ATTACHMENT C

RESPONDENT'S ARGUMENT

Edward Moore

Respondent in PRO PER

BOARD OF ADMINISTRATION OF
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT UNION

In the Matter of the Denial for Reimbursement for Direct Voice Rehabilitation for: EDWARD MOORE, Respondent	Case Agency No.: 2011-1255 OAH Case No: 2014050855 RESPONDENT EDWARD MOORE'S ARGUMENTS AGAINST THE ADOPTION OF THE PROPOSED DECISION OF ALJ CalPERS Bd. Hearing: May 20, 2015 Trial Date: February 17, 2015 Before the Honorable Jonathan Lew

Edward Moore (Moore) hereby submits his arguments in favor of granting the reimbursement for speech therapy in the form of direct voice rehabilitation (DVR). On March 16, 2015, the Honorable Jonathan Lew, ALJ, (Court) found in favor of CalPERS and denied Moore's appeal.

In 2007, Moore was experiencing complications with his throat and speech abilities, to the point he was unable to communicate. Moore's primary doctor, Dr. Garth Tanner, and his treating otolaryngologist, Dr. Thomas Killeen (located in Modesto), could not come up with a diagnosis. On March 12, 2008, Moore's primary doctor referred Moore for a **second opinion consultation** to see an otolaryngologist specialist at UCSF, Dr. Mark Courey. Dr. Courey diagnosed Moore with **abductor** spasmodic dysphonia (SD), a rare voice disorder. Moore was given three management treatment options for his abductor SD; (1) to see a speech pathologist for speech therapy in the form of direct voice rehabilitation with Dr. Morton Cooper, (2) Botox shots (which would be for the rest of his life), or (3) complex throat surgery, with no guarantee. Based on both Dr. Courey, and Dr. Tanner recommendations, Moore picked speech therapy, the least evasive treatment option with the most guaranteed results.

As the Court correctly pointed out, SD is extremely rare, and there are three types of SD: (1) adductor SD, (2) abductor SD, and (3) mixed adductor and abductor SD. Adductor is the most common form, and thus, the most highly researched by specialists. As CalPERS points out, in a supporting medical review, the common treatment plan for

adductor SD is Botox. This, however, is not the case for abductor SD, which is what Moore is diagnosed with. In fact, CalPERS never presented any evidence as to what the treatment plan would be for abductor SD. As noted, Moore's treating physician Dr. Tanner and the SD specialist and otolaryngologist Dr. Courey, both, recommended speech therapy with a speech pathologist that specializes in SD treatment, including abductor SD, as the first choice treatment. Also, it is undisputed that there is no speech pathologist in Moore's HMO Plan that offers such a treatment. Dr. Courey has a staff, including a speech pathologist at UCSF. Dr. Courey did not recommend his own staff, because treatment of abductor SD is highly specialized, and one of the few specialists in the nation that provides treatment is Dr. Morton Cooper. Also, Moore has **abductor** SD, which is very rare and different from adductor SD. Thus, the treatment for abductor SD is different. Not, surprising, all of the expert testimony and opinions by doctors and the speech pathologist that Managed Care and CalPERS provided were based on the treatment plan for adductor SD, including the peer review documentation that was introduced into evidence. This is an abuse of discretion by the Court to disregard this fact and not even address this issue in the proposed decision.

In fact, all of the doctors, including the speech pathologist that Managed Care and CalPERS relied on had no experience in SD, or SD treatment. This is evidenced by the fact that none of these experts even had knowledge that there are different types of SD, and more importantly, what the **different** types of treatment plans would be for each of the three diagnoses. Such an example would be a patient having cancer, and Managed Care, and CalPERS presenting testimony from a specialist, such as an oncologist, as to what the treatment plan would be. In this scenario, it would be malpractice for the oncologist to say that the treatment plan would be radiation or chemotherapy without even distinguishing **what type of cancer the patient had. Surely, an oncologist would not give the same treatment plan with a patient having breast cancer and one having prostate cancer.** Reliance by the Court on this type of evidence is an abuse of discretion.

The type of treatment options that was given to Moore by his treating physician, Dr. Garth Tanner, and Dr. Mark Courey, who was his treating otolaryngologist specialist, was for his abductor SD. There is a presumption that when a doctor offers a treatment plan, it is based on medical necessity as stated in the HMO Plan. Both of these doctors agreed that the treatment plan for abductor SD was speech therapy. Also, Moore had a local otolaryngologist, a Dr. Thomas Killen. Initially, Dr. Killen too had referred Moore to speech therapy. Thus, each of these doctors carefully followed the Hippocratic Oath, and used the least evasive, but the most highly effective treatment choice based on medical necessity. Dr. Tanner and Dr. Courey recognized that conventional speech therapy was not going to

1 treat Moore's abductor SD. Thus, these two doctors recommended speech therapy. in the form of DVR by Dr. Morton
2 Cooper, one of the few doctors in the nation that specializes in such SD disorders. These doctors did not recommend
3 Botox or surgery or that Moore have a third opinion consultation with a third **otolaryngologist**; a Dr. Edward
4 Damrose, who specializes in throat cancer as recommended by Blue Shield, when it arbitrarily rejected Dr. Tanner's
5 referral request.

6 Blue Shield never offered Botox or surgery. Blue Shield never even offered for Moore to see a speech
7 pathologist within the Plan. Instead, Blue Shield rejected Dr. Tanners' second opinion referral request for Moore to see
8 a speech pathologist, and replaced that with Moore getting only a consultation with another otolaryngologist; Dr.
9 Edward Damrose. What Blue Shield was doing was simply "doctor shopping" in the hopes that another
10 otolaryngologist would not offer speech therapy. Such conduct is in bad faith, and should not be supported by
11 Managed Care, CalPERS, and the Court. Dr. Tanner had sought the second opinion referral for a speech pathologist,
12 because the speech therapist that Moore had been getting treatment for two years merited no results. Dr. Tanner's
13 actions make sense, because he was going from a t speech therapist to a more qualified specialist such as certified
14 speech pathologist in the same field (for speech therapy). Blue Shield rejected the speech pathologist, and reverted to
15 another otolaryngologist. The HMO Plan prohibits doctor shopping. Nowhere in the Plan is there authorization to
16 force a patient to a third opinion consultation, especially when they are being treated by a medical doctor with the
17 same expertise. Here, Moore was already being treated by Dr. Courey, an otolaryngologist.

18 Also, Dr. Courey, being a specialist and Moore's treating doctor, went one step further, as he knew the severity
19 of Moore's abductor SD, and the fact that abductor SD is so rare. Dr. Courey invited Moore to participate as a patient
20 in the national SD and voice disorder conference that he was hosting in San Francisco. Dr. Courey, through UCSF,
21 sponsored this conference, which consisted of thousands of professionals. Dr. Courey invited highly respected doctors
22 and specialists from world wide as panelists to speak on speech disorders including the treatment of SD. In fact, some
23 of the literature that CalPERS introduced for adductor SD was from specialists that were guest speakers at this
24 conference. Also, Dr. Morton Cooper was a guest speaker at this same conference to speak of his specialization
25 regarding DVR as to the treatment of SD.

26 In light of this evidence, CalPERS, at the hearing slandered Dr. Morton Cooper, calling him a snake oil
27 salesman, and a revival faith healer (among other disrespectful terms that will not be repeated.) Such conduct was not
28 only unprofessional and but highly discourteous, especially to the two physicians that recommended Dr. Morton

Cooper (Tanner and Courey). It was also very telling of CalPERS' bad faith behavior (evident by its collusion with Managed Care and Blue Shield) towards Moore, and substantiates that CalPERS never intended to reverse the decision by Blue Shield, and that the appeals process that Moore was forced to participate in for the last 5 years was a sham. CalPERS also at one point simply denied Moore's hearing, even though for years, CalPERS had agreed that that Moore was entitled to a hearing. Moore was prejudiced by CalPERS's delaying tactics, as two of Moore's doctors became unavailable, including Dr. Cooper, who subsequently retired several years ago. For CalPERS to engage in such tactics as name calling and belittling Moore's doctors is unconscionable, and goes to the heart of how Moore has been treated.

As to the SD conference above, Dr. Courey made arrangements for Moore to have a consultation with Dr. Morton Cooper, where Dr. Courey was present. It was then that Moore made a decision to go back to Dr. Tanner to discuss DVR treatments with Dr. Morton Cooper, as the speech therapy that Moore had been receiving was not helping. Dr. Tanner agreed, and made the referral request. Nothing in the Plan allows Blue Shield to act in such an arbitrary manner to reject Dr. Morton Cooper. In fact, the presumption is that if the primary doctor makes a referral, **it is based on medical necessity**. Here, Dr. Tanner made the referral to Dr. Morton Cooper based on being medically necessary. Dr. Tanner's recommendation must be given deference:

> "Referral to Specialty Services and Second Medical Opinions
> Blue Shield encourages you to receive specialty services through a referral from your Personal Physician. Your Personal Physician will generally refer you to a Plan specialist or Plan non-physician healthcare practioner in the same medical group or IPA as your Personal Physician, but you can be referred outside the medical group or IPA if the type of specialist or non-physician health care practioner needed is not available within your Personal Physician's medical group or IPA. If there is a question about your diagnosis, plan of care or recommended treatment, including surgery, or if additional information concerning the diagnosis and the most appropriate plan of treatment, or if the current treatment plan is not improving your medical condition, you may ask your Personal Physician to refer you to another physician for a second medical opinion. If you are requesting a second opinion ~~about care you received from a specialist, the second opinion may be provided by any Plan specialist of the same or~~ equivalent specialty. All second opinion consultations must be authorized ...
> To obtain referral for specialty services...you must first contact your Personal Physician. ***If the Personal Physician determines that the specialty services are medically necessary, the physician will complete a referral form and request necessary authorization.***
> Your Personal Physician will designate the Plan provider from whom you will receive services. ***When no Plan provider is available to perform the needed service, the Personal Physician will refer you to a non-Plan provider after obtaining authorization.***" (Plan, pp. 10, 11.)

Also of importance is that there was no speech pathologist in Moore's Plan that could offer treatment for abductor SD. Dr. Tanner had diligently sent Moore to the only speech therapist under the Plan for 2 years. Blue Shield approved the speech therapy, as it was a covered benefit. Blue Shield cannot in good faith now reject a different form of speech therapy (DVR) and insist on Botox or surgery, or pursue "doctor shopping".

Also, Dr. Tanner only referred Moore after he had exhausted all other means of speech therapy that was offered under the Plan. No other speech pathologist was available in the area to treat abductor SD, so Dr. Tanner, as authorized by the Plan made the referral request. Dr. Tanner's referral request had been correct, as Moore can now speak and communicate, a fact conveniently lost on Blue Shield, Managed Care, CalPERS and the Court. CalPERS in its list of exhibits for trial provide an explanation for SD:

> "The diagnosis of spasmodic dysphonia usually is made following careful examination by a team that includes an otolaryngologist, a doctor who specializes in diseases of the ear, nose, throat, head, and neck; a speech-language pathologist; a health professional trained to evaluate and treat speech, language, and voice disorders; and a neurologist, a doctor who specializes in nervous system disorders... Behavior therapy (voice therapy) is another form of treatment that may work to reduce symptoms..."

Dr. Tanner had assembled such a team-what was missing was the speech pathologist that treated SD disorders. That is why Moore's personal physician then sought a **second opinion consultation** authorization for a speech pathologist that specialized in SD disorders, in an attempt to follow the treatment options for speech therapy for SD patients. Blue Shield completely disregarded Moore's doctors, including his primary's referral even though the plan states:

> "A close physician-to-patient relationship is an important ingredient that helps to ensure the best medical care...your Personal Physician will: Help you decide on actions to maintain and improve your total health; coordinate and direct all of your medical care needs; ...work with you medical group or IPA to arrange your referral to specialty physicians, hospitals and all other health services, including requesting any prior authorization you will need...The physician-patient relationship you and your Personal Physician establish is very important. The best effort of your Personal Physician will be used to ensure that all medically necessary and appropriate professional services are provided to you in a manner compatible with your wishes...Your Personal Physician will advise you if he believes that there is no professionally acceptable alternative to a recommended treatment or procedure... (Plan, pp. 64, 65, 66.)

The Court failed to give any deference to these sections as stated in the Plan. No consideration was given to Moore or two of these treating doctors as to the recommendation and referral to Dr. Morton Cooper. No consideration had been given to the fact that Moore diligently followed his doctor's advice, and was correct in getting the medical treatment for his abductor SD; because the treatments with Dr. Morton Cooper worked, and Moore's voice had been restored to the level where he has the ability to communicate. Thus, CalPERS calling Dr. Morton Cooper slanderous names to malign Dr. Morton Cooper's reputation will not negate the fact that DVR does work.

Also, at the subject hearing, it was pointed out to CalPERS testifying expert, Dr. Nandini Nerayan, that Moore had abductor SD. It was further pointed out to Dr. Nerayan that the medical documents and peer review that she was reading from were all based on adductor SD research (not abductor SD). Dr. Nerayan was clueless that adductor and

abductor were actually two different SD types. Even though Moore had **abductor**, all of Dr. Nerayan's testimony and the documents she relied upon were for the treatment of adductor SD, including the medical peer review that she was relying upon advocated for Botox and surgery. Dr. Nerayan spent approximately four hours on the stand painfully reading the literature line by line to support Managed Care and CalPERS decision to uphold Blue Shield's decision to deny Moore's speech therapy with Dr. Cooper. Dr. Nerayan had not inherent knowledge or expertise in the SD field. This is not surprising, as Dr. Nerayan, who is a pediatrician, had never diagnosed, or ever treated an SD patient.

Based on the above, conduct by such these organizational giants, such as Blue Shield, Managed Care, and CalPERS are unconscionable. A layperson can never win when these organizational giants have such superior resources and a complicated appeals system. At trial, CalPERS actually had an administrator testify for the Court regarding its convoluted appeals system, including the use of flow charts.

The appeals process is designed for the layperson to fail. Even worse, Managed Care and CalPERS unconditionally back each other up, as they use the same contracting medical specialists under Maximus. These organizations count on the layperson not having the resources to hire an attorney and expert medical doctors or specialists to testify. In fact, Moore is an individual that is unemployed, because of his abductor SD. Moore is an individual that is out of pocket for approximately $20,000 for medical care, that should have been paid for by his HMO Plan. The HMO paid for nothing regarding Moore's treatment. If Moore had followed what Blue Shield had wanted him to do; he would have never been able to even communicate and would have been even more severely disabled. Moore followed his HMO Plan for over two years, and realized that HMO Plan would simply deny any treatment options for his abductor SD (including Botox and Surgery), as it was cost effective for them.

Moore respectfully requests that the proposed decision of the Court not be adopted. Here, CalPERS own doctors and experts did not even correctly understand what Moore was diagnosed with. CalPERS believed that if it gave the Court enough medical documentation and hired a pediatrician and read the documents into evidence that would be sufficient for the Court. And it was. The Court abused its discretion when it relied upheld CalPERS experts, including a pedestrian to find that Botox and surgery was the treatment of choice based on medical necessity for SD. The Court abused its discretion when it relied on such sham evidence and testimony offered by CalPERS.

Dated: 5/5/2017

Edward Moore

Edward L. Moore, Respondent

PROOF OF SERVICE

I, Raiyn Bain, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States, over the age of 18 years, and reside in the County of Sacramento, State of California and not a party to this action: my address is P.O. Box 160411, Sacramento, California 95816. On the date below, I served the following document(s):

RESPONDENT EDWARD MOORE'S ARGUMENTS AGAINST THE ADOPTION OF THE PROPOSED DECISION OF ALJ

In a separate envelope for each of the persons named below, addresses as set forth immediately below the respective names, as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on May 6, 1015 at Sacramento, California.

Raiyn Bain, Declarant