.
23 Q. As part of your preparation to come here today and
24 testify, did you review any documents?
25 A. Yes.

1 Q. What documents did you review in order to prepare for
2 your testimony today?
3 A. Dr. Minor's reports, the reports of Dr. Endicott, a
4 limited number of Dr. Armstrong's reports, the reports of Dr.
5 Schaefer.
6 THE COURT: Schaefer?
7 THE WITNESS: Schaefer.
8 I did review the tasks of the California Highway
9 Patrol, both the current duration and the one invoked at the
10 time of her injury.
11 Q. (BY MR. COFFEY) Any other documents?
12 A. Oh, there were a number of other reports in here. I
13 could go through and list them for you if you wish. It's a
14 pretty big stack.
15 Q. You have lifted a manila file folder, is that what we
16 might call a "patient chart?"
17 A. Primarily her prior records.
18 Q. Okay. Dating back to as early as 1991?
19 A. I believe so, yes.
20 Q. Okay. Dr. Champlin, as part of your review of documents
21 in this matter did you review anything that stated or
22 articulated what the CalPERS standard for disability
23 retirement is?
24 A. I don't believe I did. As I understand, the standard is
25 an inability to perform the essential task of the patient, of

1 the individual's job.
2 Q. Inability to perform an essential function?
3 A. Yes, an essential function.
4 And I did review CalPERS "O," line 05, the physical
5 requirement of Physician slash Occupational Title. I did
6 note it was missing the signature of the member.
7 Q. Okay. Do you have your own copy -- Exhibit A. I'm
8 sorry.
9 Dr. Champlin, we've previously marked as Exhibit A
10 your October 28, 2013 report; do you have your own copy of
11 that with you?
12 A. You know I don't think. My secretary gave it to me.
13 MR. COFFEY: Can I approach, your Honor?
14 THE COURT: Yes.
15 MR. COFFEY: Here we go.
16 THE WITNESS: Thank you.
17 MR. COFFEY: Yep.
18 Q. (BY MR. COFFEY) Okay. Is Exhibit A, a true and correct
19 copy of your original report dated 10/28 2013; correct?
20 A. It is.
21 Q. Okay. Have you prepared any other written reports
22 regarding Ms. Dean other than Exhibit A?
23 A. I have not.
24 Q. And did you prepare Exhibit A specifically for this
25 appeal, this hearing, for this matter?

1 A. I prepared it at Ms. Dean's request.
2 Q. And if my notes are correct, Ms. Dean contacted you and
3 asked you to evaluate her?
4 A. Yes.
5 Q. And in that contact or communication did she ask you to
6 determine whether she was able to perform specific duties of
7 the C.H.P. officer?
8 A. Yes.
9 Q. Dr. Champlin, you told us in your direct testimony that
10 you have in the past and I think currently served as a Q.M.E.
11 or a Qualified Medical Examiner in the context of a workers'
12 compensation case?
13 A. Yes.
14 Q. When you do serve as a Q.M.E. in a case involving a
15 C.H.P. officer who has made a claim for workers' compensation
16 benefits, do you typically prepare a written report?
17 A. I do an extensive one, much of the format of Dr.
18 Minor's.
19 Q. Exhibit A, a two-page report, is that not typical of a
20 report you would prepare when you served in the capacity as a
21 Q.M.E. involving a C.H.P. officer who's made a claim for
22 permanent benefits?
23 A. Certainly the Qualified Medical Evaluator addresses a
24 number of the disability status, causation status,
25 apportionment, and future medical treatment. In this case I

1 was asked to prepare a specific report on a specific issue.
2 Q. And I think I heard you say in your direct testimony you
3 made reference to a review of records, do we find in Exhibit
4 A an identification of what records you did review?
5 A. No. The records I was asked to review, a specific issue
6 whether or not Ms. Dean was capable of performing the
7 essential tasks. The records may give bearing on many of the
8 other issues that I just mentioned as the doctor of a medical
9 evaluation, but in this case it was could she perform the
10 essential task?
11 Q. And turning back to Exhibit A.
12 If I can address your attention to Exhibit 1, your
13 first full paragraph?
14 A. Yes.
15 Q. Towards the end of that paragraph you write in part
16 quote, "she has some degree of weakness and clear atrophy in
17 the left thigh," end quote?
18 A. Yes.
19 Q. You told us that you did review Dr. Minor's reports, and
20 in Dr. Minor's report did you find that as part of his
21 clinical examination of Ms. Dean he also noted atrophy in the
22 left lower extremity?
23 A. Yes. At the time of his examination he noted a 1
24 centimeter atrophy of the left lower extremity.
25 Q. And in Dr. Minor's report he actually provided his

1 measurement, if you will, of the perceived atrophy?
2 A. Well, it's not perceived. It's symmetrical, yes.
3 Q. You and Dr. Minor was noting seemingly the same
4 condition in the same patient?
5 A. Yes.
6 Q. When in that symmetry that I just quoted you use the
7 descriptive phrase "some degree of weakness"; is there a way
8 that you can quantify, calibrate, what "some degree of
9 weakness" means?
10 A. Certainly you know I would have rated her weakness in a
11 1 to 5 scale. In 4.5 out of 5 not -- present, but not
12 terribly significant.
13 Q. Continuing on the very next sentence in that very first
14 paragraph. Quote, "she has some decrease in dorsiflexion,
15 left greater than right, of the ankles" end quote.
16 Again, Doctor, is there any way that you can
17 provide us with what a quantification, characterization,
18 calibration of what some decrease in dorsiflexion means?
19 A. She probably had about 10 decrease of dorsiflexion at
20 one time or another. However, it may or may not continue due
21 to her prior history. She did have a prior history of an
22 ankle injury.
23 Q. Next paragraph which begins on examination. There's an
24 entry, quote, "there is decreased sensation bilaterally in
25 the patellar region, ankle."

1 And linking that to your testimony here this
2 morning that decreased sensation -- I'm sorry -- bilaterally
3 both knees had a decreased sensation?
4 A. Yes.
5 Q. How did you test for that?
6 A. Generally, I use a two point discrimination device sort
7 of like a paper clip or may use a Semmes-Weinstein
8 Monofilament. The left knee was insensate in the patellar
9 region, the right had some degree but a very poor -- of a
10 somewhat right discretion.
11 Q. And if I read your report, Exhibit A, and your testimony
12 here today correctly it is their lack of sensation in both
13 knees that you believe insensates Ms. Dean from performing
14 the usual and customary duties of a C.H.P. officer?
15 A. I believe it puts her and the general public at
16 increased risk and would therefore prohibit her from acting
17 as a California Highway Patrol Officer.
18 MR. COFFEY: May I have a moment, your Honor?
19 THE COURT: Yes.
20 MR. COFFEY: Thank you, Dr. Champlin.
21 THE COURT: Okay. Mr. Whitaker, your questions?
22 MR. WHITAKER: Thank you, your Honor.
23 CROSS-EXAMINATION
24 BY MR. WHITAKER:
25 Q. Good morning.

1 Mike Whitaker representing the California Highway
2 Patrol.
3 May I approach, your Honor?
4 THE COURT: Yes.
5 Q. (BY MR. WHITAKER) I'll show you what's previously
6 marked as Exhibit 109. Take a quick moment and take a look
7 at the document and I have a couple of questions about that
8 exhibit.
9 Dr. Champlin, have you seen that document before?
10 A. Several times.
11 Q. Did you use that document in your examination and in
12 basing your opinions of Ms. Dean?
13 A. I actually believe I used the previous version, because
14 that's what would have been applicable at the time of her
15 evaluations. However, I believe the pertinent issues in both
16 versions were the same.
17 Q. Okay. This revision was 4/10 which --
18 MR. WHITAKER: May I approach again, your Honor?
19 THE COURT: Yes.
20 Q. (BY MR. WHITAKER) And I'll hand you another exhibit
21 previously marked "Dr. Champlin" at "108," and take a look at
22 that exhibit?
23 A. I believe that's the one I used, yes.
24 Q. So that's the document that you referred to as part of
25 your examination in basing your opinions of Ms. Dean, is that

1 correct?
2 A. Yes, it is.
3 Q. Okay. Now, based on your examination and resulting
4 diagnosis of Ms. Dean is she currently able to remove
5 obstacles from the roadway to ensure the smooth flow of
6 traffic?
7 A. Well, she could remove some.
8 Q. What would she be able to remove from the roadway if she
9 was to return as a C.H.P. officer, based on your examination
10 and diagnosis of her?
11 A. On a single occasion I believe she could probably remove
12 most objects. If we're talking about you know, let's see,
13 move a 200 pound person from a vehicle, lift and/or carry the
14 victim 50 feet, I think that's questionable.
15 I note that hauling is now required for 50 feet of
16 distance in this document.
17 Q. Let me stop you there.
18 So when you say it's questionable, what do you mean
19 by that?
20 A. The example I use when I talk to my patients is if you
21 have chronic back pain and your back hurts all the time and
22 your house was on fire and your spouse is on the floor
23 unconscious, can you get them out of the house on time?
24 Okay. Because that's the standard for disability.
25 It doesn't matter if it makes your back hurt so bad if you

1 are in bed for a week afterwards which is different than the
2 workers' compensation system which is undue pain and
3 suffering.
4 Q. Looking at Exhibit 108 in front of you are there any
5 particular tasks on this list that based on your examination
6 and diagnosis of Ms. Dean she would not be able to perform
7 currently if she were to return as a C.H.P. officer?
8 A. I don't believe she could crawl 50 feet and her
9 insensate knees would lose position and she would fall over.
10 Q. Which exhibit?
11 A. No. 2. I have the vaulting a -- feet medium area and
12 running 30 yards of a medium grade. I'm not sure if she
13 could do that in her current condition.
14 Q. And what about her current condition causes you concern
15 about if she can perform that task?
16 A. She has on ongoing knee pain, ongoing back pain, and EMG
17 evidence of a cervical ridiculitis.
18 Q. In laymen's terms, what did you say?
19 A. Her knee, neck, and back hurts.
20 Q. You said something about an EMG?
21 A. There was an EMG. I tend to be biased in hard findings.
22 In her case while she was under the care of the chiropractor
23 she went under testing revealing at C-6 and 7 and decreased
24 sensation and strain at upper extremities. I think it is
25 relatively minor, but when you start to vault objects and go

1 running uphill, I think you might have difficulty operating a
2 weapon and I think that's problematic for a C.H.P. officer.
3 Q. And an EMG is what?
4 A. Electromyography.
5 Q. Anything else Ms. Dean would be unable to return for if
6 returning as a California Highway Patrol Officer?
7 A. Again, the balance flexibility and agility. No. 6 notes
8 that she has to be able to perform a full standing search and
9 preliminary frisk. Part of the procedure with physical
10 procedures of the knees and maintaining your balance with an
11 intoxicating individual and often times it is an isolated
12 event taking place where you have no back up. In her case
13 she has findings that make me believe that she would not it
14 be safe doing that.
15 Q. Anything else on this particular Exhibit 108 that you
16 believe that she could not perform if she were to return as a
17 California Highway Patrol Officer?
18 A. She has a number of findings which are softer and
19 chronic back pain as stated earlier off the record,
20 difficulty sitting for the time length she will be in court
21 today, and she needs to get up and move around to relieve the
22 back pain and that's clearly a finding. It is not a hard
23 finding, but if it was a sole finding I would not disable a
24 highway patrol for but with combined injuries there are a
25 number of things she would have trouble returning to the

1 California Highway Patrol and functioning in her position.
2 Q. Moving to 109, the first document I asked you to look at
3 are there. Any particular tasks in this document that you
4 believe based on your examination and diagnosis on Ms. Dean
5 should she be unable to perform if returning to the
6 California Highway Patrol?
7 THE COURT: Pardon the interruption. But I know
8 I've seen one of the two kinds of documents before, but I
9 don't see it here.
10 The one I've got is the California Highway Patrol
11 Officer task statements and according to your list that is
12 108?
13 MR. WHITAKER: Correct, your Honor.
14 THE COURT: But the one that I've seen in other
15 cases are the 14 Critical Physical Activities, although my
16 experience is that you don't find those words anywhere in
17 that document. But I don't see it in this package of
18 documents that you gave me.
19 MR. WHITAKER: Fourteen Critical Physical
20 Activities is marked at 109, your Honor.
21 THE COURT: Yeah, but I don't have it.
22 MR. WHITAKER: I'm sorry. I'll give you a copy of
23 it, it is also CalPERS No. 8.
24 May I approach, your Honor?
25 THE COURT: Yes.

1 MR. WHITAKER: This is 109. I'm sorry about that.
2 I'm sorry.
3 THE COURT: I don't think I have seen this before,
4 this is different than what I have seen in the past.
5 Okay. So this is the critical -- the 14 Critical
6 Physical Activities, this is 108.
7 MR. WHITAKER: It's 109, your Honor.
8 THE COURT: Okay. Thank you.
9 MR. WHITAKER: Correct.
10 THE COURT: Please continue.
11 Q. (BY MR. WHITAKER) In reviewing 109, the 14 Critical
12 Activities my question to you is is there anything in
13 particular on this document that she would be unable to
14 perform based on your examination and resulting diagnosis of
15 Ms. Dean?
16 A. I think she has significant difficulty kneeling,
17 especially as they describe it. Okay. Kneeling to look
18 underneath the seats of a vehicle, the dash of a vehicle,
19 look under furniture, et cetera, pulling, dragging heavy
20 objects such as logs off the roadway. I believe it may also
21 be something that she's not able to do. There are various
22 aspects of P.M.A. as a method of arrest, separating
23 uncooperative persons, using locks, grips and holds that she
24 wouldn't have difficulty doing on a single occasion.
25 Q. Could she get a 50 pound object off a road?

1 A. I believe so.
2 Q. When you say that she would have difficulty, what do you
3 mean by that in performing a particular task?
4 A. I believe that there is sufficient physical evidence to
5 this date that she would not be safe in performing arrest
6 because of the objective findings of her exam and as such I
7 would not permit her to return to the job.
8 MR. WHITAKER: At this point, I have no further
9 questions.
10 THE COURT: All right. Do you have further
11 questions of the doctor, Ms. Dean. And you have consulted
12 with your husband about any possible questions he thinks you
13 might have missed?
14 MS. DEAN: Yes.
15 THE COURT: Recross, Mr. Coffey.
16 RECROSS EXAMINATION
17 BY MR. COFFEY:
18 Q. Dr. Champlin, you are aware that C.H.P. officers, field
19 officers, perform their duties in a multitude of physical
20 environments across the state?
21 A. Yes.
22 Q. And included in those different physical environments
23 would be different climates?
24 A. Yes.
25 Q. And included in those different climates would be snowy,

1 cold weather conditions?
2 A. Yes.
3 Q. Are you aware of what uniforms are allowed by the C.H.P.
4 for officers to wear when they are in very cold, snowy
5 conditions?
6 A. I believe so. I take care of a number of motor officers
7 who come in during the wintertime and I believe they are
8 wearing the winter uniform.
9 Q. And that consists of what?
10 A. I believe it is heavy wool pants and the motor officers
11 usually wear an undergarment underneath that.
12 Q. And if a C.H.P. officer, male or female, is on duty and
13 in a snowy, cold environment wearing approved C.H.P. winter
14 gear, which as understand it to be the heavy wool pant, would
15 that affect sensation in their knees?
16 A. Yes, but not appropriately. I can't make an exception.
17 Q. Why is that?
18 A. The ability to feel, the ability in space from the
19 tactile impulses received from the neurological system.
20 Q. The appropriation?
21 A. When you have a definite sensory deficit and bearing
22 weight on an area with a -- you have much less balance and if
23 you are numb and you are kneeling on your numb knee it is a
24 lot easier to push you over.
25 Q. So answering Judge Engeman's question at some point in

1 this hearing if there's a difference of opinion between your
2 assessment or evaluation of Ms. Dean and Dr. Minor's it might
3 focus down to the significance of the appropriation deficit?
4 A. I'm not sure of the question there.
5 Q. Is your opinion that Ms. Dean would not be safe
6 returning to the usual and customary duties of a C.H.P.
7 officer driven in largest part by the appropriation deficit
8 bilaterally in her knees?
9 A. Yes, I would say I would.
10 Q. You told us about the other concerns but at the heart of
11 your opinion that's what we have, either an agreement or
12 disagreement between you and Dr. Minor?
13 A. Well, I'm not sure of Dr. Minor's opinion regarding the
14 loss, so I'm not sure how to answer it.
15 THE COURT: Recross, Mr. Whitaker?
16 MR. WHITAKER: No further questions, your Honor.
17 THE COURT: Doctor, I wanted to clarify a couple of
18 things.
19 VOIR DIRE EXAMINATION
20 BY THE COURT:
21 Q. You are board certified in family practice, is that
22 correct?
23 A. I am.
24 Q. And is that where you spend most of your time?
25 A. No, it is actually spent in occupational medicine.

1 Q. What is occupational medicine, what does that entail?
2 A. The diagnosis and treatment of industrial injury,
3 fitness for duties, examination hazards, material exams, and
4 acting as a medical evaluator for insurance companies and
5 other companies, et cetera.
6 I act as a Qualified Medical Evaluator doing panel
7 and Agreed Medical Exams.
8 Q. What percentage of your practice involves the treatment
9 of patients?
10 A. The majority, probably 70 percent.
11 Q. But those patients are typically patients who have
12 experienced some industrial injury?
13 A. Yes.
14 Q. Okay. And are they referred to you by the insurance
15 company, how do you get them?
16 A. I started taking care of highway patrol officers early
17 in my career and most of those have been by word of mouth
18 among the officers themselves. Other referrals come from
19 insurance companies, individual corporate accounts doing
20 hazardous material, companies, people working with lead,
21 asbestos, and other similar compounds. And I'll do both the
22 injuries and the fitness for duty exams and those are
23 mandated by federal and state guidelines.
24 Q. You are an assistant clinical professor at U.C. Davis?
25 A. Yes.

1 Q. And in what subject?
2 A. Family medicine and I lecture in family medicines.
3 THE COURT: Any other questions for the Doctor?
4 MR. COFFEY: No. Thank you.
5 THE COURT: Thank you, Doctor. You are excused.
6 Okay. So what are we going to handle, go to
7 Mr. Coffey's case-in-chief now?
8 MR. COFFEY: I would think so, your Honor.
9 THE COURT: Okay. Please.
10 MR. COFFEY: Okay. I would like to call Frank
11 Minor, M.D.
12 THE COURT: All right.
13 Dr. Minor, would you raise your right hand to be
14 sworn.
15 FRANK WEBER MINOR, M.D.,
16 Being called as a witness on behalf of the
17 Respondent, having been first duly sworn, was examined and
18 testified as follows:
19 THE COURT: Please be seated.
20 And would you please state your name for the record
21 and would you please spell both the first and last names.
22 THE WITNESS: Frank, F-r-a-n-k; Weber, W-E-B-E-R;
23 Minor, M-I-N-O-R.
24 THE COURT: Thank you. Proceed.
25 MR COFFEY: May I approach briefly, your Honor?

1 THE COURT: Yes.
2 MR. COFFEY: Do you have a copy of the C.V.?
3 THE COURT: Is it in any of the exhibits?
4 MR. COFFEY: No. I would ask the Court to mark as
5 a one-page document as CalPERS Exhibit 10. I previously
6 provided a copy to counsel and Ms. Dean.
7 DIRECT EXAMINATION
8 BY MR. COFFEY:
9 Q. Dr. Minor, can you take a look at what's been marked as
10 Exhibit 10?
11 A. Yes.
12 Q. Do you recognize that document?
13 A. Yes.
14 Q. And what is Exhibit No. 10?
15 A. That's my C.V.
16 MR. COFFEY: Okay. 10 for identification.
17 Q. (BY Mr. COFFEY) Dr. Minor, is the information contained
18 on Exhibit 10 accurate?
19 A. Yes, sir. It is.
20 Q. How long have you been a licensed physician in the State
21 of California?
22 A. I've been a licensed physician in California since 1985.
23 Q. Are you board certified in any area of specialized
24 practice?
25 A. Yes, sir. I'm board certified in orthopedic surgery and

1 have been board certified since 1983.
2 Q. Do you currently maintain an active practice?
3 A. Yes, sir. I do.
4 Q. Where is that?
5 A. That is in Grass Valley, California.
6 Q. What percentage of your professional time is spent in
7 patient care?
8 A. Certainly at least 90 to 95 percent.
9 Q. What do you do with the remaining 10 to -- or 5 to 10
10 percent of your professional time?
11 A. I perform Qualified Medical Evaluations, Agreed Medical
12 Evaluations, I.M.E., Independent Medical Evaluations.
13 Q. In this matter -- strike that.
14 Have you been retained before in this matter to
15 examine CalPERS members who have applied for disability
16 retirement benefits?
17 A. Yes, sir. I have.
18 Q. Can you tell us -- and when I say "retained," in what
19 capacity would you be retained?
20 A. I have been asked to evaluate CalPERS employees that
21 have had various injuries. I've been asked to make an
22 opinion as to whether they are capable of returning to work.
23 Occasionally, I've been asked as to address issues
24 such as causation in those situations.
25 Q. When you have in the past evaluated a CalPERS member for

1 purposes of eligibility for disability retirement, did that
2 take place directly at the request of CalPERS or did you work
3 through some other entity?
4 A. I believe I've -- in situations in Grass Valley, CalPERS
5 has called my office and asked for an evaluation. There was
6 a company, Objective Medical Evaluators here in Sacramento
7 that I worked with from roughly 1994 through the time they
8 went out of business around 2010 or so, and CalPERS would
9 contract with that company for me to do evaluations.
10 Q. Okay. In this matter do you know if you were retained
11 directly by CalPERS or whether you were retained through some
12 other entity?
13 A. I believe I was retained strictly through CalPERS.
14 Q. Okay. When was the -- that you first did perform an
15 evaluation of a CalPERS member for purposes of expressing an
16 opinion whether that individual was or was not substantially
17 incapacitated?
18 A. We're not talking this specific case?
19 Q. Correct, just the first time you recall being a CalPERS
20 independent medical evaluation?
21 A. I would say probably 1994, 1995 with O.M.E.
22 Q. From 1994 to 1995 to the present have you continued to
23 on occasion perform I.M.E.s, or Independent Medical
24 Evaluations, for purposes of a CalPERS medical retirement?
25 A. Yes, sir.

1 Q. In let's say in the year 2012, do you know or do you
2 have an estimate of how many matters you were retained by
3 either by CalPERS or some other entity to perform an
4 evaluation of a CalPERS member for purposes of offering an
5 opinion regarding disability retirement?
6 A. I don't have a number, it might have been one to five.
7 Q. And now we've gone through most of 2013. Do you have --
8 do you know or do you have an estimate of what that number
9 might be in the past year, how many CalPERS evaluations
10 you've performed?
11 A. Probably one or two.
12 Q. When you do perform an evaluation of a CalPERS member
13 for disability retirement benefit, are you compensated?
14 A. Yes, ma'am.
15 Q. And how is your fee determined? Do you negotiate it
16 directly by contract, how is the fee set?
17 A. CalPERS is different than other entities such as
18 Sacramento County. CalPERS, unless we negotiate an advance,
19 pays a flat fee and I don't know that number off the top of
20 my head.
21 Q. Okay. As you have performed evaluations of CalPERS
22 members for purposes of a disability retirement benefit have
23 you expressed both opinions meaning yes the individual is
24 substantially incapacitated and no the individual is not
25 substantially individually incapacitated?

1 A. Yes.
2 Q. Do you have any way of telling us let's say in the past
3 year and -- well, that wouldn't work in only one or two
4 cases. All right. Let's use a five year returning average.
5 In the past five years do you have any way of
6 telling us the percentage of CalPERS evaluations that you
7 performed where you offered an opinion that the individual
8 was disabled versus the percentage of cases where you offered
9 a contrary opinion, the individual was not disabled?
10 A. I'd estimate it's about a 50/50.
11 Q. Are you paid the same flat fee whether your opinion of
12 the individual is disabled or not disabled?
13 A. Yes, ma'am.
14 Q. Do you have a CalPERS exhibit packet there with you at
15 the witness stand, Doctor?
16 A. I believe I do.
17 Q. Could you take a look at what has been marked as Exhibit
18 8?
19 A. 108.
20 Q. 8?
21 A. Yes, sir. It says California Highway Patrol 14 Critical
22 Physical Activities.
23 Q. Yes.
24 A. Yes, sir. I have that.
25 Q. Have you seen that document before?

1 A. Not until this morning.
2 MR. COFFEY: May I approach?
3 May I approach, your Honor?
4 THE COURT: Yes.
5 Q. (BY Mr. COFFEY) Showing you what has been marked for
6 identification as Exhibit 108, have you seen that document
7 before?
8 A. Yes.
9 Q. And what is Exhibit 108?
10 A. California Highway Patrol Officer Task Statement.
11 Q. Did you use a copy of a version of what is marked as
12 Exhibit 108 as part of your workup or valuation in this
13 matter your evaluation of Ms. Dean?
14 A. Yes.
15 Q. Could you turn now Doctor to what is marked as Exhibit 5
16 in the CalPERS exhibit packet?
17 A. That's my report I believe.
18 Q. A report dated December 6th 2011?
19 A. Yes, sir.
20 Q. All right. Can we go through that report then.
21 On page 1 of Exhibit 5 in the second paragraph you
22 indicate that you spend 1.25 hours face-to-face with Ms. Dean
23 during the interview and evaluation?
24 A. Yes, sir.
25 Q. When you prepare a report for CalPERS do you normally

1 indicate the amount of time you spent face-to-face with the
2 individual?
3 A. Yes, sir.
4 Q. Is 1.25 hours in the normal range, is it more time than
5 your usual time spent, less time?
6 A. Generally, I spend an hour with a patient.
7 Q. Pretty close to normal?
8 A. Yes, just a tad bit longer.
9 Q. Okay. And you took a history from Ms. Dean?
10 A. That's correct.
11 Q. We find that information beginning at the bottom of page
12 1 of Exhibit 5 and continuing on?
13 A. Yes, sir.
14 Q. Through page 3?
15 A. Yes, sir.
16 Q. And did some of that information also come from your
17 review of medical reports?
18 A. Yes, sir.
19 Q. You have a heading at the bottom of page 3, a job
20 description. You have already told us that you are familiar
21 with what's marked as Exhibit 108. Before evaluating Ms.
22 Dean for the purposes of a CalPERS retirement have you
23 previously evaluated any other C.H.P. officers for a similar
24 issue whether or not they were substantially incapacitated
25 for doing their duties as a C.H.P. officer?

1 A. Yes, sir. I've seen this many times.
2 Q. Okay. Now, on page 4 of your report under the heading
3 of current symptoms, again that information is from Ms. Dean?
4 A. The current symptoms, yes.
5 Q. At the very end of that heading there's an entry, quote,
6 at the end of the office visit she stated that she could do
7 the duties of a C.H.P. officer but would likely hurt, end
8 quote; is that a statement Ms. Dean made to you?
9 A. Yes, sir.
10 Q. Why would you include that in your report?
11 A. It is very difficult, it is very difficult to
12 retroactively and concurrently state that someone years
13 earlier has been incapacitated to their job and then strictly
14 on the basis of their current complaints or this examination
15 state that they can go back and do their job. We -- I had
16 evaluated her, the findings were very weak in my opinion, we
17 had -- I felt that we had had a congenial evaluation and at
18 the end she said well -- well, I -- I think I could do the
19 job but I -- I would likely hurt.
20 Q. So was this a statement volunteered by Ms. Dean to you?
21 A. Yes.
22 Q. In other words, Dr. Minor, what I'm asking is did you
23 try to interrogate Ms. Dean in a fashion as to "Ms. Dean, do
24 you think you can do the job of a C.H.P. officer?"
25 A. Well, that's not -- I don't ask that type -- I don't

54

1 interrogate the patient at all along those lines.
2 Q. From the middle of page 4 over onto the middle of page
3 15, that's all of your notations of review of records?
4 A. Yes, sir.
5 Q. And what is your practice when you review records as
6 part of a percent valuation, do you try to summarize the
7 records? Do you only put in matters that are significant?
8 How do you go about deciding what goes into your report under
9 a heading of chart review or record review?
10 A. I put in all the records that are submitted to me. I
11 will weed out records that are redundant. I will, not always
12 but usually, weed out any records that deal with things like
13 a hysterectomy or upper respiratory infection or a C section
14 that is just not pertinent.
15 Q. Okay.
16 A. Occasionally, I might accidentally slip something in
17 because I've gotten into it and rather than rewinding and
18 taking some time to take that out of the record I just leave
19 it in, but --
20 Q. Doctor, could you turn to page 16 of Exhibit 5?
21 A. Yes, sir.
22 Q. Under the heading "past work history," do you know where
23 that information came from?
24 A. That information came from a questionnaire that we
25 send -- sent to her in advance of the evaluation that she

55

1 filled out for us and I had that to review.
2 Q. So again information provided by Ms. Dean to you in
3 response to the questions?
4 A. Correct.
5 Q. Okay. So you again, your notes regarding your actual
6 clinical physical examination of Ms. Dean on the bottom of
7 page 16 and continuing, correct?
8 A. Correct.
9 Q. On page 17 under a heading of "upper extremities"
10 there's a number of lines of entry in a column if you will
11 left with an identification of the test being performed, the
12 middle column, right, and again that's right upper extremity
13 or arm?
14 A. Correct.
15 Q. And the final column moving over to the left arm?
16 A. Correct.
17 Q. Without going through each and every line can you look
18 at that Doctor and tell us at the time you made your
19 examination and entered these findings is there a finding of
20 significance one way or the other?
21 A. No, sir. The findings were normal with the exception of
22 she had had a prior carpal tunnel release and still had a
23 little sensitivity in the area of the nerve that had been
24 decompressed on her left hand, other than that everything
25 felt in order or normal.

56

1 Q. So strength, sensation, reflex, upper extremities, a
2 normal examination?
3 A. Yes. Yes, sir.
4 Q. Did you test for grip strength?
5 A. Yes, sir.
6 Q. In the next paragraph and the findings were what?
7 A. Very impressive.
8 Q. Turning to page 18 of your report. Now we're focused on
9 the lower extremities?
10 A. Yes, sir.
11 Q. And moving again left to right across the page you
12 identified the tester, the area that you're looking at and
13 then whatever your findings were for the right leg and
14 finally the left leg?
15 A. Yes.
16 Q. Again, without necessarily going line by line can you
17 tell us in those findings are there findings that are
18 significant to you one way or the other?
19 A. Well, there was a little small amount of loss of motion
20 in the left knee as compared to the right but the knee
21 motions were very good. There was a little, there was a
22 little bit of grinding with range of motion with both knees,
23 the left a little more than a -- the right. I could not
24 detect any fluid in any knee. She seemed to have, in spite
25 of a prior tear that had been tested she had good ligament

57

1 stability in both knees, she did have some loss of feeling in
2 the front of both knees.
3 Q. Where do you note that?
4 A. About two-thirds of the way down. Numbness and it
5 follows under knee flexion, extension. And I meant
6 discussing numbness with regards to the leg and that's
7 present in the anterior aspect of the knees.
8 Q. So in the middle of page 18 under that larger heading of
9 lower extremities we get to an entry knee flexion slash
10 extension?
11 A. Yes.
12 Q. Opposite that for the right, 0 degrees to 160 degrees --
13 A. Correct.
14 Q. -- is that normal?
15 And for the left, 0 degrees to a 140 degrees?
16 A. So there's some deficit, yes.
17 Q. And we go down to gravitation ligaments and we find
18 numbness and when you write anterior for both right and left,
19 what does that tell us?
20 A. That tells us she did not feel light touch on the front
21 of the knees. And then on the paragraph below this chart, if
22 I may use the chart, there the sensation of the rest of the
23 legs was in tact.
24 Q. So you were present here earlier this morning and heard
25 the testimony of Dr. Champlin?

1 A. Yes, sir.
2 Q. And you had an opportunity to also review his report,
3 Exhibit A?
4 A. Yes, sir.
5 Q. And you heard Dr. Champlin express an opinion because of
6 that numbness or lack of sensation in Ms. Dean's knees it was
7 his opinion that she could not return to full duty as a
8 C.H.P. officer?
9 A. That's right.
10 Q. Do you agree with Dr. Champlin's opinion in that
11 respect?
12 A. No, sir.
13 Q. Why?
14 A. Well, Dr. Champlin is stating that she loses by not
15 having feeling there in the front of the knees. She has lost
16 appropriate sensation and appropriate sensation is a feeling
17 of the extremity in space whether my numb is up, my numb is
18 down. And we can check people and check for appropriate
19 sensation in toes and stuff and fingers and sometimes it's
20 abnormal. It can be abnormal in diabetics who have lost
21 feeling, normal sensation in their legs. But appropriate
22 sensation, it is not just sensation of the skin. Appropriate
23 sensation is determined by the muscle tendon unit as well as
24 the joint position and there can be some slight altered
25 appropriate sensation with loss of feeling at the skin, but

1 there's an amount of appropriate sensation that's still
2 available within the muscle tendon units. I mean if we lost
3 appropriate sensation of our legs due to loss of feeling in
4 the front of the knee, our patients that we do artificial
5 knees that are completely numb knees in the front, people
6 that have had A.C.L. constructions have numb front knees. If
7 you have lost the appropriate sensation you lost the ability
8 to control that extremity and the ability to stand and walk
9 and that just isn't the case.
10 Q. So appropriate sensation as a heading has subparts to
11 it?
12 A. Correct, there are multiple factors.
13 Q. Cessation on the surface of the skin being one factor?
14 A. Right.
15 Q. And you would -- in fact you would agree and find in
16 your examination of Ms. Dean I won't say the same lack of
17 cessation but you documented and she told you as you tested
18 there's a lack of cessation on both knees?
19 A. Yes, sir.
20 Q. But your examination or evaluation went beyond the
21 surface of the skin?
22 A. Yes, sir.
23 Q. And did you find as you tested or examined Ms. Dean's
24 knees that there were any other deficits in any of the other
25 factors that would contribute or constitute full appropriate

1 sensation?
2 A. No, sir.
3 Q. Continuing on page 18 of your report, Exhibit 5, did you
4 check Ms. Dean's cervical range of motion?
5 A. Yes, sir. I did.
6 Q. What were your findings?
7 A. She had good range of motion with 45 degrees of flexion,
8 38 of extension and 36 of left lateral bending of her neck.
9 32, correction; 36 to the right and 32 to the left of lateral
10 bending. The rotation was excellent at 75 degrees in each
11 direction.
12 Q. Okay. And did you check Ms. Dean's lumbar range of
13 motion?
14 A. Yes, sir. I did.
15 Q. And what were your findings?
16 A. Well, her lumbar flexion was 52 degrees, she was able to
17 move forward, touch the floor with lacquerity, and she had no
18 problems.
19 Q. Some of us may know the definition of a lacquerity, when
20 you use that term what are you describing?
21 A. She bent over quickly and easily to my observation of
22 her.
23 Q. Why would that or why was that a significant observation
24 or finding?
25 A. Well, I've just -- I just don't see people with back

1 pain being able to bend forward quickly and touch the floor.
2 Q. Now, in the CalPERS evaluations you are asked ultimately
3 to express an opinion?
4 A. Yes, sir.
5 Q. And did you do so in this matter?
6 A. Yes, sir.
7 Q. And do you find that opinion on page 19 of your report
8 under the heading of "discussion?"
9 A. Yes, sir.
10 Q. Now, on Item 1 again you are answering a question posed
11 to you in these matters?
12 A. Yes.
13 Q. Okay. Part of the entry reads, quote, "the member
14 stated to me that she could do the duties of a C.H.P.
15 officer," and I'll stop there. We've already talked about
16 Ms. Dean making or volunteering that statement to you?
17 A. Yes.
18 Q. Then if you continue after that sentence. "However, she
19 would likely have neck and back pain as a result of such
20 activities," end quote.
21 Is that sentence as I just read your opinion or is
22 that related back to what you wrote on page 4 of your report,
23 she could do the duties of a C.H.P. officer but would likely
24 hurt, meaning her statement to you?
25 A. Right, that was her statement to me and I wouldn't

1 disagree with her statement.
2 Q. Okay. Good.
3 Meaning after your own clinical examination of Ms.
4 Dean your review of whatever records you reviewed, your
5 opinion is she's fully capable of doing the duties of a
6 C.H.P. officer but in performing a task of removing a 200
7 pound individual she might experience an exacerbation of low
8 neck pain or low back pain?
9 A. Yes, sir.
10 MR. COFFEY: Thank you, doctor.
11 THE COURT: Okay. Mr. Whitaker, do you have
12 questions?
13 MR. WHITAKER: If we could request a break.
14 THE COURT: Okay. Off the record.
15 (Whereupon, there was a brief recess.)
16 THE COURT: Okay. Back on the record.
17 Mr. Whitaker.
18 MR. WHITAKER: Thank you, your Honor.
19 CROSS-EXAMINATION
20 BY MR. WHITAKER:
21 Q. Michael Whitaker representing the California Highway
22 Patrol today.
23 A. Yes, sir, Mr. Whitaker.
24 Q. I'll start my questions request with what I intended
25 with the respect to the ability of Ms. Dean to return to the

1 California Highway Patrol at the C.H.P. as a traffic officer.
2 In -- in your opinion that she could extract a 200
3 pound victim from a car, is that your opinion?
4 A. Yes, sir.
5 Q. And but she would be -- would have an exacerbation of
6 neck and back pain, is that correct?
7 A. Exacerbation meaning a pain that would get better.
8 Q. Would she have it during extracting an individual
9 weighing 200 pounds from a vehicle?
10 A. She could.
11 Q. If she had to then extract another 200 pound person from
12 a vehicle would she be able to perform that function as a
13 C.H.P. officer with the back pain?
14 A. I suppose.
15 Q. What do you mean "I suppose?"
16 A. I think she could. She has the physical capability of
17 doing it.
18 Q. With the exacerbation of neck and back pain at the
19 moment?
20 A. Possibly, yes.
21 Q. Possibly?
22 A. Possibly she would not be able to do so.
23 Q. Would she be able to extract a third person from a
24 vehicle weighing 200 pounds based on your examination and
25 diagnosis of Ms. Dean?

1 A. If she were having a problem she might not being able to
2 extricate a third person.
3 Q. And you would agree based on your examination of other
4 C.H.P. -- other C.H.P. officers who are in the field by
5 themselves and do not have immediate backup and come upon an
6 accident where victims have to be extracted from a vehicle
7 they would have to perform that, correct?
8 A. Correct.
9 Q. And at the time of your examination Ms. Dean was not
10 wearing a gun belt, correct?
11 A. Correct.
12 Q. And do you know what is on a gun belt of a C.H.P.
13 officer?
14 A. I've got a pretty good idea. I've seen the beefy belts
15 with the gun and the ammunition and sometimes a walkie-talkie
16 or sometimes a device to communication.
17 Q. Do you know how much a gun belt would weigh?
18 A. I believe they are in the neighborhood of 25 to 35
19 pounds.
20 Q. And would that weight of the gun belt being on Ms. Dean
21 would that impact her ability to do any of the essential
22 duties of a C.H.P. officer in your estimation?
23 A. It could make it more difficult.
24 Q. What do you mean by "more difficult?"
25 A. With regards to pain, she could have pain as a result of

1 carrying this duty belt.
2 Q. Going back to the hypothetical of the multiple victim
3 car accident that she comes upon as a California Highway
4 Patrol wearing in your words a 25 to 35 pound gun belt, would
5 she be able to extricate up to three individuals weighing up
6 to 200 pounds based on your diagnosis of her?
7 A. I think she could. As you got up to three she might not
8 be able to do that.
9 Q. She did tell you as part of your record or your report
10 on page 19 that she stated that wearing a gun belt causes her
11 back to hurt?
12 A. Correct.
13 Q. Other than California, are you licensed to practice in
14 any other jurisdiction?
15 A. Louisiana and New Mexico.
16 Q. And are those licenses current?
17 A. Yes, says my office assistant and myself.
18 Q. Have you ever been disciplined by any government or
19 agency regulating the practice of medicine?
20 A. No, sir.
21 Q. Have you ever been sued for malpractice?
22 A. Yes.
23 Q. How many times?
24 A. Probably in the neighborhood of four or five times.
25 Q. And what was the nature of those malpractice claims, if

1 you remember?
2 A. One was a child that had a slip in the hip. I had been
3 trying to diagnose it for several, several years. He was
4 morbidly obese and just before I left town for a vacation for
5 ten days the mother called, requested X-rays which again I'd
6 been trying to get for years, and I went ahead and I ordered
7 them and the day before I got back to town the X-rays had
8 been read and she had taken them to another physician in a
9 nearby town. He had operated on the child and I have no idea
10 what happened. Things didn't go well and I was named in the
11 suit and dropped in the suit.
12 Q. Are the other matters that you were involved in
13 regarding malpractice regarding misdiagnosis of your patients
14 that you were treating?
15 A. No.
16 Q. Okay. So what were the other malpractice cases about?
17 A. Another one was individual. I had reconstructed his
18 anterior crucial ligament, pain in the knee postoperatively,
19 he had seen another physician, he did some surgery, he sued
20 me and I dropped the case.
21 There was another case on the year that I moved up
22 to Grass Valley with a -- they called me in on my birthday at
23 about 1:00 in the morning for a lady that had gone through a
24 deck, she had an open fractured dislocation at the ankle, the
25 bones ground into the dirt below. She had neuropathic foot,

1 no appropriate sensation in the foot or anything which makes
2 it difficult to heal. We operated on her three times and I
3 kept trying to get her to go into a nursing home so she --
4 she could heal the fractures and not walk on it because every
5 time she left the hospital after several times, a three
6 weeks' stay, she'd get home and slip on the crutches, when I
7 wanted her to be in a walker and refractured the ankle.
8 Ultimately, I had her set up to go into a nursing
9 home and she refused to do so after the third break and
10 ultimately went to see a very fine physician here in
11 Sacramento. He attempted to fuse the ankle and due to her
12 neuropathy and poor perception that failed and she ended up
13 with a painful swollen leg. She could not get an attorney to
14 sue me. She sued me in pro per and lost.
15 Q. Have you ever lost credentials to practice medicine in
16 any professional setting such as a hospital?
17 A. No, sir.
18 Q. Now, you indicated in your direct examination of Mr.
19 Coffey asking you questions you have been performing
20 examinations for CalPERS since 1994-or 5?
21 A. Yes, sir.
22 Q. And can you estimate the number of examinations that you
23 have conducted since that time at the request of CalPERS?
24 A. I would just a real estimate, but maybe 50.
25 Q. 50?

1 A. Yes, sir. And that was primarily through the O.M.E.
2 office here in Sacramento. And I never actually did them in
3 my own office until I quit doing them there, their objective
4 medical -- well, when they went out of business.
5 Q. So you're making a distinction in terms of the estimate,
6 in terms of when you were directly retained by CalPERS to
7 perform an examination as opposed to indirectly through some
8 registry?
9 A. Yeah, I'm combined in both.
10 Q. That you are combining the direct and indirect retention
11 by CalPERS?
12 A. That's correct.
13 Q. In your estimate of 50?
14 A. That's correct.
15 Q. Of the 50 what is the percentage in which you found a
16 CalPERS member or a government employee to be incapacitated
17 for the performance of the usual and customary duties?
18 A. Well, as I said earlier, about 50 percent.
19 Q. Okay.
20 A. And again that's an estimate.
21 Q. And of those 50 examinations could you estimate for us
22 the number of peace officers that you evaluated?
23 A. That's going to be hard for me to say in that I may be
24 confusing it with peace officers that I have seen for
25 Qualified Medical Evaluations and stuff. Because I remember

1 seeing this document a number of times and I would say I've
2 probably seen in the neighborhood of 15 to 20 peace officers
3 total. Again, that's probably mixing with Qualified Medical
4 Evaluations and not just CalPERS. I just can't come up.
5 Q. So when you say a Qualified Medical Examination in terms
6 of a workers' compensation claim?
7 A. Correct.
8 Q. How about in terms of medical evaluations, have you ever
9 done those?
10 A. Not for the California Highway Patrol.
11 Q. For other agencies?
12 A. Ones for Grass Valley P.D.
13 Q. Okay. So you may have conducted over the course of
14 since 1994, 1995, fifteen to twenty examinations of peace
15 officers but you don't remember if it was in the context of a
16 disability retirement context or for some other reason; is
17 that correct?
18 A. Yes. Yes, sir.
19 MR. WHITAKER: May I approach, your Honor?
20 THE COURT: Yes.
21 Q. (BY MR. WHITAKER) I'm going to hand you, Dr. Minor,
22 what's previously admitted as Exhibit 100 and take a moment
23 to look at the exhibit and a few questions about it.
24 A. Yes, sir.
25 Q. And do you recognize this exhibit?

1 A. Yes, I do.
2 Q. And you received that on or about October 6th 2011,
3 correct?
4 A. Yes, sir.
5 Q. In that particular letter on the first page at the very
6 bottom, last sentence, it says that a job description was
7 enclosed; do you remember that job description was that was
8 provided to you by CalPERS?
9 A. As I vaguely remember I believe it was a job description
10 that was prepared around 1995.
11 Q. If you could, Dr. Minor, take a look in this packet?
12 A. Yes, sir.
13 Q. Document, Exhibit No. 7.
14 And if you could tell me if that's the document
15 that you received from CalPERS?
16 A. Yeah. Yes, sir.
17 Q. And it also indicates in this letter that they were
18 providing you with a medical history file, can you tell us or
19 describe for us what that file contained?
20 A. That file was a file, primarily her orthopedic care,
21 from around 1992 up through that current date.
22 Q. And that medical history file that was provided to you,
23 the records in that file, did you set forth your review of
24 those records in your report?
25 A. Yes, sir. I did.

1 Q. And is there anything in that medical history file that
2 is provided to you by CalPERS that is not provided to you in
3 your report?
4 A. I'm not following that question. I'm sorry.
5 Q. Yeah. Of this medical history file that's provided to
6 you by CalPERS --
7 A. All right.
8 Q. -- is there anything in that file that you did not note
9 in your report of December 6th 2011?
10 A. I don't think so.
11 Q. Now, referring to page 2 of Exhibit 100.
12 CalPERS had asked that you document and discuss in
13 part a critical task statement of a C.H.P. officer; my
14 question to you is did you do that?
15 A. Yes, sir.
16 Q. And where is that in your report that you referred to
17 and discussed the critical task statement of a C.H.P.
18 officer?
19 A. In my report, if you go to page 6, the third paragraph
20 down there's 9/6/95. There's a review of duties of a highway
21 patrol, and I tried to summarize that.
22 Q. Okay. Did CalPERS revise you with a separate document
23 that was entitled "Critical Task Statement" apart from
24 Exhibit No. 7?
25 A. I was provided a document and you can see down about

1 two-thirds, three quarters of the way, I had a document that
2 mentioned the duties of a highway patrolman and what happened
3 is they say they'll never do things occasionally, they
4 frequently, constantly do things in these various duties and
5 what I will do is I will summarize stating the officer was
6 never to do boom, boom, boom, boom, boom, boom. Occasionally
7 do boom, boom, boom, boom, boom. Occasionally and
8 frequently, and I summarized that. And that was not -- that
9 was not in that document that you provided me just a moment
10 ago, but I went forward. If you would like me to read it?
11 Q. No. I'm just trying to I remember, clarify, what was
12 provided to you by CalPERS.
13 Was there a document that was provided to you
14 entitled "Critical Task Statement?"
15 A. Yeah. There was a document that discussed that the
16 highway patrolman was expected to be able to extract someone
17 weighing a 160 to 200 pounds, they are expected to get out of
18 the car and run a certain distance, leap over barriers. Yes,
19 I did see that type of a document.
20 Q. Okay. I believe this exhibit is still on the witness
21 stand, it's Exhibit 108. If not, I can provide it.
22 A. I've got it.
23 Q. Is that the document that you are referring to?
24 A. I believe so.
25 Q. All right. Did CalPERS provide you with that particular

1 document 108 at the time that they sent you this October 2001
2 letter?
3 A. Yes, sir.
4 Q. And did you use Exhibit 108 in with your evaluation of
5 Ms. Dean?
6 A. Yes.
7 Q. Now, when you set forth some of the duties of a highway
8 patrol officer in your report on Exhibit 6, were you
9 referring to Exhibit 7 or were you referring to also Exhibit
10 108?
11 A. I was referring to both of these exhibits I believe.
12 Q. But you are not sure if you referred specifically to
13 Exhibit 108 in providing information about the usual and
14 customary duties of a C.H.P. officer as reflected in your
15 report on page 6?
16 A. I don't know the title of that piece of paper I'm
17 referring to but I believe I well summarized it here in this
18 paragraph, the duties that I was -- that was brought to my
19 attention that a C.H.P. officer needed to perform.
20 Q. When you say "C.H.P. officer", you mean a California
21 Highway Patrol officer?
22 A. Yes, sir.
23 Q. Just so the record is clear.
24 A. Yes, sir.
25 MR. WHITAKER: May I approach, your Honor?

1 THE COURT: Yes.
2 MR. WHITAKER: I'll hand you another exhibit that's
3 already admitted into evidence, it is Exhibit 101.
4 Take a moment to look at that exhibit, doctor.
5 THE WITNESS: Yes, sir.
6 Q. (BY MR. WHITAKER) Are you familiar with what's marked
7 and admitted in Exhibit 101?
8 A. Yes.
9 Q. And you received Exhibit 101 on or about December 5th
10 2011, correct?
11 A. Yes.
12 Q. And in this particular letter that was sent to you by
13 CalPERS it indicates that they were providing a job
14 description, did they provide you with a job description that
15 was different than what we've already discussed, Exhibit No.
16 7 or Exhibit No. 108?
17 A. I don't believe there's any difference.
18 Q. And they indicated they were sending a medical history
19 file, did they provide you with documentation that was
20 different or in addition to what they previously sent to you
21 in October of 2011?
22 A. I don't think so.
23 Q. Okay. And again there's a reference to page 2 to a
24 critical task statement, and did they provide you with a
25 critical task statement that was different from what's been

1 marked as Exhibit 108?
2 A. Question number two.
3 Q. No. On page 2.
4 A. Page 2 --
5 Q. -- of this letter. December 5th 2011, CalPERS indicates
6 it was sending or asking you to evaluate a Critical Task
7 Statement of a California Highway Patrol officer?
8 A. Okay. I see that in that statement, yes.
9 Q. Did they provide you with a task statement different
10 than what's admitted as Exhibit 108?
11 A. I don't know, but I don't think they provided anything
12 that was any different.
13 Q. Okay.
14 A. I'm not sure why I necessarily got these two different
15 letters.
16 Q. That was going to be my next question, if you knew why
17 they sent you a separate letter in July 11th 2007?
18 A. No, sir.
19 Q. Did you bring your file in reference to Ms. Dean with
20 you here today?
21 A. Yes, sir.
22 Q. Is document -- I'm sorry -- 108 and Exhibit 7 in your
23 file the reference?
24 A. No, sir.
25 Q. They are not in your file?

1 A. No, sir.
2 Q. Okay. And why not?
3 A. After I review these documents I give the entity CalPERS
4 to take them back or I destroy them because I have reviewed
5 them, I've summarized them, and I'm trying not to have to buy
6 a warehouse.
7 Q. And do you know in this instance if you returned the
8 documents to CalPERS or if you destroyed them?
9 A. If you'll let me look.
10 Q. You have your file here today?
11 A. Yeah.
12 Q. If it refreshes your recollection I would like you to
13 take a look at that.
14 A. No. I'm not sure what she did with those records.
15 Q. And when you say "she," who are you referring to?
16 A. Cathy White in my office who does the scheduling and
17 handles the records.
18 Q. So looking at the file does not refresh your
19 recollection as to what happened to those documents?
20 A. Correct.
21 Q. A few more questions about the December 2011 letter sent
22 to you, Dr. Minor. There's no page number. It is the first
23 page of the attachment, so it is the third page of the
24 document. To help you, on the bottom of the page it has
25 "Dean 469."

1 A. Yes. Yes, sir.
2 Q. In the third full paragraph it makes mention of a state
3 traffic officer task statement, do you know what was sent to
4 Michael Perez in reference to that?
5 A. I'm not following here.
6 Q. If you could take a look at Exhibit 108.
7 A. 108.
8 Q. Hold that letter because I'm coming back to it.
9 A. Okay. Yes, sir.
10 Q. I'm trying to give you a better question then the one I
11 just asked you. So -- so Exhibit 108?
12 A. All right. Yes, sir.
13 Q. Is that the document that's referenced in this
14 attachment that was provided to you by CalPERS state traffic
15 officer traffic statement?
16 A. I believe it was, yes.
17 Q. Now, did you go through the state traffic officer task
18 statement, each of the items listed, 1 through 14, with Ms.
19 Dean in conjunction with your examination of her?
20 A. No, I did not.
21 Q. Did you go through this list of 1 through 14 tasks noted
22 in Exhibit 108 and make a determination as to whether or not
23 she can do these functions?
24 A. Yes, sir.
25 Q. Now, you would agree as part of this letter that was

1 sent to you by CalPERS that CalPERS was requiring you as the
2 examiner to go over the job duties statement, Exhibit 108,
3 with the member or in this case Ms. Dean to ascertain whether
4 or not the member could actually perform those duties; is
5 that correct?
6 A. That was not my assumption but maybe I misread the
7 letter.
8 Q. Okay.
9 A. But my understanding was that I was to evaluate the
10 individual and answer the questions based upon what the
11 written description was.
12 Q. But again you did not go through the officer task
13 statement and the duties set forth in that statement with Ms.
14 Dean, is that correct?
15 A. That's correct. I was just clarifying that I thought
16 that you were inferring that they, CalPERS, was stating that
17 I needed to each and individually go through those with her.
18 Q. Well, I'm looking at their particular letter on page 3,
19 the first page of the attachment, and it indicates in the
20 "please discuss the job statement with the member" to see if
21 the member can perform the duties and if there are additional
22 duties the member needs to perform, so I believe the
23 instruction was by CalPERS to go through Exhibit 108 with the
24 member in this case, Ms. Dean; do you have a different
25 interpretation of what CalPERS was asking of you?

1 A. Yes.
2 Q. And that was the instruction provided by CalPERS was to
3 go through that, is that correct?
4 A. Not really.
5 Q. So you have a different interpretation of what was set
6 forth in the letter?
7 A. Yes, sir.
8 Q. Now, you've only seen Ms. Dean once in December of 2011,
9 correct?
10 A. Correct.
11 Q. And you have not seen her since 2011, correct?
12 A. This is the second time I've seen her.
13 Q. To be more precise?
14 A. Correct.
15 Q. You have not examined Ms. Dean since 2011?
16 A. Yes, sir.
17 Q. So you don't know as you sit here today whether or not
18 she has another physical condition that may impact her
19 ability to perform the regular and customary duties because
20 you have not seen her since July of 2011, correct?
21 A. Correct.
22 Q. And since you have not seen her since July of 2011 you
23 don't know whether or not she has a current condition that
24 may affect her ability to exercise peace officer powers, is
25 that correct?

1 A. That's correct.
2 Q. And because you have not evaluated Ms. Dean since
3 December 2011 you don't know whether she is still
4 incapacitated of performing the normal functions and duties
5 of a C.H.P. officer because of a current physical condition,
6 correct?
7 A. Correct.
8 Q. Now referring back to page 16 of your report, and maybe
9 I'll give you a moment to swap out exhibits.
10 A. Thank you. Yes, sir.
11 Q. On page 16 of your report you noted that Ms. Dean had
12 sciatica, correct?
13 A. Correct.
14 Q. What is sciatica?
15 A. Sciatica is a term that we use with regards to pain
16 radiating generally out of the back but more specifically
17 being into the leg.
18 Q. Did you make --
19 A. Generally, the posterior aspect of the leg.
20 Q. Were you done?
21 A. Yes, sir.
22 Q. Did you find or confirm that she suffered from sciatica
23 based on your examination?
24 A. She had complaints of sciatica. The physical exam was
25 not substantiating the pathology that we find with sciatica

1 in that she had such excellent flexibility that just wasn't
2 reproducing the pain or with the testing that was being done.
3 Q. But would you agree that if she was wearing a 25 to 35
4 pound gun belt that that would exacerbate any sciatica she
5 could have?
6 A. Not necessarily, it could.
7 Q. If it could would that impact her ability to perform the
8 usual and customary duties of a C.H.P. officer?
9 A. It could.
10 Q. Would it be to the point she could not perform any of
11 the essential duties of a C.H.P. officer wearing the gun belt
12 and having sciatica?
13 A. I don't think in this situation.
14 Q. And why not?
15 A. Well, I just don't.
16 Q. Is there anything in particular that you can point to as
17 part of your examination where you would opine that she would
18 not have a problem wearing a gun belt and suffer from
19 sciatica in performing the usual and customary duties of a
20 C.H.P. officer?
21 A. Well, yes. Based upon her exam she had excellent
22 flexibility, she had flexibility far beyond a normal person
23 of her age.
24 Q. But again the flexibility that you measured as part of
25 your examination, Ms. Dean was not wearing a gun belt as she

1 would as if she was in the field as a C.H.P. officer?
2 A. Correct.
3 Q. Did you review any X-rays taken of Ms. Dean of her?
4 A. No, sir.
5 Q. Did you order any X-rays to be taken of Ms. Dean as part
6 of your examination?
7 A. No, sir.
8 Q. Why not?
9 A. I didn't order any because her physical exam was so
10 normal.
11 Q. Did you review MRIs taken of Ms. Dean within twelve
12 months before your examination of her?
13 A. No, the only MRI that I reviewed was the report.
14 Q. There was an MRI in a particular report that you
15 reviewed?
16 A. Correct. There was an MRI report from the late '90s.
17 Q. Do you remember the physician that ordered the MRI in
18 that particular matter?
19 A. I think it may have been Dr. Armstrong, but I'm not
20 positive.
21 Q. Okay. And is it safe to assume you did not order an MRI
22 as part of your examination of Ms. Dean in 2011?
23 A. That's right.
24 Q. Why not?
25 A. Especially things like MRI's, we don't order MRI's

1 unless we have a strong suspicion of a pathologic process
2 ruptured disk demonstrated on the MRI and help substantiate
3 the level of the problem and the level of the possible
4 surgery that might need to be done. We generally don't
5 order -- we order tests usually to confirm our suspicions.
6 It's not felt to be good practice to go and perform a fishing
7 expedition with tests like MRI's.
8 Q. Did you perform any skin tests or examinations on Ms.
9 Dean as part of your examination?
10 A. Yes, sir.
11 Q. And what kinds of skin tests did you perform?
12 A. Light touch on the dorsal plantar, the top, the bottom
13 of the foot, the inside and outside of the legs, and the
14 interior and posterior parts of the legs, and she reported
15 loss of feeling in both of the knees.
16 Q. And you testified to that before?
17 A. Yes, sir.
18 Q. And did you perform any head tests on Ms. Dean?
19 A. Head tests. I did not go past the neck. No, sir.
20 Q. And how about any eye examinations on Ms. Dean?
21 A. No, sir.
22 Q. Did you perform any ear tests on Ms. Dean?
23 A. No, sir.
24 Q. On page 15 of your report you noted that Ms. Dean
25 occasionally hears some buzzing or noise in her ears, is that

1 correct?
2 A. On page 15?
3 Q. Right.
4 A. Page 15 of your report on the very bottom there's a
5 notation.
6 A. Okay. Yes, sir.
7 Q. Is the word "occasionally" your word or is that her word
8 in describing the buzzing in her ears?
9 A. I assume it was her.
10 Q. Did she indicate to you what she meant by occasionally?
11 A. No, sir.
12 Q. Did you inquire?
13 A. No, I did not.
14 Q. Why not?
15 A. Well, that part of the review of items I did not feel --
16 it was just not my opinion that that was going to be germane
17 to her orthopedic problems. Now, if it was thought someone
18 wants to deal with her hearing issues I would be the wrong
19 person to do it.
20 Q. Okay. But you would agree as a physician that if she
21 had a hearing problem it could affect the normal abilities
22 and --
23 MR. COFFEY: Objection. Hypothetical.
24 THE COURT: Sustained on the latter ground.
25 Q. (BY MR. WHITAKER) Based on her statement did you

1 believe an examination or further examination of her ears may
2 have been warranted to determine whether or not that may
3 impact her ability to perform the usual and customary duties?
4 A. No, sir.
5 MR. COFFEY: I'm going to object to the continued
6 line of questioning. I haven't objected previously but Ms.
7 Dean was granted disability retirement on the basis of an
8 orthopedic condition. When CalPERS determined that they were
9 going to exercise their right to reevaluate her they
10 reevaluated her on the condition that sent her out on
11 retirement an orthopedic condition that is the focus of this
12 appeal, whether confident medical evidence substantiates that
13 on an orthopedic basis Ms. Dean continues to be substantially
14 incapacitated or adversely she's not, anything outside the
15 scope of an orthopedic claim is irrelevant.
16 THE COURT: Well, we got an answer to the last
17 question. I'll just say with respect to the line of
18 questioning I just don't usually entertain them because I
19 don't know the context or the specific language of a
20 particular question will be.
21 So let's hear the next question. We got an answer
22 to the last, so let's hear a new question.
23 Q. (BY MR. WHITAKER) Did you perform any tests or
24 examinations to determine the cause of the buzzing or noise
25 in her ears?

1 MR. COFFEY: Objection. Relevance.
2 MR. WHITAKER: Your Honor, if I may be heard on
3 these questions with the scope of the review under Code
4 Section 11292, we have a legal disagreement as to CalPERS as
5 to what that means. When determining if someone is still
6 incapacitated they take the narrow view that you simply need
7 to examine whether the condition that gave rise in the first
8 place still exists. Our review is not that narrow, our
9 position is you have to look at the entirety of the person
10 because yes that particular condition may have resolved but
11 there may be other conditions mental and physical that may
12 impact that person's ability to return to the job, whether
13 that person can do the usual and customary duties in this
14 case of a regular California Highway Patrol officer and
15 that's the reason I'm asking the questions, your Honor.
16 I would like to make a full record and I understand
17 the Court has a condition with the relevancy of these and I
18 would like to make the questions and at the time that it is
19 appropriate I would like to take it up and have it challenged
20 should we have an adverse decision.
21 THE COURT: I don't have to answer that question
22 because I don't have to ask that question.
23 We have orthopedic surgeon, he stated the obvious,
24 it is outside the field of expertise, so the question posed
25 to him is irrelevant. I don't have to answer the larger

1 question. I am sustaining the objection because the question
2 posed to this expert as to why he did not perform that test
3 given, what he said is his field, and what CalPERS asked him
4 to do is not relevant.
5 Let's have a new question again. I offer no
6 opinion as to that larger question.
7 Q. (BY MR. WHITAKER) Dr. Minor, did you perform any nose
8 tests examinations on Ms. Dean?
9 MR. COFFEY: Same objection.
10 THE COURT: Sustained.
11 MR. WHITAKER: If I could go through the questions
12 to make an adequate record.
13 THE COURT: Okay. Or make an offer of proof.
14 If you wish to ask any questions outside the area
15 of the disability or the area for which she was granted the
16 disability retirement that would be your offer of proof.
17 MR. WHITAKER: My offer of proof is to confirm that
18 his evaluation of Ms. Dean was narrow, that it was focused on
19 the orthopedic issue that gave rise to her disability
20 retirement in the first place and the legal condition is the
21 review should have been more expansive under Government Code
22 Section and that's the purpose of my questioning, your Honor,
23 so the record is accurate at the appropriate time to make the
24 argument that CalPERS has not met its burden of proof under
25 21192 to say she's no longer incapacitated for her

1 performance of the usual and customary duties of a C.H.P.
2 officer.
3 THE COURT: Okay. Is that an offer of proof?
4 I will state for the record for those areas outside
5 the basis for the disability retirement of the disability
6 retirement in the first place and the areas outside of the
7 expert's field of expertise, I'm inclined to sustain an
8 objection on relevance grounds for any such questions.
9 MR. WHITAKER: So if I could have a moment to do my
10 examination --
11 THE COURT: Yes.
12 MR. WHITAKER: -- of Dr. Minor.
13 Q. (BY MR. WHITAKER) Did you perform any musculoskeletal
14 tests on Ms. Dean?
15 A. Yes, sir.
16 Q. What tests did you perform on her?
17 A. Well I -- on the upper extremities I did a range of
18 motion, I checked her sensation, I checked her pulses, I
19 checked for carpal tunnel syndrome, I checked pertinent
20 reflexes, I checked her strength, scars about the upper
21 extremities, measured the circumferences of the arm at
22 specific levels, I measured from at a lower extremity, I did
23 a range of motion closely, examined knee ligaments, looked
24 for instability, I checked her reflexes, I checked the
25 straight leg raising with her, I checked the straight leg

1 raising when sitting with regards to back exams, I checked
2 her cessation. I noted scars, once again, from specific
3 landmarks or circumferences of her thigh and her calf and I
4 completed her back exam because there were little parts of it
5 in the upper extremity exam and lower extremity exam
6 indicated in the court and I tidied things up with her range
7 of motions and I also checked her leg lengths with her lying
8 on the exam table, once again, using specific landmarks.
9 Q. Did you perform a shoulder and lengths test on Ms. Dean?
10 A. No, I did not.
11 Q. Did you have her walk heel to toe?
12 A. No, I did not.
13 Q. Did you have her squat?
14 A. No, I did not.
15 Q. Did you have her do a duck walk?
16 A. No.
17 Q. Did you perform a Lockman test on her?
18 A. Yes.
19 Q. And what is a Lockman test?
20 A. It is with the knee flexed at about 15 degrees and we
21 pull the lower leg bone forward checking to see if there's
22 instability of the anti-crucial ligaments she had torn and
23 disabled previously.
24 Q. And that would not --
25 A. Yes, sir. I felt that she had an excellent procedure

1 done there.
2 Q. What about a one leg hop?
3 A. No. I don't do those things. In trying to aggravate
4 the patient I checked the gross motor strength of the lower
5 extremities, but I try not to send the patient out of the
6 office hurting more than when they came out.
7 Q. So was it your belief she would not be able to do the
8 squat or heel to toe walk?
9 A. No. I thought she could do those things.
10 Q. How about a duck walk?
11 A. You know quite honestly I didn't consider that.
12 Q. And how about a one leg hop, did you consider that?
13 A. No, sir.
14 Q. Could you let me start again.
15 Did you not consider a one leg hop because you
16 thought it might exacerbate a problem she had?
17 A. It's not a test I would normally do.
18 Q. Now, in your report you indicate on page 16 under the
19 category of cardiovascular -- I'll give you time to take a
20 look at that particular entry in your report, Dr. Minor.
21 A. Correct.
22 Q. And you noted it was negative?
23 A. Correct.
24 Q. And how did you arrive at that conclusion?
25 A. All of these categories here are called a review of

1 systems and we have a cardiovascular system and it will talk
2 about high blood pressure or heart palpatations or shortness
3 of breath, inability to lie flat without getting shortness of
4 breath and she did not indicate or circle that she had any of
5 those particular problems.
6 Q. So I understand you correctly. So in reference to
7 review of systems as noted in your report that's based on
8 what Ms. Dean had indicated in an evaluation or written
9 evaluation that she provided to you?
10 A. That's correct. We provided her a questionnaire and in
11 that questionnaire there's about two pages of different
12 things through ear, nose, throat, heart, lungs, gasp test,
13 nasal, musculoskeletal and various symptoms or signs. Some
14 are signs and symptoms, some are diagnosis like hypertension
15 and if they've got something there they will circle it.
16 Q. So you understand the category, review of symptoms set
17 forth in your report, did you undertake any examination of
18 Ms. Dean to confirm or refute what she had set forth in the
19 questionnaire?
20 A. Once again with regards to buzzing in the ears, no, I
21 did not.
22 Q. No. I'm asking for example what started the line of
23 questioning. The note of cardiovascular and the notation of
24 negative you stated that that comes from an answer there?
25 A. Right.

1 Q. Well, my question to you is did you do an independent
2 analysis as part of your evaluation to either confirm or to
3 refute that information provided to you as part of the
4 questionnaire?
5 A. No. If they haven't circled anything I wouldn't do -- I
6 wouldn't try to, that's not the way we do things.
7 Q. I'm trying to confirm.
8 A. Yeah.
9 Q. So with respect to the category set forth under the
10 review of symptoms is it your testimony that you did not
11 undertake any particular independent analysis to confirm the
12 information that was provided to you by Ms. Dean?
13 A. I took her for her word.
14 Q. That's fine. Thank you.
15 A. Yes, sir.
16 Q. Now, following your examination of Ms. Dean did you tell
17 her if you couldn't work ten years as an officer, I don't
18 know what makes you think you could work now as an officer?
19 A. I believe I made that statement, because I don't recall
20 having an exam where CalPERS asked me to evaluate someone
21 that had been taken off duty. It to me, it was a little
22 unusual.
23 Q. Dr. Minor, on the witness stand should be Exhibit 109.
24 If you could locate that particular exhibit?
25 A. Yes, sir.

1 Q. Have you seen Exhibit 109 before today?
2 A. No, sir.
3 Q. So you did not refer to Exhibit 109 as part of your
4 examination of Ms. Dean, correct?
5 A. Correct.
6 Q. And you did not use Exhibit 109 to arrive at your
7 opinions regarding Ms. Dean's ability to perform the usual
8 and customary duties of a C.H.P. officer, correct?
9 A. Correct.
10 MR. WHITAKER: May I approach, your Honor?
11 THE COURT: Yes.
12 Q. (BY MR. WHITAKER) Let me ask you to take a look at
13 what's previously admitted as Exhibit 110, Dr. Minor?
14 A. Yes, sir.
15 Q. Have you had a chance to look at Exhibit 110?
16 MR. COFFEY: Let me catch up.
17 MR. WHITAKER: I'm sorry.
18 MR. COFFEY: Yeah.
19 Q. (BY MR. WHITAKER) Have you seen this document before?
20 A. It looks like this document was updated 6/3/12 and I
21 don't think I've ever seen this document. I may have seen
22 some prior iteration of it. Yes, sir.
23 Q. Thank you.
24 MR. WHITAKER: Just to save some time, your Honor.
25 I'm going to mark a few exhibits provided to Dr.

1 Minor, if that's okay?
2 THE COURT: Yes.
3 MR. WHITAKER: May I approach?
4 THE COURT: Yes.
5 Q. (BY MR. WHITAKER) I'm handing you two exhibits that
6 have already been admitted, Exhibits 102 and 103.
7 If you could take a moment to take a look at 102
8 first and I may have some questions for you.
9 A. Yes, sir.
10 Q. Okay. Do you recognize Exhibit 102, correct?
11 A. Yes, sir.
12 Q. And you received that letter from CalPERS on or about
13 January 10, 2012?
14 A. Yes, where they talk about critical task lists and --
15 Q. Correct?
16 A. Yes, sir.
17 Q. What did you do in response to that letter?
18 A. I replied.
19 Q. Okay. And how did you reply to CalPERS?
20 A. What I try in my reply, I try to point out that I had
21 answered the questions. And I believe I stated I made
22 statements as to where the answers were in my original
23 report.
24 Q. And I believe your response to that particular January
25 10th 2012 letter is -- and I'm not sure if it is marked or

1 identified, but it is set forth in CalPERS as Exhibit No. 6.
2 Could you take a look at that document?
3 A. Yes, sir.
4 Q. So that was your response. Exhibit No. 6 was your
5 response to Exhibit 102, is that correct?
6 A. Correct.
7 Q. And so tell us where in Exhibit 6 do you indicate or
8 comply with CalPERS' request that you specifically set forth
9 the critical task that Ms. Dean either could do or could not
10 do?
11 A. Well, in there I stated that I had in the original
12 report I reviewed the job description, the physical
13 requirements of the position of a critical task list, and
14 then I gave them the page where I reviewed the duties of the
15 highway patrol in my report and then, which was on page 6 and
16 then on page 15, what I mentioned that there was the
17 Integrity Staffing Solution dated 6 and 11 and then I went on
18 that with regards to running, jumping, kneeling that I had
19 addressed it. And I have noted in the original duties that
20 officer was not expected to crawl but was occasionally
21 expected to run, kneel, squat and climb. And then I
22 mentioned that where under discussion number one of my
23 original report I did not feel there were job duties that the
24 member was unable to perform because of the physical and
25 mental condition. And then the next paragraph as to whether

1 she was substantially incapacitated for the performance of
2 her duties I pointed out paragraph two that I had addressed
3 an issue. And then I mentioned and then they ask if this was
4 permanent or temporary with regards to an incapacitation and
5 I pointed out on paragraph three that I had addressed that
6 issue.
7 Q. Now, in the January 10th 2012 letter sent to you by
8 CalPERS it indicates on the first page that they were sending
9 you a physical requirements position document, do you know
10 what they were referring to?
11 A. They sent a document.
12 Q. Okay. If you could take a look at page 1 --
13 A. Uh-huh.
14 Q. -- of that letter?
15 The full paragraph under Clarification Report
16 Request there's a notation in the letter that says CalPERS is
17 attaching a physical requirement's position document?
18 A. Yes.
19 Q. Do you see that?
20 A. Yes.
21 Q. Okay. Can you tell us what that document was that they
22 sent to you?
23 A. That was a document detailing the duties of a highway
24 patrolman.
25 Q. Okay. So is it your testimony that the physical

1 requirements of a physical document of the official document
2 are the same as 108 as previously discussed?
3 A. Yes.
4 Q. So as part of this letter that was sent to you in
5 January of 2012, did CalPERS attach 108 to consider as part
6 of your evaluation of Ms. Dean?
7 A. Yes, sir.
8 Q. Other than Exhibit 108 did they send you any other
9 attachments other than this letter of 2012, if you can
10 recall?
11 A. I'd have to read this letter again. And then I believe
12 they also provided the document as to what was required for
13 medical qualifications as to disability requirement.
14 Q. And you communicated you provided a response which was
15 Exhibit No. 6, correct?
16 A. Correct.
17 Q. To the January 2012 letter?
18 A. Correct.
19 Q. When you received the January 10th letter from CalPERS,
20 did you speak to anyone at CalPERS?
21 A. I don't believe I did.
22 Q. Okay. Did you just simply respond to the letter?
23 A. Right.
24 Q. Okay. Did you disagree with CalPERS' position that your
25 initial report of December 2011 may have been inefficient in

1 some manner?
2 A. Well, I didn't -- I just didn't seem to understand why
3 if I felt that she could do her duties why they were asking
4 me what duties she couldn't do, because I felt that she could
5 do her duties.
6 Q. But was it your understanding based on your receipt of
7 the January 2012 letter that CalPERS was specifically
8 requesting that you go through the critical task duties as
9 set forth in Exhibit 108 and document that in an amended
10 report to them?
11 A. No, I didn't think that. I -- I thought that I'd
12 answered it by stating that I have reviewed these and felt
13 that she did do them. I suppose that I could have gone
14 through, number one, and read that out and state that the
15 officer could do this and then, number two, read it out that
16 the officer can do this, but I did not do that.
17 Q. Okay. And then I handed you another exhibit marked as
18 identified and admitted as Exhibit 103.
19 If you will take a moment to look at that exhibit
20 and I have some questions for you?
21 A. Yes, sir.
22 Q. Do you recognize Exhibit 103?
23 A. Yes, sir.
24 Q. And you received that letter from CalPERS on or about
25 March 2nd 2012, correct?

1 A. Correct.
2 Q. Okay. And what did you do in response to that letter
3 from CalPERS?
4 A. My understanding -- as I recall, once again, I pointed
5 out in my report where I felt that I had answered those
6 questions again. They are stating, list the specific job
7 duties that you feel a member is unable to perform because of
8 a physical and a mental condition. If so, please explain in
9 detail. Well, I didn't feel that there were specific job
10 duties that she could not perform.
11 Q. Okay. Did you respond to CalPERS in writing?
12 A. Yes, sir.
13 Q. Did you set forth in that response the specific job
14 duties from the 14 Critical Physical Activities that either
15 she could or could not perform?
16 A. As I said earlier, I responded the same way that I felt
17 that she could perform her duties.
18 MR. WHITAKER: May I approach, your Honor?
19 THE COURT: Yes.
20 MR. WHITAKER: I'll hand you what's previously
21 marked into evidence as Exhibit 104.
22 Dr. Minor take a moment to look at that.
23 THE COURT: May I ask what's the relevance of this
24 inquiry. I'm having trouble of under -- I'm sympathetic with
25 the doctor in this case. And the letter you submitted 2012,

1 frankly, it doesn't make any sense. And doctor says she's
2 not disabled and this person writes what areas she was
3 insubstantially incapacitated for the performance, so what is
4 the relevance, where does it take us, there's no --
5 MR. WHITAKER: It goes to the weight, your Honor.
6 Here's the entity retaining him to do analysis.
7 THE COURT: But a nonsensical letter, that's my
8 problem.
9 MR. WHITAKER: And his report or findings are
10 incomplete or inefficient in some way.
11 THE COURT: And I'm not relying on any fashion of
12 an implicit opinion and being charitable when I say that by
13 Joe Klockgether Retirement Specialist Two. The evidence I am
14 relying on is what are the usual duties and the capacity or
15 incapacity to perform the duties, not what you characterize
16 as deficiencies. And frankly I can't find any deficiencies
17 based on what I'm reading here.
18 MR. WHITAKER: Again, your Honor, it goes to the
19 weight, the entity that retains him and has questions about
20 his opinions. And if they have questions of it, it goes to
21 the CalPERS as the burden of proof. These letters indicate
22 that there's a problem.
23 THE COURT: I know. I got you.
24 MR. WHITAKER: Okay.
25 THE COURT: That might be a superficial analysis,

1 but when you take a look at the letter they don't in any way
2 determine the weight of his testimony.
3 If I agree with you if they did impeach him -- the
4 weight of the expressing his opinion. I agree with you in a
5 generic since, it would be irrelevant. And the guy is
6 sending letters, please clarify. The doctor is responding.
7 I can't clarify. You have telling you there are areas of
8 incapacitation because I don't feel she's incapacitated.
9 How it diminishes the weight of the testimony, help
10 me out there?
11 MR. WHITAKER: The weight are specific in the terms
12 of the tasks involved of a California Highway Patrol in terms
13 of what was reflected in his report on page 6. And my
14 reading of the letters, two letters, sent by CalPERS to Dr.
15 Minor and in asking him to go through the 14 critical
16 activities and document. Even if his opinion was to say she
17 can do the 14 critical tasks, that's what she wanted. But to
18 have him go through that carries weight. She obviously
19 thought there was import to that to specifically go through
20 the activities which are very detailed.
21 THE COURT: He says list the specific job duties
22 from the 14 physical critical activities that you feel the
23 member is unable to perform. It doesn't say, as you have
24 stated and implied, that you are to list them all and go
25 through them and with each one say she can do this, she can

1 do this, she can do this. That's not what he's asking for.
2 I'm looking at the language of the letter and it is
3 pretty darn clear.
4 MR. WHITAKER: And his response to CalPERS, January
5 17th response, doesn't even indicate that he went through the
6 14 critical activities and arrives at an opinion one way or
7 the other similar to the response of March 6th 2012. He
8 doesn't go through it and say look, look through, there's
9 nothing in there, in the 14 critical tasks.
10 THE COURT: Because he already said she's not
11 incapacitated from the performance of the duties.
12 MR. WHITAKER: That is quite not correct, because
13 in his report and what he testified to he did not remember to
14 list the 14 critical task statement, Exhibit 109, in his
15 report.
16 MR. COFFEY: I beg to differ in the record, and the
17 transcript will clear up that dispute.
18 THE COURT: I'm just telling you. At this point
19 I'm looking for something that's useful and this is not
20 useful, that's what I'm telling you.
21 So you made a record and I just assume if you need
22 to wind up on this, let's wind up on it.
23 But essentially this is the doctor doing his best
24 to respond to a question of an apparent opinion by this
25 fellow that works for CalPERS and that's not helpful to me.

1 MR. WHITAKER: And I would concede the documents
2 speak for themselves.
3 THE COURT: Yes.
4 MR. WHITAKER: And his response from the March 2nd
5 2012 letter is reflected in the March 6th letter which is
6 Exhibit 104.
7 THE COURT: And the premise for which I disagree is
8 because of the fact that this gentleman said it somehow
9 impugns his professional opinion in there. I can't get to
10 that and I don't know who this guy is and my assumption is he
11 is not a medical doctor. He doesn't say he is.
12 MR. WHITAKER: And based on the Court's prior
13 ruling in terms of the scope of Dr. Minor's examination and
14 the area of expertise, the rest of the questions were part of
15 following that.
16 THE COURT: Okay.
17 MR. WHITAKER: I would get objections from Mr.
18 Coffey. And that I made an adequate record, that that line
19 of questioning is reserved for later argument.
20 I have no further questions of this witness apart
21 from one objection.
22 I just have to confirm something, and if I may be
23 allowed to approach the witness one more time?
24 THE COURT: Yes.
25 MR. COFFEY: Which Exhibit?

1 MR. WHITAKER: Exhibit 111.
2 Q. (BY MR. WHITAKER) Let's take a moment to look at what's
3 been marked as Exhibit 111. I have one quick question.
4 A. Yes.
5 Q. You never used Exhibit 111 as part of your examination
6 with Ms. Dean, correct?
7 A. I've never seen this letter before.
8 THE COURT: Any questions, Ms. Dean?
9 MR. DEAN: Your Honor, if it's okay, I would like
10 to ask the questions.
11 THE COURT: Any objection?
12 MR. COFFEY: No, your Honor.
13 THE COURT: Any objection?
14 MR. WHITAKER: No objections.
15 MR. DEAN: I'm trying to provide the information as
16 best as I can. Mine will follow the same lines of
17 Mr. Whitaker. So if anything offered is something that's
18 been done, I'll apologize.
19 THE COURT: Well, you have an independent right to
20 pose questions. You have the right to ask the same question.
21 You just don't have the right yourself to ask questions
22 repeatedly, so go ahead.
23 MR. DEAN: Okay. If I may approach the witness?
24 THE COURT: Yes.
25 / / /

1 CROSS-EXAMINATION
2 BY MR. DEAN:
3 Q. Dr. Minor, this is Exhibit B.
4 It is my understanding CalPERS requires all I.M.E.s
5 to apply and complete and sign an application agreement, is
6 that true?
7 A. I believe so.
8 Q. Do you remember filling that out?
9 A. No, sir.
10 Q. If you look on page -- what I want to go through is I
11 found some violations of this contract on --
12 MR. COFFEY: Objection. Commentary. Argument.
13 THE COURT: Okay. Well, I'll give Mr. Dean some
14 latitude here. But yes this is just the time for questions
15 and one of the things we see lots because people have the
16 compulsion because they watch shows on T.V. and it is not
17 necessary to preface questions with editorial comments, the
18 better practice is to just ask the questions; okay?
19 MR. DEAN: Okay. I'm sorry, your Honor.
20 If you can look at Exhibit H, I, and J.
21 I only made four copies, so I may have to borrow
22 yours.
23 MR. COFFEY: If I can approach the witness, your
24 Honor. I can share my copy.
25 MR. DEAN: Okay. Great.

1 THE COURT: Okay.
2 Q. (BY MR. DEAN) Exhibit H, a bill for $2,400 from your
3 copy. Exhibit I, same bill from CalPERS fiscal services,
4 decision approved for a thousand dollars. And then Exhibit
5 J, it says -- if you look at where it says "Dear, Dr. Minor.
6 The invoice submitted for fees for the examination of I.M.E.s
7 has been reduced per your agreement, the maximum examination
8 for services is $1,000" but you charged him 2,500?
9 A. I got paid a thousand.
10 Q. I understand that. But if you look at page 2 of the
11 Exhibit B it says "total costs for a complex case and/or a
12 large volume of records are not to exceed the thousand
13 dollars." Then it says below "I understand the charging of
14 excessive fees may result in the removal of the CalPERS
15 I.M.E. list?"
16 A. I see that.
17 Q. And assuming you read this contract and you signed this
18 contract, right; is that correct?
19 A. I assume I did, yes.
20 Q. Okay. So if you go to page 3 it says "I have read and
21 understood the attached CalPERS reference sheet and I agree
22 to submit updates as agreed to with CalPERS."
23 One of the issues here, if you look at the exhibit,
24 this is the second violation by the way.
25 MR. COFFEY: Objection, your Honor. This is

1 editorial commentary, plus argument.
2 MR. DEAN: Your Honor, I'm simply trying to show if
3 Dr. Minor doesn't understand the contract or doesn't want to
4 adhere to the contract it compromises his evaluation, it
5 shows there's no regard for the contract or he doesn't
6 understand it. And it says right here, and this is where it
7 kind of goes in with Mr. Whitaker's --
8 THE COURT: Let's hold on a second.
9 Mr. Coffey is not objecting on the basis of
10 relevance.
11 MR. DEAN: Okay.
12 THE COURT: Instead of asking questions you're
13 arguing and making editorial comments.
14 MR. DEAN: Oh.
15 MR. COFFEY: And if I may be heard. I will object
16 on the grounds of relevance because this inquiry takes us
17 into areas that are not helpful to decide whether competent
18 medical evidence supports the CalPERS determination, a
19 dispute over fees if one existed between Dr. Minor and
20 CalPERS is entirely extraneous to the issue presented to your
21 Honor.
22 THE COURT: Well, I'm inclined to agree. But I'm
23 going to give the Dean's some latitude here.
24 So the gist of the question here -- I want to cut
25 to the chase, that having signed the agreement why did he

1 charge the $2,500 which is apparently in $1,500 in excess of
2 that allowed; is that what you are asking him?
3 MR. DEAN: I guess that would be the question.
4 THE COURT: All right.
5 MR. DEAN: Go ahead.
6 THE COURT: You can follow up with whatever you
7 want, but at least let's get to the core issue.
8 VOIR DIRE EXAMINATION
9 BY THE COURT:
10 Q. Doctor, do you know how this occurred, apparently this
11 cap on your fee?
12 A. Your Honor, I don't do my own billing, my secretary does
13 the billing. She's used to do the billing through workmen's
14 comp. I document the number of hours of a record reflects,
15 et cetera, and she charged at $250 an hour. So she billed
16 that out, they objected and paid me the thousand. And we
17 learned a lesson and the lesson is the next time I got five
18 inches of records to review she talks to CalPERS and we get
19 an understanding. And I accepted the thousand dollars and
20 because CalPERS didn't pay me the full fee I didn't and one
21 of my supplemental reports turn around and try to hammer
22 CalPERS and flip-flop a decision or something.
23 THE COURT: Okay. All right. So again if you have
24 other questions in this area, feel free.
25 MR. DEAN: I do.

1 THE COURT: Okay.
2 MR. DEAN: I'll try to make them as questions.
3 CONTINUING CROSS-EXAMINATION
4 BY MR. DEAN:
5 Q. Exhibit F is a second request regarding information
6 regarding the 14 critical tasks dated March 2nd 2012?
7 A. Yes, sir.
8 Q. Okay. You had a supplemental report in response to that
9 request dated 26, March, 2012?
10 A. Well, I don't know the date of that, of my reply.
11 Q. Do you have a "G" you could share with the Doctor?
12 MR. COFFEY: I'm trying to find one.
13 THE COURT: Did you make reference to Exhibit F,
14 because I don't have an "F."
15 MR. DEAN: I don't, your Honor. That was provided
16 either by Mr. Whitaker or Coffey. I'm sorry. I didn't mean
17 to double up on everything here and I didn't write them all
18 down.
19 THE COURT: I wanted to make sure I was with you.
20 Q. (BY MR. DEAN) This is the second clarification report
21 request dated May 2012?
22 MR. WHITAKER: Your Honor, if I may. Exhibit 103.
23 Q. (BY MR. DEAN) Okay. Do you see that document in front
24 of you?
25 A. 103 and 103.

1 Q. And the supplemental reports dated March 2nd 2012, is
2 that correct?
3 A. Correct.
4 Q. And is there any reason you were not timely in
5 submitting the report, because CalPERS gives you a seven-day
6 window to supplement that. It says rush 24 hours or seven
7 days of requests, is there any reason you took 24 days to
8 provide that?
9 A. You know I don't know if I was on vacation or not.
10 Q. Do you see that's an I.M.E. requirement by CalPERS in
11 this contract that you signed?
12 A. I'm not going to dispute that.
13 Q. Okay. No problem.
14 And also again Mr. Whitaker went over this, must be
15 willing to include in the medical report certain standard
16 information included by CalPERS.
17 So if you look on page 2 of it's Exhibit B it says
18 the second page, but it is the second page after the
19 eligibility requirements; do you see where it says C.H.P.
20 modification of an above description?
21 A. I don't know what form you're on. I'm sorry.
22 Q. Still Exhibit B, the Independent Medical Examiner
23 application.
24 A. Okay.
25 THE COURT: So what page?

1 MR. DEAN: Well, it says page 2 is the second page
2 after. Go to page 7. It doesn't say page 7. It says page
3 2. I don't know why.
4 MR. WHITAKER: It's the second to the last page on
5 Exhibit B.
6 THE WITNESS: All right.
7 MR. DEAN: Okay. Is everybody there?
8 THE COURT: Well, maybe. I'm not sure.
9 Q. (BY MR. DEAN) The top of the page says "Medical
10 Qualification For a Disability Retirement."
11 A. Yes, sir.
12 Q. And if you look at C.H.P. of modified description in the
13 case of a California Highway Patrol?
14 THE COURT: Slow down. Read slowly.
15 Q. (BY MR. DEAN) In the case of a California Highway
16 Patrol, C.H.P. officer, the definition of disability is
17 modified as a result of a 1986 court decision. As part of
18 its evaluation of disability for C.H.P. officers in addition
19 to making a substantial incapacity summarization as
20 summarized CalPERS or incapacitated for the performance of
21 each task and duty including those tasks and duties found in
22 the state personnel job board announcement and the state
23 officer task statement regardless of how remote the
24 possibility may be that the officer may perform the activity.
25 So this is a requirement by CalPERS on a contract

1 that you signed that states that you have to address those
2 tasks including the 14 critical task list?
3 MR. COFFEY: Objection. Mischaracterization of
4 evidence. The document speaks for itself.
5 THE COURT: Okay. Just as a summary statement.
6 This is part of what you agreed to do as an I.M.E. for
7 CalPERS, right?
8 THE WITNESS: Right.
9 THE COURT: Okay. Next question.
10 Q. (BY MR. DEAN) And I wanted to show that. And I believe
11 it also said that when he got the first letter from CalPERS
12 regarding the examination, is that correct, it had the same
13 information on it? It would have been -- I don't have the
14 number of the exhibit.
15 Have either of you provided it?
16 MR. WHITAKER: It would be Exhibit 102
17 THE COURT: Okay.
18 Q. (BY MR. DEAN) Okay. Bear with me here. I got a pile
19 of paperwork.
20 Can I ask you, Dr. Minor, your definition of full
21 duty as it refers to a highway patrol officer?
22 A. Well, full duty is the officer is able to go out and
23 perform the 14 critical areas that are listed on the piece of
24 paper.
25 Q. Okay. Now, I'm going to refer to your report and I

1 don't know what.
2 THE COURT: Exhibit 5.
3 MR. DEAN: 5. Okay. Let me see here.
4 Q. (BY MR. DEAN) Okay. There is on page No. 8, you
5 commented on Dr. Armstrong's report dated March 23, 1998?
6 A. Yes, sir. I was summarizing his of that date.
7 Q. Okay. Okay. You stated that she's seen by Dr.
8 Armstrong who felt she was P.N.S., permanent stationary --
9 no, permanent pathology or aside pathology. And then you
10 stated he returned her to full duty and you felt she had a
11 permanent.
12 The important part there is that that report you
13 said stated that Dr. Armstrong said he returned her to full
14 duty, is that correct?
15 A. I believe that's what's in the report.
16 Q. Do you have a copy of that report?
17 A. Not with me.
18 Q. But your report?
19 A. Yes.
20 Q. I believe everybody has Exhibit L, so if Mr. Coffey
21 could share with you.
22 And on page 2, the second paragraph, it says "as of
23 tomorrow I have given her a release back to her usual and
24 customary job tasks without giving her any restrictions. It
25 is my opinion she will suffer from permanent disability as

1 result of her February of 15, '97 motor vehicle accident."
2 Now, that was the one that you had said that she
3 had -- he had returned her to full duty, is that correct,
4 that was her interpretation of full treatment?
5 A. Well, usual and customary job tasks without full
6 restrictions, yeah.
7 Q. Okay. If you go to Exhibit M which you actually
8 commented on, that one on page 7 in your report.
9 So since you commented on it in your report does it
10 mean that you read that report?
11 A. Yes, I reviewed it.
12 Q. Okay. So on the second page of Exhibit M, last
13 paragraph, it says "despite the persistence of the symptoms
14 she continued to carry out the usual and customary job tasks"
15 and you interpreted that as full duty, correct?
16 A. 10/6/97, my report, my summary of that states she was
17 seen by R.W. Armstrong for her back following the incident of
18 2/15/97.
19 THE COURT: I don't want you to read that.
20 MR. DEAN: Just the second page, bottom paragraph.
21 THE COURT: Before he leaves that I don't see any
22 reference to duty full or modified, is there any reference to
23 that?
24 THE WITNESS: No, sir.
25 MR. COFFEY: For the record, your comment and

1 question to the witness, your Honor, was referring to Exhibit
2 5 and the entry made by Dr. Minor for his review of the
3 10/6/97 report by Dr. Armstrong which is now marked as
4 Exhibit M.
5 THE COURT: Correct. Thank you.
6 Q. (BY MR. DEAN) So let me read the rest of it.
7 "Despite the persistence of her symptoms she has
8 continued to carry out the usual and customary job tasks
9 after being involved in the motor vehicle accident in
10 Modesto. She transferred to Sacramento to a desk job and has
11 been carrying out her desk job work ever since."
12 And what I'm trying to get at here at Exhibits L,
13 M, N, O, P, Q, R and S all refer her back to the temporary
14 position at headquarters as a temporary desk job. He did not
15 put her back to full duty, but just the normal customary task
16 in headquarters?
17 MR. COFFEY: Objection. Mr. Dean is now
18 testifying. There is no question pending.
19 THE COURT: Let's turn it into a question then.
20 Is that correct, what Mr. Dean just said? And I
21 guess what we're talking about is -- what was it, page 8?
22 MR. DEAN: His report?
23 THE COURT: Yeah, is that where that is?
24 MR. DEAN: One was page 8 and one was page 9.
25 THE COURT: I was looking to how you referred to an

1 original summary.
2 Oh, yeah, that was page 8 and the entry is 3/23/98.
3 MR. COFFEY: May I be heard briefly, your Honor?
4 MR. DEAN: Right.
5 THE COURT: Well, we still haven't gotten an answer
6 from the witness.
7 MR. COFFEY: Your Honor --
8 THE COURT: Yes.
9 MR. COFFEY: -- these documents dated in '97 or '98
10 pertain to Ms. Dean's condition as she approached application
11 for disability retirement and may have been relevant there,
12 today we are not concerned with Ms. Dean's condition circa
13 1997 or 1998. We are concerned with her condition as of the
14 time CalPERS asked for a reevaluation of her condition.
15 Whatever evidence there may be in various medical
16 reports dated 1997 or 1998 containing competent medical
17 evidence supporting a determination of substantial incapacity
18 are relevant and germane only to that preexisting application
19 for disability retirement.
20 THE COURT: Okay. But I guess the reason the
21 question is posed is essentially to -- well, the question is
22 too strong a word. But to suggest that maybe some of those
23 things were cited in the doctor's report were not recited
24 accurately and by inference, then perhaps the report -- to
25 borrow expression -- used properly by Mr. Whitaker might

1 determine the weight to be contributed to the report.
2 The problem that I have with the question, sir, is
3 really you are challenging the characterization by Dr.
4 Armstrong. Really there's the problem that I have with it
5 may be Dr. Armstrong shouldn't have used the words he used,
6 but those are what he used. So he said I'm returning to her
7 without restrictions to her usual and customary duty, and for
8 someone who heard a hundred of these cases it usually means
9 full duty. And what you are pointing out is that she had
10 modified duty and he, Mr. Armstrong, shouldn't have used that
11 language and it doesn't impugn this witness and that's the
12 problem that I'm having with the question.
13 MR. DEAN: I'm trying to show the privatization of
14 the question. And the question earlier, he had a different
15 interpretation of 14 different tasks and that he's showing a
16 different interpretation of full duty.
17 THE COURT: He didn't. He summarized it and he
18 summarized accurately and we can all take issue and some of
19 us can take issue of Dr. Armstrong.
20 MR. DEAN: That was not my intention, but that
21 these doctors that sent her back to work. She had a position
22 in administration, she was not working on the highway as
23 required to do the 14 critical tasks, and he may have sought
24 full duty and that's fine. And but this doctor and all of
25 the other doctors state that, et cetera, she was working in

1 headquarters at the time. They did not return her to full
2 duty simply stating she could go back to work in
3 administration.
4 THE COURT: I'm not sure what import that is
5 because what this doctor is doing what all doctors do is he's
6 doing a record's review summarizing the background and unless
7 it was established to me --
8 MR. DEAN: Right.
9 THE COURT: -- it was a significant element or
10 factor of the ultimate conclusion in this case, it wouldn't
11 be of any importance to me.
12 MR. DEAN: Well, I want to show the interpretation
13 and I don't know how to word it properly, but there's a
14 statement that is said in this report to that Angela made and
15 I'm trying to show that the doctor's interpretation could be
16 different than what someone actually said.
17 THE COURT: Well, go right at it instead of dancing
18 around with other statements.
19 MR. DEAN: Should I comment then on some of the
20 other reports or --
21 There's one other report, if I may?
22 THE COURT: Okay.
23 MR. DEAN: Can you find it for me there.
24 Oh, I got it right here.
25 This would be -- I'm sorry -- Exhibit R.

1 THE COURT: Okay. Give me a minute to find it.
2 Okay. Do you have it, Doctor.
3 MR. DEAN: Can you give it to him, Mr. Coffey,
4 please.
5 THE COURT: So this is the report prepared by
6 Douglas Kindall, K-I-N-D-A-L-L, M.D., am I correct?
7 MR. DEAN: Right.
8 THE COURT: Okay.
9 Q. (BY MR. DEAN) Now, if you refer to page 9 on his report
10 which is --
11 THE COURT: -- Exhibit 5.
12 MR. DEAN: Exhibit 5.
13 Q. (BY MR. DEAN) So page 9, down at the last -- the second
14 to the last sentence it says 5/4 of 2000.
15 Doctor, you said that she was seen by Dr. Kindall
16 who said he did not feel she could return to full duty yet.
17 THE COURT: Okay. Is there a question?
18 MR. DEAN: Well, my question is how he got -- he
19 arrived at that comment. Because in Dr. Kindall's report
20 that says the patient is not physically capable of full
21 unrestricted duty, limited duty is not visible at present.
22 And when it says the estimated date of return to work duty is
23 as of never.
24 MR. COFFEY: Objection. Relevance. Evidence Code
25 352.

1 Mr. Dean is now trying to cross-examine Dr. Minor
2 on inconsistent statements by Dr. Kindall as supposedly made
3 in a 1998 report as Exhibit R and as opposed to an
4 unidentified report that we don't have and it is not relevant
5 in this matter. That is the statement of Dr. Kindall back in
6 1999 and it is not part of today's case.
7 THE COURT: I'm not sure he's doing that, but where
8 is the statement?
9 MR. DEAN: Exhibit R says date of visit, D.O.V. 5/4
10 of 2000.
11 THE COURT: The "R" I'm looking at is dated April
12 8, 1999.
13 MR. DEAN: Oh, you're absolutely right.
14 I'm sorry. Let me see that.
15 You're correct. I gave you the wrong one.
16 Let me see. It's "K."
17 THE COURT: "K."
18 MR. DEAN: Yeah, I'm sorry.
19 THE COURT: All right.
20 MR. DEAN: Does that make sense?
21 THE COURT: Where does he make reference to this
22 report in Exhibit 5?
23 MR. DEAN: I think on page 9.
24 THE COURT: Okay. All right. Let's see page 9,
25 and this is --

1 MR. COFFEY: -- an entry, second from the bottom of
2 the page.
3 THE COURT: Okay.
4 MR. DEAN: So you see where she's seen by Dr.
5 Kindall who said she could not return to full duty as of yet.
6 But if you read the actual report it says she is not capable
7 of full on restricted duty. It makes no mention of him
8 saying that she cannot return to full duty yet, it says
9 never.
10 THE COURT: I don't see the word "never."
11 MR. DEAN: It is on the second page down at the
12 bottom. It says "estimate date to return to full duty." It
13 says "never." At the very bottom of the page.
14 THE COURT: Oh, okay.
15 MR. DEAN: So again I was just trying to point out
16 interpretation and inconsistencies.
17 THE COURT: Let's ask the doctor.
18 Did you notice "never" at the bottom of the second
19 page?
20 THE WITNESS: No, sir. I didn't.
21 THE COURT: Okay.
22 MR. DEAN: Okay. Did you want to stop there, your
23 Honor, or do you want to keep going?
24 THE COURT: Lunch until 1:30.
25 (Whereupon, there was the lunch recess.)

1 THE COURT: Let's see. We are back on the record.
2 Mr. Dean, you are still asking your questions;
3 right?
4 MR. DEAN: I have a few more. Yes, your Honor.
5 THE COURT: Okay.
6 MR. DEAN: I'll be as brief as possible.
7 Q. (BY MR. DEAN) Okay. Only Exhibit 5 which was your
8 original report?
9 A. Right.
10 MR. DEAN: Can you, Mr. Coffey, if you don't mind,
11 give him Exhibit U?
12 MR. COFFEY: "U."
13 Q. (BY MR. DEAN) Okay. So referring to Exhibit U and at
14 page 6 of Exhibit 5.
15 This is the California State Board Specification
16 List is that what you are referring to on where you said
17 there's a review of duties of the highway patrol dated
18 9/6/95, is that what you were referring to was the California
19 State Board Personnel Specifications?
20 If you look at the date it says 9/6/95?
21 A. Yes, that was one of the documents. Yes, sir.
22 Q. And what was the other documents?
23 A. The other document, if I can use my chart?
24 THE COURT: I just wanted to point out. Unless I'm
25 missing it or something is out of order, the last exhibit I

1 have in your pile is "S."
2 MR. WHITAKER: If I may, your Honor.
3 THE COURT: Addelberg Associates report July 22,
4 1998.
5 MR. WHITAKER: If I may, your Honor.
6 Exhibit U is also Exhibit No. 7 and Exhibit 108.
7 THE COURT: Okay. So 7. I got you.
8 Q. (BY MR. DEAN) Okay. So I'm sorry.
9 What was the other one that you were referring to
10 on page 6 of your report?
11 A. I was referring to -- because I've got it referring to
12 the CalPERS authorization to disclose health authorization,
13 that's one of the forms. And also the form you pointed out
14 Office of the California Highway Patrol. Then here is the
15 California Highway Patrol Officer Task Statement that was
16 available and then --
17 Q. Are you referring to Exhibit 108?
18 A. Yes. And then also the Physical Requirements of
19 Position slash Occupational Title of CalPERS.
20 Q. What was the report that you said you had just seen for
21 the first time this morning?
22 A. You know that quite honestly was 108. I think that may
23 have been the one that I was referring to.
24 Q. So can we say then on your report on page 6 that it was
25 Exhibit U which is the State Personnel Board Specs, "U"s not

1 Exhibit 108, because it's the first time you saw it because
2 you said this morning --
3 THE COURT: Referring to 108. Because "U" is not
4 an exhibit in this case right now. It is 108 and 7.
5 MR. DEAN: So my Exhibit U is 107.
6 THE COURT: Yeah, because I don't have a "U" at
7 least right now.
8 MR. DEAN: Okay.
9 Q. (BY MR. DEAN) So on page 6 of your report which would
10 be Exhibit 7 or 107, the State Personnel Board
11 Specifications, that's what you are referring to because
12 didn't you say this is the first time you had seen Exhibit
13 108 was this morning?
14 A. And I misspoke. I did see it and I have it in my chart.
15 MR. COFFEY: For the record, my recollection of the
16 witnesses testimony is that Exhibit 109, the 2010 update of
17 the 14 critical tasks, is the document that the witness had
18 not seen before today.
19 THE WITNESS: Yes.
20 THE COURT: Well, he did say that yes.
21 Next question.
22 Q. (BY MR. DEAN) But that was the revision date 2010, the
23 fact took place in 2011.
24 Did CalPERS not provide you with all of the
25 information that they require?

1 A. That's the information that I had.
2 Q. Okay. So you did not have the Exhibit 108 dated -- I'm
3 sorry -- 109 dated 4 of 2010?
4 A. I don't believe I had the number 109.
5 Q. Okay. Now, did you have a chance to look at that?
6 A. 109?
7 Q. Yes.
8 A. Briefly, yes.
9 Q. Okay. Did you happen to note that Exhibit 107 doesn't
10 list the heights, weights, distances, frequencies, and
11 durations that Exhibit 108 or 109 have?
12 A. Right.
13 Q. Okay. So --
14 A. I used the CalPERS form when I hit the buttons never,
15 occasionally, frequently, and constant. Those buttons came
16 out of the CalPERS form that was provided stating the various
17 activities that the officer is expected to be able to do.
18 Q. And that was Exhibit 107, the California State Personnel
19 Board Specifications?
20 A. No, sir. No, sir. There's a form --
21 Q. Are you referring to the physical requirements of the
22 position?
23 A. Nothing that you all have not provided that form,
24 period.
25 Q. Okay.

1 THE COURT: Can I say for the record, I don't have
2 a 107. So I went through the documents and I was going to
3 say something, but the title suggests it's the same as
4 another exhibit. By "title" I mean on the list of exhibits.
5 MR. WHITAKER: If I may, your Honor. There's a
6 copy of 107.
7 May I approach?
8 THE COURT: Yes. So are there two S.P.B. specs
9 marked, because there's 110 and 107?
10 MR. WHITAKER: That's correct.
11 107 and 7 are the same document.
12 THE COURT: Okay. But 107 and 110 are not the same
13 documents?
14 MR. WHITAKER: That is true, your Honor.
15 THE COURT: Okay. Thanks. So now I've got 107.
16 Q. (BY MR. DEAN) Would you say that Exhibit 108 or well
17 109, which is the current version, is more stringent and
18 specific than Exhibit 107?
19 A. It's more -- looks like it's more specific.
20 Q. Okay. What I want to ask also on your report. If you
21 go back to -- let me get the page. Page 19. Page 19.
22 If you go all the way down where it says "given her
23 statement about employability."
24 A. Yes, sir.
25 Q. Okay. Does everybody see that.

1 You used her statement about employability as a
2 basis for your opinion?
3 A. Correct.
4 Q. And how of on a scale of 1 to 10, how important was that
5 statement?
6 A. It was enough -- it was very important.
7 Q. So 8, 9, 10?
8 A. It was very important.
9 Q. Okay. Okay. And you also said that another basis for
10 your opinion was that the exam was normal, correct?
11 A. Correct.
12 Q. Okay. And you also used the fact that she -- you said
13 that she had an upbeat mental appearance was also used as a
14 basis for your opinion?
15 A. Yes, I did say that.
16 Q. Okay. Okay. There's an exhibit in here and I believe
17 it's 15 on Mr. Coffey's list of exhibits.
18 And I got it.
19 Find it on your page.
20 It will be page 15 on your report which is Exhibit
21 5.
22 A. Yes, sir.
23 Q. Does everybody see that?
24 A. Yes, sir.
25 Q. You had written in here that you got some information

1 from Integrity Staffing and it basically said that she lifted
2 and moved up to 60 pounds.
3 I can read the whole thing if you like.
4 Does anybody need me to read that?
5 THE COURT: No. It's in evidence.
6 Well, I don't know. Has it been offered yet, it's
7 marked as an exhibit?
8 MR. DEAN: Yes, Exhibit 9.
9 MR. COFFEY: I will be offering that.
10 THE COURT: Then you don't need to read it.
11 Q. (BY MR. DEAN) Did you have a chance to look at that,
12 Dr. Minor?
13 A. I summarized it. Yes, sir.
14 Q. And just for the record I wanted to show that Megan Doss
15 wrote that anything above 35 pounds required a team lift of
16 two individuals and anything above that would be subject to
17 disciplinary action or injury. I wanted to make sure that
18 you saw that, that was team effort.
19 There was a number of reports that mentioned her
20 teeth. Did you have a chance to review any of those.
21 A. You know, I may have. I don't think I included them
22 because you know if a person goes into a physician or a
23 health provider's office and they fill out a questionnaire
24 and they indicate that they've had back pain in the past or
25 something, I might. I would usually put that into the report

1 if we're dealing with back issues.
2 Q. Okay.
3 A. But if dealing strictly with teeth issues I don't think
4 I would include that in my summary.
5 Q. The reason, well --
6 A. I mean I try to cover everything.
7 Q. Well, okay. And so you said that you had stopped the
8 exam at her neck, correct?
9 A. Where?
10 Q. That was earlier?
11 THE COURT: Your testimony?
12 THE WITNESS: Yes.
13 MR. DEAN: Your testimony?
14 THE WITNESS: Yes.
15 Q. (BY MR. DEAN) And so the teeth were not included in
16 your exam?
17 A. No.
18 Q. And I'm asking because that was part of the head and you
19 said that you had not examined anything above the neck,
20 correct?
21 A. Yes.
22 MR. DEAN: Okay. Okay. I think -- I believe
23 that's all I have, your Honor.
24 I thank you very much.
25 THE COURT: All right.

1 Mr. Coffey, redirect?
2 MR. COFFEY: Yes.
3 Thank you, your Honor.
4 I'm going to ask that a collection of documents be
5 marked as the PERS Exhibit 11.
6 THE COURT: How should I characterize these?
7 MR. COFFEY: Patient questionnaire.
8 THE COURT: All right. 11 for identification.
9 REDIRECT EXAMINATION
10 BY MR. COFFEY:
11 Q. Dr. Minor, I'm showing you a collection of documents
12 we've marked as Exhibit 11. Ask you to take a quick look at
13 those.
14 A. Yes, sir.
15 Q. Do you recognize those documents?
16 A. Yes, sir. I'm familiar with these documents.
17 Q. What are they?
18 A. These are documents that I sent out to the patient
19 before the examination asking them to complete it, try to
20 help expedite the exam. And Ms. Dean, Officer Dean, did that
21 for us.
22 Q. So these documents are part of your patient chart?
23 A. Yes, sir. They are.
24 Q. Okay. On what would be the 7th page of Exhibit 11 but
25 which in the upper left-hand corner of that particular page

1 has an identification of page 4, is that the page in the
2 patient questionnaire where the individual is asked to
3 indicate if they have complaints or symptoms or whatever in
4 terms of those identified symptoms?
5 A. Yes, sir. It is.
6 Q. Okay. And in response to Mr. Whitaker's
7 cross-examination questions of you about the information
8 contained in your report, Exhibit 5, about symptoms is that
9 where that information came from?
10 A. Yes, sir.
11 Q. Okay. Now, also earlier and in response to questions,
12 remember you were being asked about well could Ms. Dean if
13 she returned to full duty as a C.H.P. officer extract one 200
14 pound person then it was two 200 pound people and then it was
15 three 200 pound people, do you remember those series of
16 questions?
17 A. Yes.
18 Q. Okay. Let me get a little bit of clarification.
19 Is your opinion about Ms. Dean's ability to extract
20 one 200 pound person then two and have difficulty with three
21 specific or personal to Ms. Dean as she presented to you, or
22 is that opinion generic to that circumstance?
23 MR. WHITAKER: Objection. Vague and ambiguous.
24 THE COURT: Well, I think I understand the
25 question, but you want to try to clarify?

1 MR. COFFEY: Sure.
2 Q. (BY Mr. COFFEY) Was your opinion and testimony as
3 earlier stated about Ms. Dean having difficulty extracting
4 the third 200 pound person from the burning vehicle specific
5 to her, meaning her presentation to you, your examination of
6 her, her then current physical condition as of December 2011,
7 or some other reason?
8 MR. WHITAKER: I'm going to object, your Honor.
9 The question mischaracterizes or misstates the
10 testimony of the witness.
11 THE COURT: Well, in what regard?
12 MR. WHITAKER: Because when I asked the
13 hypothetical, your Honor, I think the testimony as my
14 recollection was on the third removal of the victim Dr. Minor
15 said she could not do the job. I mean she could not do that
16 task continuing.
17 THE COURT: He said something similar to that. I
18 don't know if he used those words, but he said it's something
19 similar to that.
20 MR. WHITAKER: It's paraphrasing. Well, she would
21 have difficulty. But the testimony from Dr. Minor said she
22 would not be able to do it because of the problems.
23 THE COURT: He came close about having to have --
24 MR. COFFEY: My notes don't say that.
25 THE COURT: He was a little bit more emphatic.

1 At any rate, can we do it another way instead of
2 alluding to that?
3 MR. COFFEY: Sure.
4 Q. (BY MR. COFFEY) Going back to that line of questioning.
5 Your opinion was Ms. Dean would be able to extract
6 one 200 pound person from the burning vehicle, correct?
7 A. Correct.
8 Q. Okay. Was that opinion based on your evaluation of her?
9 A. Yes.
10 Q. Going to the second 200 pound person in the burning car
11 and whether your -- or your testimony was she might have some
12 difficulty or your testimony was even more restricted, she
13 couldn't do it.
14 Is that based on your assessment or evaluation of
15 Ms. Dean, meaning everything you reviewed in terms of medical
16 records, how she presented to you, what she said to you, et
17 cetera, et cetera, is it specific to her or some other
18 reason?
19 A. No, it's specific to her.
20 Q. Okay. Going to the third 200 pound person in the
21 burning --
22 THE COURT: Okay. I'm going to interrupt you.
23 I had a chance to take a look at my notes. What
24 you said what about the third, the response was maybe not if
25 she was having problems. And when asked the very similar

1 question she might not be able to do that, so that was his
2 testimony earlier. So --
3 MR. COFFEY: Might not be able to do it, your
4 Honor. That's what I wrote down.
5 THE COURT: Okay. At any rate you were asking
6 about the third.
7 MR. COFFEY: The third.
8 THE COURT: And was your opinion specific to Ms.
9 Dean?
10 MR. COFFEY: Correct, your Honor.
11 THE COURT: Your answer.
12 THE WITNESS: Yes.
13 Q. (BY MR. COFFEY) And what about Ms. Dean's specific
14 physical condition or presentation as you evaluated her
15 causes you to say "Gee, if she's got a burning vehicle and
16 it's three 200 pound people she might not be able to get that
17 third person out of the car?"
18 A. That is really based upon her statement of having back
19 pain.
20 Q. Okay.
21 A. And not something that I saw on physical exam.
22 Q. In other words, there isn't anything about the mechanism
23 of her body, how the joints work, how the muscles interact
24 with tendons or whatever that would cause you to say "Gee,
25 she might have difficulty with the third person."

1 A. Correct.
2 Q. That statement, that testimony, is based on her
3 statement to you "I can do the job but you know I might hurt
4 afterwards?"
5 A. And her examination.
6 Q. Mr. Whitaker asked you about a number of tests and you
7 indicated that you didn't perform the tests such as shoulder
8 apprehension tests?
9 A. Correct.
10 Q. Did you see any reason to perform that test?
11 A. No, sir. Not at all.
12 Q. Why?
13 A. That test is done primarily if you are concerned about
14 an individual maybe dislocating their shoulder and you ask
15 them to put it up and around in the vulnerable position to
16 dislocate and they ask you to stop or cry or do something
17 dramatic.
18 Q. How about the heel, toe test?
19 A. Well, I had grossly evaluated the major muscle groups
20 and did not feel that I necessarily needed to do that because
21 she had done everything so well.
22 Q. Would that be a response regarding squats and duck walk
23 test?
24 A. Yes, sir.
25 Q. Now, you were asked if you had made a statement to Ms.

1 Dean about if you could not work as a C.H.P. officer ten
2 years ago. I don't know why they meaning "CalPERS" could
3 make you work now something to that affect?
4 A. I believe I made a statement to that affect.
5 Q. Okay. You recall you might not, do you recall the exact
6 verbiage or is that generically kind of what you were saying?
7 A. Generically, that's what I remember saying. I do just
8 remember being kind of confused as to why CalPERS would do
9 some kind of an evaluation.
10 Q. Do you remember why you made that statement, was that
11 before you examined her or after?
12 A. I don't recall.
13 Q. I'm going to jump from that to what you just testified
14 to that Ms. Dean's statement that she could perform the
15 duties of a C.H.P. officer as being very important to your
16 ultimate opinion in this matter.
17 Do you remember when Ms. Dean made that statement
18 to you before or after your examination of her?
19 A. That was -- that was as she was about to exit.
20 Q. And did Ms. Dean's statements to you that she could
21 perform the duties of a C.H.P. officer confirm or corroborate
22 your own findings on clinical examination of her?
23 A. Well, on clinical exam I felt that she had an excellent
24 exam, a very normal exam. And -- and I really was having
25 problems appreciating that she had a back problem or a real

1 serious knee problem. And then she's made that statement and
2 it was -- it really put me in a corner. Well, I guess this
3 corroborates what I -- I had been seeing here on this exam.
4 Q. So you felt her statement did corroborate your own
5 findings?
6 A. Yes, sir.
7 Q. Now, Dr. Minor, if we reverse the circumstances and at
8 the end of your clinical examination of Ms. Dean you have
9 formed an opinion that she remains substantially
10 incapacitated from performing the usual and customary duties
11 of a C.H.P. officer and Ms. Dean comes to you and says you
12 know I can do the job but I'd hurt, would the fact that she
13 makes that kind of a statement cause you to override your own
14 findings on clinical examination or would you write a report
15 that says nope she's still incapacitated?
16 A. In a situation like --
17 THE COURT: You know I know there's no objection,
18 but I really don't want to get into these kinds of
19 hypotheticals. There's enough to decide this case.
20 MR. COFFEY: All right. Your Honor, okay.
21 That is all I have on redirect, your Honor.
22 Thank you.
23 THE COURT: Recross, Mr. Whitaker?
24 MR. WHITAKER: I have a few questions.
25 Thank you.

RECROSS EXAMINATION

BY MR. WHITAKER:

Q. Doctor, referring to page 19 of your report.

You were asked a question about your reference quoting from your report "upbeat mental appearance" and I wanted to ask you what is the basis of that statement in your report?

A. Well, within an evaluation like this I would customarily see a patient that's malingering not forthcoming, talking, trying to hide things and she was a very pleasant individual.

Q. Is that a clinical diagnosis or finding that she had upbeat mental appearance?

A. No, it is not. I found her to be just a very delightful individual.

Q. You indicated that she told you that she had back pain?

A. Right.

Q. Correct. Did you as part of your examination determine that her statement to you about back pain was not correct?

A. No.

Q. Okay. So there's nothing that you found that would refute her statement to you that she suffers from back pain?

A. No, sir.

Q. Okay. What about pain or numbness to her knees, was there anything in your examination that would call into question her subjective statements to you that she has that

kind of pain in her knees or numbness?

A. The numbness is -- I felt was very accurate and in the record review that came out a number of times.

Q. Okay. And what about the pain that she says she indicates. She said pain and needles, I think that was the --

A. Yeah, I didn't see anything that would refute that. I saw excellent motion of the knees and excellent motion of the back and -- but no, I didn't. I felt that she was honest.

MR. WHITAKER: If I can have one moment, your Honor?

THE COURT: Yes.

MR. WHITAKER: I have no further questions, your Honor.

THE COURT: Okay. Do you have further questions?

MR. DEAN: I do. I have two questions.

THE COURT: Okay.

RECROSS EXAMINATION

BY MR. DEAN:

Q. On page 19 of your report, did you list part of your diagnosis at cervical and lumbar strain?

A. Yes, I did.

Q. And would you agree that those injuries are chronic?

A. Yes, I would, given that she still has pain and reports it.

MR. DEAN: Thank you. That's all I have.

THE COURT: Redirect?

MR. COFFEY: No, your Honor.

THE COURT: Thank you, Doctor. You are excused.

THE WITNESS: Thank you, your Honor.

THE COURT: Mr. Coffey, do you have further witnesses to present?

MR. COFFEY: No, your Honor.

And so can I offer my exhibits?

THE COURT: Yes. So you've got 1 through 4 are in and you've got 5 through 11 for identification.

Let me ask Mr. Whitaker, any objection to the receipt of 5 through 11?

MR. WHITAKER: No, your Honor. No objection.

THE COURT: Any objection, Mrs. Dean to 5 through 11.

MS. DEAN: No, sir.

THE COURT: Thank you. 5 through 11 are received.

Okay. Anything else in your case-in-chief, Mr. Coffey?

MR. COFFEY: No, your Honor.

THE COURT: Okay. Let's see. Let's go back to the Dean's.

Do you wish to present further evidence beyond the testimony of Dr. Champlin and the exhibits that I've marked

for identification?

MR. DEAN: I don't, your Honor.

MS. DEAN: Nope.

THE COURT: Okay. And let's see. You've got, I think, everything on your side is in?

MS. DEAN: Sir.

THE COURT: Yes.

MS. DEAN: I am going to get up on the stand.

THE COURT: Oh, you wish to testify?

MS. DEAN: Yes.

THE COURT: Okay. Do you want to testify before Mr. Whitaker presents his witnesses, afterwards, or do you have a preference one way or the other?

MS. DEAN: It doesn't matter.

THE COURT: Do you have your witnesses here?

MR. WHITAKER: I do, your Honor.

Sergeant Carter will be testifying. He should not take too long, based upon stipulations, and I have other witnesses in the waiting room.

THE COURT: Let's handle those witnesses, is that fine?

MS. DEAN: Yeah.

MR. WHITAKER: Okay. So I'm going to take Ms. Smith first.

THE COURT: Ms. Smith, step up to the witness stand

142

1 and raise your right hand to be sworn.
2 SHARIL SMITH,
3 Being called as a witness on behalf of the
4 Respondent, having been first duly sworn, was examined and
5 testified as follows:
6 THE COURT: Please be seated.
7 And once seated would you state your full name for
8 for the record, please. Spell both the first and last names.
9 THE WITNESS: Sharil Smith, S-H-A-R-I-L.
10 THE COURT: S-H-A-R-I-L.
11 THE WITNESS: Last name Smith, S-M-I-T-H.
12 THE COURT: Proceed.
13 MR. WHITAKER: Thank you, your Honor
14 DIRECT EXAMINATION
15 BY MR. WHITAKER:
16 Q. Good afternoon, Ms. Smith.
17 A. Hi.
18 Q. Are you currently employed?
19 A. Yes, I am.
20 Q. Where were you employed?
21 A. California Highway Patrol.
22 Q. How long have you been with the California Highway
23 Patrol?
24 A. Briefly, twenty years.
25 Q. What is your working history with the C.H.P.?

143

1 A. I started out as an office assistant and worked up to an
2 office technician and then I promoted to the analyst Cal
3 services and staff services and enlisting in an association
4 government program.
5 Q. What is your current position?
6 A. An association governmental program analyst managing the
7 department's uniform reinstatement program.
8 Q. What is that program?
9 A. That program oversees the reinstatement of all uniformed
10 personnel from officers up to the highest ranking uniformed
11 people.
12 Q. And when you say uniformed personnel who/whom are you
13 referring to?
14 A. Officers, sergeants, lieutenants, captains, assistant
15 chiefs.
16 Q. Peace officers?
17 A. Peace officers, correct.
18 Q. And how long have you been in your current position?
19 A. Since 2007.
20 Q. And briefly tell us what are your duties in that
21 position?
22 A. My duties consist of processing and coordinating all
23 components of permissive and mandatory reinstatement cases
24 including coordinating background investigations,
25 psychological screening, and medical examinations.

144

1 Q. Okay. Do you know Angela Dean?
2 A. I've spoken with her on the phone.
3 Q. Okay. Is that the extent?
4 A. Yes.
5 Q. Of your knowledge with her?
6 A. Yes.
7 Q. Okay. And have you been involved with CalPERS as an
8 attempt to have Ms. Dean reinstated into her position as a
9 C.H.P. officer?
10 A. Through correspondence, yes.
11 Q. And tell us what your involvement has been with the
12 California Highway Patrol?
13 A. My involvement began Ms. Dean contacted my boss, Tim
14 Castle, I believe initially informed him that CalPERS had
15 cleared her to return to work. I then followed up with a
16 phone call to her giving her my contact information. The
17 letter that she had received from CalPERS, we get a copy of
18 that shortly thereafter and then we generated an appeal, an
19 informal appeal, to CalPERS in light of the fact that Ms.
20 Dean advised that she was going to be appealing medical
21 clearance of her to come back. So basically processing that
22 document and then subsequently a formal appeal later on when
23 it was determined that she definitely was not going to come
24 back. So that was my involvement with regard to that
25 process.

145

1 Q. Okay. And in your capacity with the California Highway
2 Patrol would you know whether or not that the C.H.P. offered
3 to reinstate Ms. Dean?
4 A. Yes.
5 Q. And why would you have that knowledge?
6 A. Because the letter of any offer would be generated by
7 myself.
8 Q. Okay. And this with respect to Ms. Dean, was there an
9 offer letter generated and sent to her?
10 A. No, there was not.
11 Q. Okay. So what offer of reinstatement of a position to
12 C.H.P. officer if any has the highway patrol made to Ms.
13 Dean?
14 A. None.
15 Q. What conditional offer to C.H.P. officer if any has the
16 C.H.P. made to Ms. Dean?
17 A. None.
18 Q. What offer to position as C.H.P. officer if any made to
19 Ms. Dean pursuant to Government Code 21193?
20 A. None.
21 Q. And what conditional offer of reinstatement to offer if
22 any did C.H.P. make to Ms. Dean pursuant to Section 21193?
23 A. None.
24 Q. Okay. I wanted to refer you, Ms. Smith, to an exhibit
25 that's already in evidence. I'm not sure if it's up on the

1 witness stand.
2 MR. WHITAKER: May I approach, your Honor?
3 THE COURT: Yes.
4 MR. WHITAKER: I'm referring to Exhibit 112.
5 Q. (BY MR. WHITAKER) Take a moment to take a look at that
6 document and tell me when you are ready, Ms. Smith?
7 A. Yes, I'm ready.
8 Q. Are you familiar with Exhibit 112?
9 A. Yes, ma'am.
10 Q. And how are you familiar with Exhibit 112?
11 A. I prepared this document.
12 Q. Okay. And what was the purpose of preparing that
13 document?
14 A. The purpose of the document was to advise CalPERS that
15 Ms. Dean would not be reinstating to her former C.H.P.
16 position.
17 Q. So this letter reflected that Ms. Dean was not offering
18 to reinstate Ms. Dean to the position of C.H.P. officer?
19 A. Correct. Correct.
20 MR. WHITAKER: I have no further questions, your
21 Honor, of this witness.
22 THE COURT: Okay. Do you have any
23 cross-examination, Mr. Coffey?
24 MR. COFFEY: A few questions, your Honor.
25 THE COURT: Okay. Thank you.

1 CROSS-EXAMINATION
2 BY MR. COFFEY:
3 Q. Good afternoon, Ms. Dean.
4 A. Hi.
5 Q. My name is Rory Coffey and you understand I represent
6 CalPERS in this matter?
7 A. Yes, I do.
8 Q. And you have been managing the reinstatement program for
9 five years or so?
10 A. Yes.
11 Q. And in Exhibit 112, the March 25, 2013, memo --
12 A. Yes.
13 Q. -- in the first paragraph there's reference to a July 5,
14 2012 C.H.P., quote, "informally appealed CalPERS' decision to
15 reinstate Ms. Dean?"
16 A. Correct.
17 Q. Do you understand that CalPERS routinely accepts as
18 valid a C.H.P., unquote, "informal appeal in matters of
19 reinstatement of disability retirement?"
20 MR. WHITAKER: Objection, your Honor. Lacks
21 foundation. Relevance. Beyond the scope of direct.
22 THE COURT: Well, I'm going to sustain the
23 relevance grounds because I can't imagine anything up here is
24 relevant to the resolution of this case.
25 I mean I understand C.H.P. says there's an appeal

1 and based on the appeal we're not going to offer her a
2 position. Okay.
3 Q. (BY MR. COFFEY) Ms. Smith, in your understanding of the
4 reinstatement process where a C.H.P. officer, a former C.H.P.
5 officer, has gone out or been approved for disability
6 retirement through CalPERS you used terms "permissive" and
7 "mandatory" in response to Mr. Whitaker's questions, correct?
8 A. Yes, I did.
9 Q. And is it your understanding that there are two types of
10 reinstatement?
11 A. Yes.
12 Q. And permissive, could we also use the term "voluntary?"
13 MR. WHITAKER: Objection. Lacks foundation. Calls
14 for speculation.
15 THE COURT: Well, she's the boss of this section
16 that does this kind of a thing so I think there has been
17 foundation.
18 Overruled. You may answer it.
19 THE WITNESS: A permissive reinstatement as defined
20 by our policies is a peace officer who voluntarily resigns
21 their position and is separated from the department
22 permanently.
23 THE COURT: So does that mean if they want to come
24 back it's discretionary on your part?
25 THE WITNESS: Yeah. Not on my part but the

1 department's part, yes.
2 THE COURT: Today you are the department. Okay.
3 Q. (BY MR. COFFEY) And a mandatory reinstatement as you
4 understand it involves what type of a situation?
5 A. A mandatory reinstatement consists of a peace officer
6 who was retired on an industrial disability retirement and
7 typically they seek reinstatement because they -- it's
8 determined either by them or their physician that they are no
9 longer incapacitated so they request reinstatement through
10 CalPERS. And then our process begins if they are you know
11 approved by CalPERS, so there are some steps that follow with
12 that.
13 Q. Okay. Also included underneath that category of
14 mandatory reinstatement then would be a situation where a
15 former C.H.P. officer who was approved for disability
16 retirement is reevaluated by a CalPERS and a determination is
17 made by CalPERS that possibly against their desires or belief
18 they are no longer substantially incapacitated and therefore
19 should be reinstated, correct?
20 A. Correct.
21 Q. So both a voluntary and involuntary reinstatement using
22 those terms as CalPERS might use them fall within what C.H.P.
23 identifies or regards as a mandatory reinstatement?
24 MR. WHITAKER: Objection. Lacks foundation. Calls
25 for speculation.

1 THE COURT: Oh, I think it is within her area of
2 expertise. But again, folks, I mean I understand this is the
3 way the system works. I don't know how if at all this is
4 helpful in the resolution of this case.
5 Ultimately, CalPERS is going to make the call.
6 Unless there's an appeal by one of the parties then Ms. Dean
7 has to be reinstated. I mean she has to at least make the
8 decision of whether she's going to take up her old career or
9 her former career. I'm sorry.
10 MR. COFFEY: Well, with that guidance, your Honor,
11 I don't have any further questions.
12 THE COURT: Do you have any questions for this
13 witness?
14 MR. DEAN: I don't.
15 THE COURT: Okay. Thank you, ma'am.
16 THE WITNESS: Thank you.
17 THE COURT: Okay. You have another witness,
18 Mr. Whitaker?
19 MR. WHITAKER: Yes, your Honor.
20 I would like to call Sergeant Brent Carter.
21 THE COURT: All right. Sergeant, raise your right
22 hand to be sworn, please.
23 SERGEANT BRENT CARTER,
24 Being called as a witness on behalf of the
25 Respondent, having been first duly sworn, was examined and

1 testified as follows:
2 THE COURT: Please be seated. And would you please
3 state your name for the record and please spell both the
4 first and last names.
5 THE WITNESS: Brent Carter, B-R-E-N-T, C-A-R-T-E-R.
6 THE COURT: Thank you. Proceed.
7 DIRECT EXAMINATION
8 BY MR. WHITAKER:
9 Q. Good afternoon, Sergeant Carter.
10 Are you currently employed?
11 A. Yes.
12 Q. How long have you been employed?
13 A. With the California Highway Patrol.
14 Q. And how long have you been with the California Highway
15 Patrol?
16 A. Just shy of nineteen years.
17 Q. And what is your current rank?
18 A. I attended the academy in 1994 and I graduated in 1995
19 and from there was assigned to San Francisco. I worked
20 patrol there. I transferred to Sacramento. I worked patrol
21 there as well as background investigations, promoted at the
22 end of 2009 to the assignment that I'm currently in.
23 Q. And what is that current assignment?
24 A. Sergeant at the cadet hiring unit.
25 Q. And what is that?

1 A. I manage the overall hiring process of our uniformed
2 members, the cadets, which is essentially a training position
3 to become an officer at the academy.
4 Q. Are you informed with the position of former highway
5 patrols seeking to reinstatement after some type of a
6 disability retirement?
7 A. We have some responsibility in that, yes.
8 Q. And how long have you been in that position?
9 A. Four years.
10 Q. And you indicated that you have experience being a field
11 and patrol officer, what's the -- can you quantify for us the
12 number of years that you have experience as a field and
13 patrol officer?
14 A. I was an officer for fourteen years, about fourteen and
15 a half years.
16 Q. So briefly tell us what are your current duties, your
17 current assignment?
18 A. Current duties at cadet hiring unit to oversee and
19 manage the hiring process of the cadet program; essentially,
20 we administer all of the process for the cadets, the written
21 examination, the interview process, the background process,
22 medical screening and site screening programs.
23 Q. And do you know Angela Dean?
24 A. I do not.
25 Q. And you didn't know her when she was a C.H.P. officer?

1 A. I did not.
2 Q. And are you familiar with the usual and customary duties
3 of a C.H.P. officer?
4 A. Yes.
5 Q. And how are you familiar with the usual and customary
6 duties of a C.H.P. officer?
7 A. I was one for fifteen years.
8 Q. And in your current position are you required to know
9 and you understand the usual and customary duties of a C.H.P.
10 officer?
11 A. Absolutely.
12 Q. Okay. Let me ask you Sergeant Carter if you can refer
13 to -- I believe the exhibits at the top of the witness stand
14 they should be in numerical order referring to Exhibit 107.
15 A. Yes.
16 Q. Are you familiar with Exhibit 107?
17 A. Yes.
18 Q. Does Exhibit 107 include references to a C.H.P.
19 officer's usual and customary duties?
20 A. Yes.
21 Q. And if we could jump to Exhibits 108, that's also on the
22 witness stand.
23 A. Okay.
24 Q. And does Exhibit 108 include references to a C.H.P.
25 officer's usual and customary physical duties?