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7 BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

8	In the Matter of the Application for)	CASE NO. 2015-0243
9	Cancellation of DR/IDR Application)	
)	OAH NO. 2016-050434
10	SHELDON K. SCARBER,)	
	Respondent,)	CalPERS' OPPOSITION TO
11	and)	RESPONDENT'S REQUEST FOR
)	PROTECTIVE ORDER SEALING
12	CALIFORNIA HIGHWAY PATROL,)	CONFIDENTIAL RECORDS
)	Hearing Date: September 15, 2016
13	Respondent.)	Hearing Location: Fresno
)	ALJ Coren Wong, presiding
14)	

15
16 Petitioner California Public Employees' Retirement System (CalPERS) submits
17 the following Opposition to Respondent's Request for Protective Order Sealing
18 Confidential Records in its official capacity, and not otherwise.

19 Hearing in this matter was completed on September 15, 2016 in Fresno, CA.
20 The record remained open for the parties to submit Closing Briefs on October 17,
21 2016. Both Respondent and CalPERS submitted timely Closing Briefs.

22 Also on October 17, 2016, Respondent served a Request for Protective Order
23 Sealing Confidential Records. Respondent wants confidential information including
24 medical information, names of minor(s), and Respondent's personal information to be
25 sealed. His solution is to seal entire documents. CalPERS objects.

1 As a preliminary matter, CalPERS properly redacted all confidential information
2 from its exhibits. The only documents which were not redacted were Respondent's
3 exhibits.

4 As ALJ Wong attempted to explain to Respondent numerous times during
5 hearing, there is no issue regarding Respondent's medical condition here. The *only*
6 *issue* here is whether his termination and Stipulated Settlement preclude his ability to
7 file for Industrial Disability Retirement (IDR) under *Haywood, Smith and Vandergoot*.
8 All the medical documents Respondent submitted are irrelevant to that single issue.

9 *Only if* Respondent's appeal survives the *Haywood* hearing, will the issue of his
10 medical condition become relevant. Therefore, Respondent should properly withdraw
11 all his medical records from consideration.

12 Despite numerous explanations at hearing, Respondent nevertheless decided
13 to submit various medical records at hearing. They were all admitted as administrative
14 hearsay. CalPERS has no objection to confidential information being redacted from
15 Respondent's documents. In fact, he should have redacted them before he submitted
16 his exhibits. Respondent's address, home phone number and social security number
17 should have been redacted prior to these documents being submitted at hearing. If
18 Respondent's documents also contain names of minor(s), CalPERS does not object to
19 the minor(s)' names being redacted as well.

20 However, there is simply no basis for Respondent's documents to be sealed in
21 their entirety. Respondent gives no reason for sealing the records. If Respondent
22 wants his medical information to be private, he should not have submitted irrelevant
23 medical documents at a *Haywood* hearing in the first place. Or he could have
24 withdrawn those irrelevant medical records when the process and purpose of a
25 *Haywood* proceeding was explained to him over and over during the hearing. But he

1 did not. CalPERS renews its objection that all these medical records are simply
2 irrelevant to a *Haywood* hearing.

3 As to any of Respondent's exhibits, CalPERS does not object to confidential
4 information such as address, phone number, social security number and names of
5 minor(s) being redacted. The documents themselves do not need to be sealed if the
6 confidential information is redacted.

7 Respondent's request to seal these records is untimely. The record remained
8 open for 30 days for one purpose only: to file/serve Closing Briefs. Respondent
9 attempts an end run by requesting documents to be sealed well after the hearing has
10 concluded. This Court should not engage in Respondent's games at this late date.

11 For all the foregoing reasons, CalPERS renews its objection that Respondent's
12 medical records should not have been admitted, not even as administrative hearsay.
13 They are irrelevant to the single issue being decided. CalPERS agrees that certain
14 confidential information (address, phone number, SSN and minor(s) names) may be
15 redacted from Respondent's exhibits. If properly redacted, sealing is unnecessary.
16 Therefore, CalPERS objects to Respondent's Request for Protective Order Sealing
17 Confidential Records in their entirety.

18 Respectfully submitted,

19 Dated: October 18, 2016.


20 ELIZABETH YELLAND
21 SENIOR STAFF ATTORNEY
22 Attorney for California Public Employees'
23 Retirement System
24
25

PROOF OF SERVICE

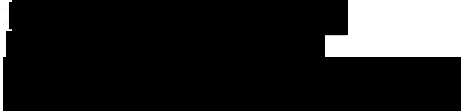
I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On October 18, 2016, I served the foregoing document described as:

CalPERS' OPPOSITION TO RESPONDENT'S REQUEST FOR PROTECTIVE ORDER SEALING CONFIDENTIAL RECORDS - In the Matter of the Cancellation of the Application for Industrial Disability Retirement of SHELDON K. SCARBER, Respondent, and CALIFORNIA HIGHWAY PATROL, Respondent.; Case No. 2015-0243; OAH No. 2016050434.

on interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed and/or e-filed as follows:

Sheldon Scarber



Office of Administrative Hearings
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833-4231
VIA EMAIL TO: sacfilings@dgs.ca.gov

Tim Castle
California Highway Patrol
Disability and Retirement Section
P.O. Box 942898
Sacramento, CA 94298-0001
VIA EMAIL TO: tcastle@chp.ca.gov

[X] BY ELECTRONIC TRANSMISSION: I caused such document(s) to be sent to the addressee(es) at the electronic notification address(es) above. I did not receive within a reasonable time of transmission, any electronic message, or other indication that the transmission was unsuccessful.

Executed on October 18, 2016, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Allyson McCain
NAME

A handwritten signature in blue ink, appearing to read "Allyson McCain", written over a horizontal line.

SIGNATURE