

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
OPEN SESSION

ROBERT F. CARLSON AUDITORIUM
LINCOLN PLAZA NORTH
400 P STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 18, 2018

9:00 A.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

A P P E A R A N C E S

BOARD MEMBERS:

Ms. Priya Mathur, President

Mr. Rob Feckner, Vice President

Ms. Margaret Brown

Mr. John Chiang, represented by Mr. Steve Juarez

Mr. Richard Costigan

Mr. Richard Gillihan

Ms. Dana Hollinger

Mr. David Miller

Mr. Ramon Rubalcava

Mr. Bill Slaton

Ms. Theresa Taylor

Ms. Betty Yee, represented by Ms. Lynn Paquin

STAFF:

Ms. Marcie Frost, Chief Executive Officer

Mr. Charles Asubonten, Chief Financial Officer

Ms. Liana Bailey-Crimmins, Chief Health Director

Mr. Ted Eliopoulos, Chief Investment Officer

Mr. Douglas Hoffner, Deputy Executive Officer

Mr. Matthew Jacobs, General Counsel

Ms. Donna Lum, Deputy Executive Officer

Mr. Brad Pacheco, Deputy Executive Officer

Mr. Scott Terando, Chief Actuary

A P P E A R A N C E S C O N T I N U E D

STAFF:

Ms. Kara Buchanan, Board Secretary

Ms. Cynthia Rodriguez, Senior Attorney

Ms. Marguerite Seabourn, Assistant Chief Counsel

ALSO PRESENT:

Mr. Tim Behrens, California State Retirees

Ms. Jill Breslau, representing Ms. Denise Patten

Mr. Neal Johnson, Service Employees International Union,
Local 1000

Ms. Denise Patten

Mr. Chirag Shah, Shah and Associates

Ms. Donna Snodgrass, Retired Public Employees Association

Mr. Bryan Snow, Corona Police Officers Association

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1 P R O C E E D I N G S

2 PRESIDENT MATHUR: Good morning, everyone.

3 Welcome to the Board of Administration meeting.

4 First order of business is roll call.

5 BOARD SECRETARY BUCHANAN: Good morning.

6 Priya Mathur?

7 PRESIDENT MATHUR: Good morning.

8 BOARD SECRETARY BUCHANAN: Rob Feckner?

9 VICE PRESIDENT FECKNER: Good morning.

10 BOARD SECRETARY BUCHANAN: Margaret Brown?

11 BOARD MEMBER BROWN: Good morning.

12 BOARD SECRETARY BUCHANAN: Steve Juarez for John

13 Chiang?

14 ACTING BOARD MEMBER JUAREZ: Good morning.

15 BOARD SECRETARY BUCHANAN: Richard Costigan?

16 BOARD MEMBER COSTIGAN: Here.

17 BOARD SECRETARY BUCHANAN: Richard Gillihan?

18 BOARD MEMBER GILLIHAN: Here.

19 BOARD SECRETARY BUCHANAN: Dana Hollinger?

20 BOARD MEMBER HOLLINGER: Here.

21 BOARD SECRETARY BUCHANAN: Henry Jones?

22 PRESIDENT MATHUR: Excused.

23 BOARD SECRETARY BUCHANAN: David Miller?

24 BOARD MEMBER MILLER: Here.

25 BOARD SECRETARY BUCHANAN: Ramon Rubalcava?

1 BOARD MEMBER RUBALCAVA: Here.

2 BOARD SECRETARY BUCHANAN: Bill Slaton?

3 BOARD MEMBER SLATON: Here.

4 BOARD SECRETARY BUCHANAN: Theresa Taylor?

5 BOARD MEMBER TAYLOR: Here.

6 BOARD SECRETARY BUCHANAN: Lynn Paquin for Betty
7 Yee?

8 ACTING BOARD MEMBER PAQUIN: Here.

9 PRESIDENT MATHUR: Thank you.

10 Next order of business is the Pledge of
11 Allegiance. And I've asked David Miller to lead us in the
12 Pledge.

13 (Thereupon the Pledge of Allegiance was
14 recited in unison.)

15 PRESIDENT MATHUR: Okay. That brings us to the
16 Board President's report.

17 So I'd like to just begin by extending my
18 appreciation to -- for all of the outstanding work the
19 CalPERS team has done to help position this fund for
20 long-term success. Whether it's reducing investment
21 external management fees, decreasing reliance on temporary
22 help, holding the line on new positions, or developing
23 simpler more efficient processes, it's your efforts that
24 allow us to invest more toward our members' benefits, and
25 build a strong foundation for the future.

1 So on behalf of the Board, thank you for all of
2 your dedication and the important work you do on behalf of
3 our 1.8 million members and their families. And
4 especially, also I want to thank the Board too for the
5 balanced, prudent and deliberative decision making over
6 the past year that has better positioned us to protect our
7 members' retirement security moving forward.

8 I'd also like to acknowledge that Health Beliefs
9 journey that we -- that began more than one year ago, and
10 hopefully will culminate later this morning when the Board
11 adopts a set of Health Beliefs statements to improve,
12 enhance and reinforce how we manage our health program.

13 The CalPERS team did an incredible job to make
14 this a collaborative and inclusive effort, engaging our
15 stakeholder groups, the Board, and our executive leaders
16 along the way.

17 In our role as health care purchaser, it is
18 important that we balance the needs and desires of our
19 diverse stakeholders as we consider what is best for the
20 program and its sustainability over the long term. I am
21 proud of our team for doing just that. Thanks to their
22 efforts, decisions made and actions taken will be aligned
23 with the Health Beliefs and keep us moving in the right
24 direction.

25 So changing gears now. As you may recall, last

1 month the full Board authorized me, as Board President, to
2 create a four-member subcommittee of the Board to
3 interview the two finalists for the Board's independent
4 counsel for administrative appeals, and to award the
5 contract to the winning firm.

6 The subcommittee met on April 12th, 2018, and
7 interviewed two firms Olson Hagel & Fishburn, LLP, which
8 was represented by christopher W. Waddell and Richard C.
9 Miadich and Shah and Association -- Associates, which was
10 represented by Chirag Shah.

11 After discussing the two finalists, the
12 subcommittee ranked the Shah firm first, and the Olson
13 firm second. The vote was unanimous to award Shah &
14 Associates the contract for the Board's independent
15 counsel for administrative appeals, and the five-year
16 contract will begin on July 1st of 2018.

17 Congratulations, Mr. Shah.

18 With that, I want to offer a reminder about
19 CalPERS Night with the River Cats. It's going to be next
20 month following Investment Committee meeting on Monday,
21 May 14th. Gates open at 6:00 p.m., and the game starts
22 about 7:00. I hope to see you all there.

23 Our CalPERS Patriot Chorus will be doing a
24 special pre-game performance. And I hope to see many of
25 our CalPERS team members out at the ballpark for this very

1 enjoyable event.

2 And with that I'll turn it over to Marcie Frost.

3 CHIEF EXECUTIVE OFFICER FROST: Thank you, and
4 good morning, President Mathur and members of the Board.

5 I'm going to start this morning's report
6 highlighting the report called *A Solid Foundation For The*
7 *Future*. And in this report, we were able to illustrate
8 key decisions that have been made by the staff
9 recommendations, and then the Board's ultimate approval,
10 which would include the change in December of the assumed
11 rate of return, also known as the discount rate, and the
12 amortization policy.

13 I'll also brief you a bit on outreach activities,
14 as well as internal activities that we do that really
15 helps to support CalPERS as a destination employer.

16 So last week we did release the report again
17 titled *A Solid Foundation For The Future*. And it paints a
18 picture of where we stand with our funded status, and
19 outlines the actions that we have taken to ensure
20 retirement security for California's public servants. The
21 decisions CalPERS has made to lower the discount rate to
22 approve a new asset allocation, and shorten the
23 amortization period have put us on a solid path to fund
24 the system for generations to come.

25 Our overriding message is that members can be

1 certain their benefits will be there for them, just like
2 they have been throughout our 85 year history. It is our
3 focus, and it is our primary duty to stay focused on the
4 members, the member' needs, the members' expectations, as
5 well as being a reliable partner to our participating
6 employers, also a very important part of the relationships
7 that we have here at CalPERS.

8 We'll use this information as a basis for future
9 conversations, presentations, and visits with both member
10 and stakeholder groups in the coming months. We've also
11 made a PowerPoint template available for your use, as I
12 know you are out talking with member groups, and labor
13 groups, and employer groups. So please feel free to use
14 that template. And if you need additional talking points,
15 certainly let us know.

16 We also know that pensions are a shared
17 responsibility. And if we're going to ask our partners to
18 contribute to the long-term success of the fund, then we
19 need to do our part to run the system as efficiently and
20 effectively as possible, and to invest our assets always
21 with our seven percent assumed rate of return in mind.

22 The next five years will be one of focus on, what
23 we call, total fund return, and total fund performance.
24 This will be done within appropriate ranges of risk
25 parameters. But one of the things that has been, I think,

1 very well received in some of the messages and some of the
2 discussions I've been having with employer partners is
3 that these financial policy decisions were decisions that
4 ultimately had to be made. They are the most prudent
5 decisions, as well as meeting your fiduciary duty and our
6 fiduciary duty for the fund.

7 Those decisions now put us in a very good place
8 to focus on the one piece that we have complete control
9 over, and that is the investment side.

10 So in yesterday's Finance and Admin Committee,
11 you were also presented with the first reading of the
12 proposed budget for fiscal year 2018 and 2019. It does
13 represent a net increase of 0.3 percent. While some of
14 our operational costs are growing, we've made every effort
15 to offset them with reductions in other areas.

16 Some of these increases are related to contracted
17 general salary increases, and then also we expect to pay
18 10.5 million less in external investment management fees.
19 And we'll also save another three and a half million as
20 President Mathur indicated in personnel costs, such as
21 temporary help and benefits.

22 And as with last year's budget, we are not
23 requesting new PYs, or new positions. In fact, we're
24 making the most of an existing policy and protocol that we
25 have internal called Enterprise Position Pooling, where we

1 really use our Enterprise Performance Management System,
2 both on the strategic side, as well as the operational
3 side to look at those core processes that are operating
4 not within the performance that we expect. So they're
5 underperforming.

6 As we recalibrate the organization, and we're the
7 resources are needed most, that is the system that we're
8 using to gather the data to make the best informed choices
9 about where our resources need to be deployed.

10 The budget also represents an important emphasis
11 on technology solutions. And we believe that that leads
12 to higher levels of customer satisfaction, customer
13 engagement and improved efficiencies. And one of the
14 items, or focus areas, for technology over the next year
15 to two years, will be to continue to enhance our member
16 self-service features through my|CalPERS.

17 So the next step in the budget process will be a
18 second reading and approval in our May meeting. I'm also,
19 as a part of that budget, I should also mention that it
20 does finalize the actuarial valuation system, which is the
21 replacement of the old system that we've had here for
22 quite some time. This is a system that's been completely
23 developed by internal team members, which is wonderful.
24 And so we will have that ongoing support being provided by
25 the CalPERS Information Technology team.

1 Also on Tuesday, you received the valuation
2 reports for State and -- State agencies and school
3 employers. The reports do factor in the second year of
4 the discount rate change for the State, and then the first
5 rate for the schools for first reduction for 2 schools.
6 And provides information on what their contribution rates
7 will be.

8 Rates are going up, which we projected, and we
9 are continuing to work with our employer partners, so they
10 understand how to put these projected rates into their own
11 budgets and budget planning.

12 The impact to the State's contribution rates has
13 been mitigated due to the Governor and Legislature's
14 decision to pay the \$6 billion for the unfunded liability.
15 And I think it's an example of the importance, when
16 possible, of prefunding. And we're going to give you a
17 legislative update here shortly, and we can talk about one
18 of these prefunding mechanisms that's being considered by
19 the legislature.

20 In addition to the payment toward the unfunded
21 liability, the State Plan was able to realize savings as a
22 result of PEPRA. You saw that the PEPRA changes are
23 beginning to be seen. And then higher than expected
24 fiscal year returns for 2016-17 for a combined savings of
25 about 277 million.

1 And then the rising rates, as we talked with you
2 about yesterday, are the result of the implementation of
3 the lower discount rate, the changing demographic
4 assumptions, and then rising employer payroll costs. Upon
5 your approval today, the final valuation reports for
6 employers will be completed by the end of July.

7 On to the health program, as President Mathur
8 indicated, the Health Care Beliefs we've been able to
9 finalize that work to the extent possible, and get a final
10 action on those today. We are also in the process of our
11 rate development process, and we'll be able to provide
12 more public information about that soon.

13 So the health care team has really been focused
14 on three areas, and that is: Promoting high value care;
15 improving the health outcomes and status of our members,
16 their families and the communities where they live; and
17 reducing the over-use of ineffective or unnecessary
18 medical care.

19 We will present preliminary rates to the Pension
20 and Health Benefits Committee next month during the May
21 meeting, and we'll bring back final rates in June.

22 So now on to some outreach activities. Last
23 month, I was able to continue some of the regional office
24 visits. This is something I really enjoy doing. And
25 trying to find time in the schedule to do it is really

1 important, and we're going to do a better job in finding
2 more opportunities to do that.

3 These regional offices they operate as a
4 satellite office of headquarters. And what I will tell
5 they are highly engaged team members, they're very
6 connected to the customers who are walking in asking for
7 advice and counsel, and they have the best ideas about how
8 to make changes to work processes.

9 So Carene Carolan, who is the manager out of
10 our -- at our contact center. She accompanied me on these
11 visits as well a Kara, and she documented a number of
12 ideas that she's brought back to headquarters to work on
13 implementation.

14 So it's really to clear to see how passionate our
15 team members are about the primary duty that we all have
16 in serving our members.

17 In one other external outreach activity that I'd
18 like to mention is last week I was able to participate in
19 a local National Public Radio interview for a program
20 called Insight. That recording is available on our
21 website, as well as I did send that to you all directly.

22 It's a show dedicated to in-depth interviews
23 about current events. And the host was able to ask me a
24 number of questions about our solid foundation for the
25 future report that I mentioned earlier.

1 It was a great tool to guide the conversation,
2 and show the positive trajectory of the fund. And I was
3 also able to directly address some of our critic's
4 concerns that the fund is insolvent, as well as address
5 our philosophy related to divestment. And that engagement
6 with the scale and the size of CalPERS' engagement really
7 does matter. I was invited back in a few months to
8 provide an update, and I look forward to continue that
9 dialogue with the show's host.

10 So on to some internal activities, which again I
11 think are really important to talk about, because it does
12 make CalPERS the employer of choice, helps us with our
13 recruitment, as well as our retention.

14 So next week on April 24th, the executive team
15 and I will be able to recognize the APEX award. It's at a
16 breakfast to congratulate the recipients on their
17 outstanding contributions. That will be followed the next
18 day on April 25th with a graduation ceremony for our Pilot
19 Emerging Leader Program participants. And we're very
20 excited about this program. It's designed to provide
21 pre-leadership training and coaching to some of our most
22 promising, motivated team members. It's an opportunity
23 for them to determine whether leadership is really part of
24 the career that they want to continue to move forward in.
25 It gives them a little exposure, before they have the

1 responsibilities of actually being a leader.

2 And I think what we have heard, and I'll hear
3 more about this during the breakfast, is that this program
4 was really well received by both th3e participants as well
5 as the mentors.

6 And this is one of several talent management
7 initiatives that our Human Resources team -- teams are
8 working on to proactively plan for the leadership needs
9 for tomorrow that we will have, when many of our current
10 leaders are beginning to retire or schedule their
11 retirement dates.

12 Then on the 26th - April is going to a busy month
13 - the very next day we'll host our first ever wellness
14 fair which is really interesting. This is the first we
15 will be providing this event to our team. It will feature
16 health screenings, fitness challenge, and health exhibits
17 to encourage team members to embrace wellness resources
18 that we have to offer.

19 And then as the week winds down, the March of
20 Dimes walk for babies will take place on Saturday, April
21 28th. CalPERS employees will take part in this walk, and
22 have done so each year and are passionate for this cause.

23 And then that will be followed May 8th through 10
24 with our annual Career and Education Fair here on CalPERS
25 campus. And this is an annual three-day event, which

1 provides fundamental resources to help out team members
2 grow in their careers and to highlight the work we do with
3 exhibits, showcasing our divisions and human resource
4 programs.

5 And then new this year is a special mentoring our
6 on the first day. That will employees connect with team
7 leaders and mentors across the organization.

8 And then at least, but not least, is the Susan G.
9 Komen Race for the Cure to raise money for breast cancer
10 research and supportive services. I would say this is one
11 of the most important events for the team here at CalPERS,
12 and gets high levels of participation.

13 And then in closing, I will end with investment
14 performance year to date. The total fiscal year to date
15 performance is 8.3. The rolling one-year return of the
16 fund is 12.4, the three-year return is 6.8, the five-year
17 return is 8.4, the 10-year return is 5.4, the 20-year
18 return is 6.4.

19 And that concludes my remarks. And I'm happy to
20 take questions

21 PRESIDENT MATHUR: Thank you.

22 Ms. Brown.

23 BOARD MEMBER BROWN: Thank you, Madam Chair.

24 Actually, my question is for you, Madam Chair, on
25 your opening comments regarding selecting legal counsel.

1 You said there was a subcommittee. I was just wondering
2 who specifically is on that subcommittee, and how they
3 were selected?

4 PRESIDENT MATHUR: Sure. So I selected four
5 members. I selected Mr. Gillihan, Dana Hollinger, and Mr.
6 Feckner. And I based it really on their experience. Ms.
7 Hollinger is a legal professional and she has had long
8 experience in that profession, so I thought she was an
9 appropriate person to select. Mr. Gillihan also has had a
10 lot of experience in selecting outside counsel, so I
11 included him on the panel. And Mr. Feckner is the prior
12 Board President, and the sitting Vice President I thought
13 was an appropriate selection as well

14 BOARD MEMBER BROWN: Thank you. I'd just like to
15 say for the record that I would like an opportunity to
16 serve on future subcommittees that select our professional
17 consultants.

18 Thank you.

19 PRESIDENT MATHUR: I will absolutely consider
20 that. Thank you, Ms. Brown.

21 Okay. I see no further requests from the
22 Committee.

23 So we'll move on to Agenda Item number 5, which
24 is the action consent item. I would just note for the
25 committee that there is a revised travel approval item in

1 your folder.

2 VICE PRESIDENT FECKNER: Move approval.

3 PRESIDENT MATHUR: Move by Mr. Feckner.

4 BOARD MEMBER HOLLINGER: Second.

5 PRESIDENT MATHUR: Seconded by Ms. Hollinger.

6 Any discussion on the motion?

7 Seeing none.

8 All those in favor say aye?

9 (Ayes.)

10 PRESIDENT MATHUR: All opposed?

11 Motion passes.

12 I've had not request to pull anything off of
13 consent. So we'll move on to the Committee Reports and
14 Actions.

15 For Investment Committee, I will call on Mr.
16 Costigan Vice Chair of that Committee.

17 BOARD MEMBER COSTIGAN: Thank you, Madam
18 President. The Investment Committee met on April 16th,
19 2018. And, I apologize, I'm fighting a bad cold.

20 The Committee approved the following:

21 Agenda Item 5a, to approve the staff recommended
22 asset allocation glide path for CalPERS Supplemental
23 Income Plan and the Affiliate Trust Asset Allocation
24 Review: Supplemental Income Plans.

25 PRESIDENT MATHUR: On motion --

1 BOARD MEMBER COSTIGAN: The Committee received --

2 PRESIDENT MATHUR: Oh, sorry.

3 BOARD MEMBER COSTIGAN: I'm sorry, it's not --
4 no --

5 PRESIDENT MATHUR: Sorry.

6 BOARD MEMBER COSTIGAN: The Committee received
7 reports on the following topics:

8 Dual class/non-voting shares update and debate;
9 the proposed revisions to Governance and Sustainability
10 Principles; and Corporate Governance update: Proxy
11 voting, shareholder campaigns, and corporate engagement.

12 The Chair, Mr. Jones, directed staff to do the
13 following:

14 To facilitate consultation between CalPERS staff,
15 the State Treasurer's Office, and RVK, Inc. regarding the
16 CalPERS 2013 Supplemental Income Program review;

17 To provide the Committee with a breakdown of
18 industry sectors of dual-class and no-vote companies
19 ensuring an analysis of possible exclusion of no-vote
20 shares as part of the next mid-point ALM benchmark review;

21 To allow for further discussion in May during the
22 Total Fund Policy first reading for further discussion
23 regarding corporate board diversity;

24 To bring back in May -- in May's Total Fund
25 Policy the first reading, potential updated Governance and

1 Sustainability Principles language around sexual
2 harassment, clawbacks, and arbitration;

3 To reach out to the investment staff of the
4 pension funds of Florida and Minnesota to understand their
5 executive compensation voting framework.

6 The Committee heard public comment on:

7 Support of staff work on Corporate Governance
8 Update Proxy Voting on CEO pay, and; on the return of the
9 ESG investments.

10 And, at this time, I'd like to share some
11 highlights of what to expect at the April Investment
12 Committee meeting. We will have a review of the affiliate
13 trust asset allocation for LRS, JRS, JRS II, and the
14 CERBT; an update of the corporate governance regarding
15 proxy voting, shareholder campaigns, and corporate
16 engagement; and we will also have the first reading of the
17 revision of the Total Fund and Private Equity Program's
18 Policies.

19 The next meeting of the Investment Committee is
20 schedule for May 14th, 2018 in Sacramento, California.

21 And that's my report, Madam President.

22 PRESIDENT MATHUR: Thank you. Thank you very
23 much, Mr. Costigan.

24 Before I move on to the next item, I've had a
25 request to speak on Item 5b. So I will take that up now.

1 Mr. Snow, would you please come forward. You can take one
2 of these seats to my left. The microphone is turned on.
3 If you could identify yourself and your affiliation for
4 the record, and you'll have three minutes with which to
5 speak.

6 MR. SNOW: Good morning.

7 PRESIDENT MATHUR: Good morning.

8 MR. SNOW: It's on, right?

9 Okay. Bryan Snow. I'm a CalPERS member. I'm
10 also a member of Corona Police Officers Association. It's
11 nice to be back. A little break. But I appreciate the
12 opportunity to speak.

13 I'm talking about 5b, the travel requests. And
14 it was interesting, I know last month there was some
15 travel requests approved as well. And one of the issues
16 that we're having is when -- I know that CalPERS and
17 Marcie had mentioned it -- or Ms. Frost had mentioned
18 about the improvements, and the returns, and that cost
19 savings, which are all great, but we know that it goes up
20 and down.

21 So it's a -- the long term, I don't know what
22 that's going to look like. And the returns don't look
23 that great for that long term, the 10 and 20 year. One of
24 the issues that we're having is -- or the questions that
25 we're having is how are we sending people out of the

1 country?

2 I know some of these conferences are good.
3 They're nice, but that's money we're spending that we
4 could be saving. Ms. Frost also mentioned about visiting
5 members and serving the members, and I think the Board
6 should take that example. Instead of going to all these
7 places all over the world, you should be visiting
8 membership in California, and working to improve that
9 long-term sustainability that we talk about.

10 So I -- please, I would -- I would seriously
11 consider -- as a member, I'm asking you to seriously
12 consider those international, those long-term trips that
13 are costing CalPERS members money, that -- and the
14 investments that are made, the returns, that should be
15 spent on members, and what we're doing here in California.

16 Thank you.

17 PRESIDENT MATHUR: Thank you very much.

18 I've also had a request from Ms. Brown to pull
19 out 6c, but that is not an action item.

20 BOARD MEMBER BROWN: Finance and Admin, I'm
21 sorry.

22 PRESIDENT MATHUR: On, on Finance and Admin.

23 Okay. Thank you.

24 Okay. Then we'll move on now to the Pension and
25 Health Benefits Committee. And for that, I'll call on the

1 sayer Mr. Feckner

2 VICE PRESIDENT FECKNER: Thank you, Madam
3 President. The Pension and Health Committee met on April
4 17th, 2018. The Committee recommends and I move the Board
5 approve the following. Agenda Item 5, adopt the revised
6 Health Beliefs as shown in Attachment 1 of the agenda
7 item, Option 1, which contains suggested Committee member
8 changes provided at the March 2018 PHBC meeting.

9 PRESIDENT MATHUR: On motion by Committee.

10 All those in favor say aye?

11 (Ayes.)

12 PRESIDENT MATHUR: All opposed?

13 Motion passes.

14 VICE PRESIDENT FECKNER: The Committee received
15 reports on the following topics:

16 Potential reference pricing pilot for medication
17 covered under the pharmacy benefits for basic health plans
18 serviced by OptumRx for plan year 2019 and beyond;

19 An update on the self-funded Preferred Provider
20 Organization health plan benefit design changes
21 implemented January 8, 2018 and proposed changes for 2019;

22 The Committee received public comment from Larry
23 Woodson, California State Retirees regarding potential
24 increase in cost to Preferred Provider Organization
25 members, particularly in the PERSCare plan.

1 The Chair directed staff to:

2 Bring back an analysis back to the Committee
3 regarding statistics on therapeutic class outcomes; also
4 to share with the Board how CalPERS is addressing the
5 ambulatory surgery center concerns highlighted during
6 public comment.

7 At this time, I'd like to share some highlights
8 of what to expect at the May PHBC meeting. The Committee
9 will review the Gen4 Solicitation award; the proposed
10 benefit design change for 2019; and, receive information
11 on the preliminary 2019 health rates and contracts.

12 The next meeting of the PHBC is scheduled for May
13 15th, 2018 in Sacramento, California.

14 That concludes my report, Madam President.

15 PRESIDENT MATHUR: Thank you very much, Mr.
16 Feckner. The next item on the agenda is the Finance and
17 Administration Committee report. For that, I'll call on
18 the Chair -- if you could, Ms. Taylor.

19 BOARD MEMBER TAYLOR: Thank you. The Finance and
20 Administration Committee met on April 17th, 2018. The
21 Committee recommends and I move the Board approve the
22 following:

23 Agenda Item 3b, approve the April 2018
24 Prospective Report of Solicitations, Contracts, Purchase
25 Orders, and Letters of Engagement.

1 PRESIDENT MATHUR: On motion by the Committee.

2 Any discussion by the Committee?

3 Seeing none.

4 All those in favor say aye?

5 (Ayes.)

6 PRESIDENT MATHUR: All opposed?

7 Motion passes.

8 BOARD MEMBER TAYLOR: Agenda Item 3c approve the
9 1959 Survivor Benefit Program Actuarial Valuation Report
10 as of June 30th, 2017, and adopt the employer and employee
11 monthly premiums for fiscal year 2018-19.

12 PRESIDENT MATHUR: On motion by Committee.

13 Any discussion by the -- by the Board?

14 Seeing none.

15 All those in favor say aye?

16 (Ayes.)

17 PRESIDENT MATHUR: All opposed?

18 Motion passes.

19 BOARD MEMBER TAYLOR: Agenda Item 5a, approve the
20 fiscal year 2018-19 annual budget proposal first reading
21 in the amount of 1.68,636,000 and 2,875 positions, and
22 approve the transmittal of this agenda item.

23 PRESIDENT MATHUR: On motion by Committee.

24 Any discussion on the motion?

25 Seeing none.

1 All those in favor say aye?

2 (Ayes.)

3 PRESIDENT MATHUR: All opposed?

4 Motion passes.

5 BOARD MEMBER TAYLOR: Agenda Item 6a, approve the
6 proposed elected Board member percentages of time to be
7 spent on the Board related to duties on Board and
8 Committee selections with a modification to David Miller
9 to state an increase of up to 82 percent.

10 PRESIDENT MATHUR: On motion by Committee?

11 Any discussion on the motion?

12 Seeing none.

13 All those in favor say aye?

14 (Ayes.)

15 PRESIDENT MATHUR: Al opposed?

16 (No.)

17 PRESIDENT MATHUR: Please note -- was that you
18 Mr. Costigan?

19 BOARD MEMBER COSTIGAN: (Nods head.)

20 PRESIDENT MATHUR: Please note Mr. Costigan's no.

21 BOARD MEMBER TAYLOR: Okay. Approve the
22 extension of -- Item 6b, approve the extension of current
23 back-up, restoration, and disaster recovery services
24 contract through September 30th, 2018, if necessary, at a
25 total cost of approximately \$450,000.

1 PRESIDENT MATHUR: On motion by Committee.

2 Any discussion on the motion?

3 Seeing none.

4 All those in favor say aye?

5 (Ayes.)

6 PRESIDENT MATHUR: All opposed?

7 Motion passes.

8 BOARD MEMBER TAYLOR: I'm pulling 6c, removing --

9 PRESIDENT MATHUR: You can just -- you can
10 just --

11 BOARD MEMBER TAYLOR: Go ahead and go?

12 PRESIDENT MATHUR: Yeah, go ahead, please.

13 BOARD MEMBER TAYLOR: Agenda Item 6c, approve the
14 proposed amendment Section 554.7 of the California Code of
15 Regulations, and approve the submittal of the final
16 rulemaking package of the Office -- to the Office of
17 Administrative Law.

18 PRESIDENT MATHUR: On motion by Committee.

19 Discussion on the motion.

20 Ms. Brown.

21 BOARD MEMBER BROWN: Thank you. I want to start
22 off by thanking the staff for fixing the signature on the
23 ballot and removing the markings that could identify
24 voters. But there are still plenty of problems with our
25 current voting process. And I sincerely hope we will take

1 those up and fix them. Specifically, the phone voting is
2 very problematic. It does not work correctly. On-line
3 voting is unconstitutional and we'll have a much longer
4 discussion about that.

5 Also, the paper ballots for those of you who
6 don't know are mailed to a printing place in Washington,
7 where they scan them daily. And they send them over the
8 Internet to another voting place in La Jolla, California,
9 where they are ultimately tabulated without anybody
10 watching.

11 And I'm telling you, it's a bad process that's
12 open for shenanigans or worse. And I hope we actually end
13 up fixing that process, so I will be voting no on Item 6c.

14 PRESIDENT MATHUR: Okay. Any further discussion
15 on the motion?

16 Seeing none.

17 All those in favor say aye?

18 (Ayes.)

19 PRESIDENT MATHUR: All opposed?

20 (No.)

21 PRESIDENT MATHUR: Motion -- please note Ms.
22 Brown's no.

23 Motion passes.

24 Agenda Item 7a, please continue.

25 BOARD MEMBER TAYLOR: Agenda Item 7a, adopt the

1 State employer and member contribution rates for the
2 period of July 1st, 2018 to June 30th, 2019.

3 PRESIDENT MATHUR: On motion by Committee.

4 Any discussion on the motion?

5 Seeing none. All those in favor say aye?

6 (Ayes.)

7 PRESIDENT MATHUR: All opposed?

8 Motion passes.

9 BOARD MEMBER TAYLOR: Agenda Item 7b, adopt an
10 employer contribution rate of 18.062 percent for the
11 schools pool, and a member contribution rate of seven
12 percent for school's employees, subject to the Public
13 Employees' Pension Reform Act of 2013 for the period of
14 July 1st, 2018 to June 30th, 2019.

15 PRESIDENT MATHUR: On motion by Committee.

16 Any discussion on the motion?

17 Seeing none.

18 All those in favor say aye?

19 (Ayes.)

20 PRESIDENT MATHUR: All opposed?

21 Motion passes.

22 BOARD MEMBER TAYLOR: The Committee received
23 reports on the following topics:

24 Semi-Annual Health Plan Financial Report;
25 reporting on participating employers; Long-Term Care

1 Valuation Report.

2 The Chair directed staff to:

3 Review the Board member employer reimbursement
4 process and come back with reporting definitions,
5 including reportable hours, how hours are validated, and
6 possible revised caps and thresholds; and propose seeking
7 legislation to increase the monthly stipends for retiree
8 and appointed Board members.

9 The Committee heard public comment on the
10 following topics:

11 The annual report -- I'm sorry, the annual review
12 of Board member employer reimbursements; the proposed
13 Board of Administration election regulation and public
14 hearing; schools valuation and employer/employee
15 contribution rates; Semi-Annual Health Plan Financial
16 Report; and reporting on participating employers.

17 At this time, I'd like to share with you some
18 highlights of what to expect at the May Finance and
19 Administration Committee meeting.

20 The 2018-19 annual budget proposal, second
21 reading; asset and liability transfer to the San
22 Bernardino County Employees' Retirement Association;
23 extension of the third-party administrator contract for
24 the Supplemental Income Plan.

25 The next Finance -- meeting of the Finance and

1 Administration Committee meeting is scheduled for May
2 15th, 2018 in Sacramento, California.

3 And that is my report.

4 PRESIDENT MATHUR: Thank you very much, Ms.
5 Taylor.

6 So that brings us to -- we had no Committee
7 meetings for Performance, Compensation and Talent
8 Management, Risk and Audit, or Board Governance.

9 So that brings us to Agenda Item number 8,
10 Approval of Committee Delegations. Mr. Jacobs.

11 GENERAL COUNSEL JACOBS: Good morning, President
12 Mathur and Committee members or Board members that is

13 I always get the most controversial and complex
14 items, so that's why I'm here before you on this item.

15 This one brings together all the revisions to the
16 Committee delegations for final Board approval. These
17 were Committee delegations that were reviewed and approved
18 in Committee in the last couple of months. The only
19 substantive change is to the -- to the delegation for the
20 Performance, Compensation and Talent Management Committee.
21 And those revisions are outlined in -- on the first page
22 of the agenda item.

23 So with that, I will conclude my presentation.

24 PRESIDENT MATHUR: Thank you.

25 This is an action item. What's the pleasure of

1 the Committee.

2 BOARD MEMBER COSTIGAN: So moved.

3 BOARD MEMBER TAYLOR: Second.

4 PRESIDENT MATHUR: So moved by Mr. Costigan,
5 seconded by Ms. Taylor.

6 On -- any discussion on the motion?

7 Seeing none.

8 All those in favor say aye?

9 (Ayes.)

10 PRESIDENT MATHUR: All opposed?

11 Motion passes.

12 So that brings us now to Agenda Item number 9,
13 which is Proposed Decisions of Administrative Law Judge --
14 Judges. And for that, I'll call on Mr. Feckner.

15 VICE PRESIDENT FECKNER: Thank you, Madam
16 President.

17 I move the Board adopt the proposed decisions at
18 Agenda Item 9a through 9g as the Board's own decisions
19 with minor modifications to Agenda Items 9a, 9d and 9f as
20 argued by staff.

21 BOARD MEMBER MILLER: Second.

22 PRESIDENT MATHUR: Motion was seconded by Mr.
23 Miller, made by Mr. Feckner.

24 Any discussion on the motion?

25 Any requests to pull any item separately --

1 consider any item separately?

2 Seeing none.

3 All those in favor say aye?

4 (Ayes.)

5 PRESIDENT MATHUR: All opposed?

6 Motion passes.

7 Agenda Item number 10, Petitions for
8 Reconsideration.

9 Again, Mr. Feckner.

10 VICE PRESIDENT FECKNER: I move the Board deny
11 the petitions for reconsideration at Agenda Items 10a
12 through 10c.

13 BOARD MEMBER MILLER: Second.

14 PRESIDENT MATHUR: Motion has been made and
15 seconded by Mr. Miller.

16 Any -- made by Mr. Feckner, seconded by Mr.
17 Miller.

18 Any discussion on the motion?

19 Seeing none.

20 All those in favor say aye?

21 (Ayes.)

22 PRESIDENT MATHUR: All opposed?

23 Motion passes.

24 That brings me now to Agenda Item number 11,
25 which is the full Board hearing.

1 Let's open the record at this time for the full
2 Board hearing in the appeal of CHP Officer Denise C.
3 Patten, CalPERS case number 2016-1260.

4 Let us first take roll call, please.

5 Kara, sorry.

6 BOARD SECRETARY BUCHANAN: Sorry about that.

7 Priya Mathur?

8 PRESIDENT MATHUR: I'm here.

9 BOARD SECRETARY BUCHANAN: Rob Feckner?

10 VICE PRESIDENT FECKNER: Good morning.

11 BOARD SECRETARY BUCHANAN: Margaret Brown?

12 BOARD MEMBER BROWN: Here.

13 BOARD SECRETARY BUCHANAN: Steve Juarez for John
14 Chiang?

15 ACTING BOARD MEMBER JUAREZ: Here.

16 BOARD SECRETARY BUCHANAN: Richard Costigan?

17 BOARD MEMBER COSTIGAN: Here.

18 BOARD SECRETARY BUCHANAN: Richard Gillihan?

19 BOARD MEMBER GILLIHAN: Here.

20 BOARD SECRETARY BUCHANAN: Dana Hollinger?

21 BOARD MEMBER HOLLINGER: Here.

22 BOARD SECRETARY BUCHANAN: Henry Jones?

23 PRESIDENT MATHUR: Excused.

24 BOARD SECRETARY BUCHANAN: David Miller?

25 BOARD MEMBER MILLER: Here.

1 BOARD SECRETARY BUCHANAN: Ramon Rubalcava?

2 BOARD MEMBER RUBALCAVA: Here.

3 BOARD SECRETARY BUCHANAN: Bill Slaton?

4 BOARD MEMBER SLATON: Here.

5 BOARD SECRETARY BUCHANAN: Theresa Taylor?

6 BOARD MEMBER TAYLOR: Here.

7 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
8 Betty Yee?

9 ACTING BOARD MEMBER PAQUIN: Here.

10 PRESIDENT MATHUR: Thank you.

11 The proposed decision was originally considered
12 by the Board on February 14th, 2018 when the Board
13 declined to adopt the proposed decision and its stead
14 scheduled the matter for a full Board hearing.

15 I note for the record that all parties have
16 received notice of this full Board hearing, along with
17 copies of the Statement of Policy and Procedures for Full
18 Board Hearings before the Board. In addition, all parties
19 have been informed in writing that oral argument will be
20 limited to 10 minutes each for each position, and rebuttal
21 will be limited to three minutes for each position.

22 Would counsel for each party please take a moment
23 to introduce themselves, starting with staff's counsel,
24 and then Officer Patten's counsel.

25 SENIOR ATTORNEY RODRIGUEZ: Good morning, Madam

1 President --

2 PRESIDENT MATHUR: Oh, if you could turn on your
3 microphone, please.

4 It's been turned on for you.

5 Oh, no, not yet.

6 SENIOR ATTORNEY RODRIGUEZ: Now?

7 PRESIDENT MATHUR: There it is. Now you're on.

8 SENIOR ATTORNEY RODRIGUEZ: Okay. Thank you.

9 Good morning Madam President, Members of the Board. My
10 name is Cynthia Rodriguez and I'm an attorney here at
11 CalPERS.

12 MS. BRESLAU: Good morning, Madam President and
13 members of the Board. I'm Jill Suzanne Breslau. I'm
14 attorney for Ms. Patten who is sitting next to me.

15 ASSISTANT CHIEF COUNSEL SEABOURN: Good morning,
16 members of the Board and Madam President. I'm Marguerite
17 Seabourn. And I'm on the CalPERS Legal team.

18 PRESIDENT MATHUR: Than you. Okay.

19 Well, thank you.

20 Let the record reflect -- also reflect that
21 Chirag Shah, the Board's independent counsel on full Board
22 hearings and proposed decisions from the Office of
23 Administrative Hearings is here now and will be advising
24 members of the Board on procedural, as well as
25 substantive, issues that arise in this proceeding should

1 Board members have questions. Mr. Shah will also provide
2 a brief summary of the case before we begin oral
3 arguments. As stated previously, each position will have
4 10 minutes for oral argument.

5 Ms. Rodriguez will first have 10 minutes to
6 present staff's argument. After that, Ms. Breslau will
7 have 10 minutes to present Officer Patten's argument.
8 Neither side is compelled to use the full 10 minutes.
9 However, if a party concludes argument in less than the
10 time allotted, it will not be permitted to carry over any
11 remaining time to any other portion of this proceeding.

12 After both sides have presented oral argument,
13 each side will be given three minutes for rebuttal
14 argument in the same order as the original presentation.

15 First, Ms. Rodriguez, then Ms. Breslau. Here,
16 too, the parties may, but do not have to, use the entire
17 time allocated for rebuttal. But if a party decides to
18 use less time, there will be no -- there will not be
19 another opportunity to use any remaining time.

20 There is timer in this room, which will be set
21 for 10 minutes for initial argument, and three minutes for
22 rebuttals. The timer will begin when you start to speak.
23 Please pay close attention to the timer, which is in front
24 of me here, as you make your presentations, in order to
25 avoid getting -- going over your allotted time. When the

1 timer's light turns red, your time will have expired and I
2 will so indicate.

3 After all sides' arguments and rebuttals are
4 concluded, the Board may ask questions of any of the
5 parties to this proceeding, as well as our independent
6 counsel. The alternatives available to the Board are set
7 forth at Agenda Item 11. Any questions so far? Do all
8 parties understand the procedure?

9 SENIOR ATTORNEY RODRIGUEZ: We do, your Honor.

10 PRESIDENT MATHUR: Thank you.

11 Now then, Mr. Shah, please provide a summary of
12 this case.

13 MR. SHAH: Good morning, President Mathur,
14 members of the Board. As you said, my name is Chirag Shah
15 and I'm the Board's independent counsel on full Board
16 hearings.

17 Now, comes the proposed decision in the case of
18 office -- CHP Officer Denise C. Patten.

19 Officer Patten who served the State of California
20 for 18 years seeks an industrial disability retirement on
21 the basis of an orthopedic condition primarily involving
22 her neck and back. Officer Patten has served 14 of the 18
23 years as a motorcycle police officer, during which time
24 she asserts that she suffered a number of injuries as
25 outlined in the proposed decisions, factual findings 4

1 through 13.

2 Like all cases before -- such as the one before
3 the Board today, Officer Patten bears the burden of
4 persuasion. As such, Officer Patten must produce
5 sufficient medical evidence in the form of competent
6 medical opinion to persuade the Board by a preponderance
7 of the evidence, more likely than not, that she was
8 disabled as defined in the Public Employees' Retirement
9 Law section 20026.

10 In the proposed decision, the Administrative Law
11 Judge finds that Officer Patten failed to satisfy her
12 burden to produce persuasive medical evidence establishing
13 that she was dis -- substantially incapacitated as defined
14 in section 20026 at the time of her application.

15 Officer Patten obviously disagrees with this
16 conclusion and urges the Board to issue its own decision
17 finding that she is disabled for purposes of the PERL.
18 Staff, on other hand, agrees with the proposed decision
19 and urges the Board to adopt it as its own decision in its
20 entirety.

21 The details of the parties' arguments, as well as
22 the entire administrative record, are before the Board at
23 Agenda Item 11.

24 With that, Madam President, I conclude my brief
25 summary of the case.

1 PRESIDENT MATHUR: Thank you very much, Mr. Shah.

2 Let us now turn to preliminary evidentiary
3 issues. As all parties are aware, we are not here to
4 relitigate factual issues or resubmit evidence into the
5 administrative record. However, in rare circumstances,
6 the interests of achieving a just result may require
7 consideration of newly discovered, relevant documentary
8 evidence which could not, with reasonable diligence, have
9 been discovered and produced at the hearing before the
10 administrative law judge, and which therefore is not part
11 of the administrative record.

12 The Board's procedures make it clear that under
13 no circumstance may the Board accept new testimonial
14 evidence, witness testimony, or any kind of examination or
15 cross-examination of any one, including Board members, in
16 today's proceeding.

17 Under the Board's procedure, requests to
18 introduce newly discovered documentary evidence must be
19 submitted in writing to the Board Secretary no later than
20 the due date for written argument, which in this case was
21 April 4th of 2018. In order to avoid interruptions during
22 each party's respective time today, please let us know if
23 either party has any relevant, newly discovered evidence,
24 which could not have been discovered and produced at the
25 hearing that it seeks to be admitted into the

1 administrative record today as to which a timely written
2 report was submitted to the Board.

3 MS. BRESLAU: No

4 SENIOR ATTORNEY RODRIGUEZ: No, I do not.

5 PRESIDENT MATHUR: Thank you.

6 Seeing that there are no requests, to submit
7 newly discovered evidence, let us begin oral arguments.
8 Ms. Rodriguez, please present staff's argument.

9 Please start the clock for 10 minutes.

10 SENIOR ATTORNEY RODRIGUEZ: Thank you. The case
11 we have here today is from an area of law which is well
12 established, industrial disability retirement. The issue
13 presented in this case is a regular issue in the cases
14 that we have here at CalPERS. Members, or their
15 employers, request disability retirement, and CalPERS
16 staff reviews these requests and determines if the cases
17 rise to the level of the long-held standard for CalPERS
18 disability retirement. That standard is that the claimed
19 medical condition has resulted in a substantial incapacity
20 of the employee to perform the duties of their job.

21 Whenever this issue arises, CalPERS must look to
22 protecting the rights of civil servants whose employers
23 are trying to remove them from their jobs, and also
24 protect the system when a claim disability does not rise
25 to the level of a substantial incapacity to perform that

1 job.

2 This is a very significant and reoccurring civil
3 service issue, which has resulted in a long- and
4 clear-held standard of proof. The law and reasonable
5 standards hold that the employee must have a current
6 inability, not the risk of a future injury or incapacity,
7 to perform their job, and cannot be eligible for
8 disability retirement because of that risk of a future
9 injury, as was the issue here in the case with Officer
10 Patten.

11 Both CalPERS and Officer Patten provided doctors
12 for medical testimony. And the Administrative Law Judge
13 made very specific findings based on the clear evidence
14 presented, finding that this was not a disability
15 retirement situation or an industrial disability
16 retirement situation, but instead is that situation where
17 future injury is the basis of the claim.

18 The experienced Administrative Law Judge used
19 sound reasoning in his 17-page determination to consider
20 each of the High -- California Highway Patrol job duties
21 individually and to find that Officer Patten is capable of
22 performing her job duties and should not be disability
23 retired due to fears of future injury risks.

24 This case allows us to uphold the long-held and
25 fair standards of determining the entitlement of civil

1 service employees to maintain their employment, and the
2 obligation of CalPERS to determine when the disability
3 standards are met.

4 Officer Patten was a CHP Officer in the Standard
5 Patrol and Motorcycle Officer Program, a well regarded
6 profession requiring dangerous and difficult work. She
7 has had automobile and motorcycle accidents, as an
8 employee working in a vehicle for a regular shift work on
9 a daily basis is inclined to have. Ultimately, she has
10 always been released to regular duty after those
11 accidents, most of which required no time off.

12 Officer Patten was working full time without
13 restrictions when she was last at work, when she opened
14 her car door against gravity and weather, and the strain
15 from that was the last issue at her work. She saw her
16 doctors, she saw an independent medical examiner, and she
17 remained off work.

18 She filed a workers' compensation claim, and an
19 application for industrial disability retirement.

20 The most important issue at a hearing of this
21 type is the existence, or not, of competent medical
22 evidence of the member's claimed disability, her
23 substantial incapacity to perform the job duties.

24 There's also the issue of what are the job duties
25 of the member's position as a CHP Officer. Luckily for

1 the evaluation in this case, the job duties of a CHP
2 Officer are the most specifically enumerated duties of any
3 State employment. The 14 critical tasks of a CHP Officer
4 have been delineated for many years and are referenced in
5 both the California Government Code and the California
6 Vehicle Code.

7 The Administrative Law Judge in this case
8 carefully reviewed and reported on his decision of each of
9 these 14 tasks, and Officer Patten's ability to perform
10 them.

11 CalPERS called as a witness the independent
12 medical examiner who determined from his examination that
13 Officer Patten was medically capable of performing each
14 job duty. The independent medical examiner testified
15 truthfully that there was no medical reason Officer Patten
16 could not perform these duties and repetitions of the
17 duties, even when questions about repeated performances
18 beyond the job requirements.

19 Dr. Henrichsen, the only Board Certified
20 orthopedic surgeon to testify determined from his findings
21 on physical exam that Officer Patten -- on his physical
22 exam of Officer Patten and his review of her test results,
23 as well as other medical reports, that Officer Patten did
24 not show an orthopedic issue causing substantial
25 incapacity to perform her job duty.

1 The testimony of the two doctors for Officer
2 Patten was determined by the Administrative Law Judge to
3 be unpersuasive. This experienced Administrative Law
4 Judge who regularly watches and determines the weight and
5 credibility of medical witnesses found the officer's
6 expert medical evidence insufficient for specific
7 important reasons.

8 Neither of Officer Patten's doctors was a
9 specialist or Board Certified in orthopedic conditions,
10 the issue at hand. Although Officer Patten had seen
11 orthopedists. First of all, Dr. Richman, a neurologist,
12 testified that Officer Patten did not have a neurologic
13 condition that incapacitated her from her work.

14 He then went on to comment on other medical
15 reports from medical fields that were not in his
16 expertise, why he thought those reports satisfied the
17 disability standard. This was not persuasive testimony
18 for the Administrative Law Judge, as Dr. Richman was not
19 the preparer of those reports, and they were in a field
20 quite different from his own.

21 Dr. Shin, a physical medicine rehabilitation
22 expert, the area of his Board Certification, was not an
23 orthopedic specialist, but a rehabilitation specialist.
24 His testimony on direct examination was notable for what
25 it left out.

1 He testified that Officer Patten was disabled,
2 but was not asked why he made that determination. He
3 found her problem to be chronic pain, and said that she
4 should not, or could not perform many of the tasks of a
5 CHP Officer. The law is clear that discomfort or danger
6 are insufficient to find substantial incapacity.

7 The important issue of what Dr. Shin based his
8 determination of incapacity on did not come up until
9 cross-examination. At that point, he clarified that the
10 reason she could not perform her duties was not
11 incapacity, so much as an aversion to risk.

12 He testified that she had lost capacity -- excuse
13 me, that she had not lost capacity so much as she had
14 quote, "lost motor control wisdom", end quote, and was at
15 risk of for future injury, due to her hears and
16 uncertainty. He admitted that her EMG was fine, but that
17 her medical safety was at risk, because she was at risk
18 for future injuries.

19 He said quote, "I'm just saying that she's at
20 significant risk for those events to happen, if she were
21 to take on those challenges", end quote. This was not a
22 determination that she was in -- medically incapacitated,
23 but that she was limited by her evolving perception of the
24 risks she was putting herself in.

25 The important consideration here is that this is

1 a job that has always been full of risk from the moment of
2 being hired. That is the reason that safety, or police,
3 CHP, firefighter among other work designations, is paid
4 commensurate with those risks, offered higher pension
5 values, and deserved -- deserves the admiration of the
6 public and voters.

7 The fact that these employees take these risks is
8 part of the calculation of the remuneration. When an
9 employee is no longer willing to take the risk that is
10 not -- that is not a medical condition. That is a
11 reasonable decision based on a new perception of
12 limitations.

13 In this case, if the officer is no longer willing
14 to take the risks inherent in her job or has a higher
15 level of fear of the incapacities that are caused by
16 injury, or is unable to quell the fear of future injury
17 due to a change of perceptions of the risks that exist in
18 a safety job, the answer is to seek other less risky
19 employment, State or otherwise, not to be retired for
20 disability prior to retirement age.

21 Civil servants are entitled to be protected from
22 aspersions to their abilities because of their genders,
23 experiences or non-disabling injuries. Those issues which
24 are not related to medical capacity, are not part of the
25 disability retirement decision-making process.

1 Civil servants have a right to their jobs and a
2 duty to perform them, unless there is competent medical
3 evidence to the contrary. In this case, the medical
4 evidence presented at the hearing makes it clear that
5 Officer Patten can do this job.

6 We ask that the Board adopt the Administrative
7 Law Judge's determination.

8 Thank you.

9 PRESIDENT MATHUR: Thank you very -- Thank you
10 very much, Ms. Rodriguez.

11 Please start the clock for 10 minutes for Ms.
12 Breslau to present Officer Patten's position.

13 MS. BRESLAU: Thank you Madam President, members
14 of the Board. In 1996 Denise Patten took an oath to
15 honestly and conscientiously serve the people, and uphold
16 and maintain the honor and integrity of the CHP. She also
17 vowed to lay down my life rather than swerve from the path
18 of duty.

19 She has almost laid it down several times for
20 which she was off many times: The '00 accident, where she
21 was knocked off the motorcycle and cartwheeled all over
22 Wilshire Boulevard in L.A.; the 2001 accident where a lady
23 ran a red light or ran a stop sign right in front of her,
24 she T-boned her at the wheel well, the strongest part of
25 the car, left pieces of her motorcycle in the car, went up

1 over the windshield, boot scuff marks on the roof, and
2 landed on her head, and ended up in the Cedars-Sinai
3 Hospital Trauma Insensitive Care Unit for almost four
4 days. You don't go in there unless they're worried about
5 what they've got with you.

6 There's no dispute that she's been in all these
7 accidents. There was no dispute that after returning to
8 work from the Cedars-Sinai -- the accident that put her
9 into Cedars, she got hit again on the way to a doctor.
10 She was off again. Then she went back a couple of months
11 later, worked a little light duty, and got back on the
12 motorcycle, the dangerous job of a motorcycle. She's not
13 afraid of anything this woman.

14 In 2003, she's a pedestrian officer on the side
15 of the road, and somebody else sees something, thinks
16 somebody is coming in his lane hit him. What the judge
17 didn't tell you on all these, one, was first off, that she
18 was in Cedars-Sinai, second off that she was hit again,
19 which put her overnight into the trauma unit at Harbor
20 UCLA. The man put -- hit her on her hip. She went onto
21 the windshield of a 70 mile an hour car, put her head
22 through it with the helmet, and then got thrown 25 feet
23 down an embankment. She was off several months after
24 that.

25 Then she winds up having a disc replacement in

1 her neck, so now she has a partially prosthetic spine.
2 She goes to Sacramento. She's in a car, because it's
3 rainy, and you can't ride motorcycles, on the side of the
4 road and she is hit again. She is off again. This thing
5 on the 14th, on -- of, I mean, on the 30th of November
6 2014 was the straw that broke the camel's back. She was
7 on the northbound 99 to the 50, and it was at an angle.
8 It was literally a 45-degree angle she was trying to pull
9 that door. This was not trivial Dr. Henrichsen said.

10 Now, the issue here is the 14 critical tasks.
11 Sergeant Ted White testified you have to be able to do
12 these on any given day at any given time. You can't
13 decline to do it, because you've already done it several
14 times.

15 So he also said you separate uncooperative
16 persons of 160 to 200 pounds for example. How many? Is
17 it a road rage incident? Do I and two or three of you get
18 into a wreck because I'm a bad driver, and we're acting
19 nice and calm and peaceful, but the people that we've hit
20 are not, and she has to come up and separate them.

21 How many people? Is it two, is it three, is it
22 four, is it road rage, is it a domestic situation going on
23 that she winds up being sent to, which is unusual for
24 Highway Patrol but happens?

25 Dr. Fedder could not be here. He is 78 years

1 old. He fell. He's failing. I would have loved to have
2 bring him. He doesn't even do depositions in his office any
3 more. He does them from his house.

4 We brought Dr. Richman because orthopedists send
5 individuals to -- or neurologists to find out if they have
6 some radiculopathy. Dr. Henrichsen testified that he
7 thought the temperature was off in the room. Dr. Richman
8 is not only Board Certified in Neurology, he's board
9 certified in electromyography and the spine disorders.
10 He's the only one Board Certified in that.

11 She saw Dr. Shin, because workers' compensation
12 doctor she's been seeing before do not want to deal with
13 the workers' compensation situations that the State has
14 provided. They went to medical school to heal people, not
15 to write a report in whatever format the current iteration
16 of the legislature wants it written.

17 There are so many doctors that are leaving
18 workers' comp, pretty soon we're going to have none.

19 But Dr. Fedder was quite clear that she lacks the
20 ability. She has a physical inability to perform the
21 critical tasks, and he's been an AME, an Agreed Medical
22 Examiner for years, so is Dr. Richman, both of whom wrote
23 well over 100 pages of reports and record reviews, if you
24 read them.

25 Denise Patten clearly, as I put in my brief, from

1 the doctor things could not lift/carry an individual
2 resisting arrest 20 to 35 feet 160 to 200 pounds. She
3 can't -- maybe she can -- she's hyper mobile, so maybe --
4 or hyper flexible, maybe she could twist herself into a
5 pretzel and get into a car, and maybe she can pull out,
6 you know, somebody's two smaller kids. But according to
7 this, then I guess she's done it already four times, and
8 now she does it two more. Is she allowed to skip the two
9 people in the front seat? The answer is it no. And if
10 one of them is jammed in, his leg, or something is
11 literally fused with this mangled upside down car, she
12 does not have the strength in her neck, in her low back --
13 especially low back to pull these people out. She cannot
14 do these, and Dr. Richman testified to it, and Dr. Shin
15 testified to it. It's in my brief exactly where.

16 Dr. Henrichsen had -- well, Dr. Richman, when he
17 testified and Dr. Shin they both side which one of these
18 she can do. Mind you she's got 25 pounds around her waste
19 at all times while she's doing this. Dr. Henrichsen says
20 the 25 pound gun belt some people find supportive. How
21 can you buy anything he says with that? That's absurd.

22 Ted White testified otherwise. I had several
23 other officers. I had \$3,000 of subpoenaed Highway Patrol
24 Officers, Sergeants, Lieutenants and a Captain, and a
25 Chief willing to testify. I could probably get the

1 Commissioner if I try. I was precluded from putting that
2 evidence on because it's not important. Well, if the CHP
3 is not -- if their impressions of her abilities way back
4 when when they -- when she could get into the fist fights
5 and the alterations, and back up her partners, and they've
6 seen the diminution in her abilities to date, if that's
7 not important, I don't know what is.

8 But both Dr. Richman and Dr. Shin testified
9 honestly to the things that she can do, and the things
10 that she can't. You know, there used to be a different
11 critical task statement for four -- the 14 criticals that
12 went in when they get rid of the 19, and I actually have a
13 copy of it. And here's a lower and upper extremity
14 dynamic muscle strength and aerobic power. You were
15 supposed to do a 100-yard chase, physically subdue and
16 handcuff a combative suspect. Well, that's why you would
17 chase them now 100 yards or so, hopefully catch them.
18 You're supposed to remove spill loads of traffic hazards,
19 lumber, large rocks, et cetera. That's in there now.
20 But, you know, dressers, mattresses whatever you have to
21 remove, lamb, animals.

22 You're supposed to be able to extract a 200-pound
23 victim. Lift, carry, or drag the victim 50 feet. That's
24 the old one. Now, it's five to 35. Well, if you extract
25 that victim somewhere out of, you know, the number one

1 lane and you've got to go five lanes over, 12-foot lanes,
2 that's more than 60 feet. Get them onto the shoulder, get
3 them where he's out -- you might be doing 75 feet.

4 But all of these -- all of these things, you
5 know, separate uncooperative persons, pull/drag heavy
6 objects. You know, I tried to give an example of a stolen
7 car that she doesn't know is stolen, and the driver
8 doesn't know that she doesn't know it's stolen, and he
9 goes to the back of the car. And she's telling him, as
10 they're supposed to, sir, please step out back in the car,
11 please get back in the car. Okay. Sir, please, step to
12 the shoulder, but she never gets that far, because this
13 ex-felon from, you know, some White Aryan Brotherhood
14 thing up in Pelican, whatever it is, has drugs in the car
15 that he wants to go sell, because he's ordered to do it,
16 And he's all over her and the fight is on. She's fighting
17 for her life.

18 These situations happen. And here come Tom and
19 Dick or Harry, and they're coming home from their carpool,
20 and these citizens come to help her out. Well, what
21 happens if the guy gets her gun? Okay. Now, you have
22 three shot citizens as well.

23 Let me tell you, that is very expensive for the
24 State of California. But these are reasonably foreseeable
25 problems when you put an officer that even the CHP knows,

1 and they're the ones who gave her the options letter and
2 said you need to go, these are reasonably foreseeable
3 issues that can arise and can cost the people of the State
4 of California an awful lot of money.

5 You know, I am aware of Mansford[SIC] -- the
6 Mansford[SIC] case. I am aware of the Hosford case. I am
7 aware of the Starnes -- the late Willie Starnes case. You
8 know, they all sit there just like the -- just like the
9 CalPERS medical qualifications. It's the inability --
10 inability to perform the essential functions, lifting,
11 carrying, pulling, pushing, that's what Dr. Fedder wrote.
12 It's what Dr. Richman says. It's what Dr. Shin says.
13 It's the inability to perform the essential functions of
14 the actual and present job duties that determines whether
15 the members is substantially incapacitated.

16 If you looked at synonyms for ability, you get
17 capacity; inability, incapacity. Inability. She has
18 physical inability, as Dr. Fedder would have -- has
19 written to perform the tasks alone.

20 Substantial means some inability. It doesn't
21 mean all inability. Well, Dr. Fedder, Dr. Richman his
22 testimony, which the judge didn't want to listen to,
23 because he's a neurologist, when orthopedics send you to a
24 neurologist, so you can have these tests done. And by the
25 way, Dr. Henrichsen never looked at some of the records

1 that were sent until the day before. And I served them
2 and have FedEx proof of delivery on them all the way
3 starting in June right up through October. So these
4 things were sent.

5 Dr. Fields and Dr. Henry supports, and whatever
6 else State Comp they had were sent. In one hand, workers'
7 comp starts to take away medical care by saying we have to
8 send you --

9 PRESIDENT MATHUR: Sorry, your time has expired.
10 Thank you, Mr. Breslau.

11 PRESIDENT MATHUR: Ms. Rodriguez, would you like
12 to offer rebuttal at this time?

13 SENIOR ATTORNEY RODRIGUEZ: Thank you very much.

14 PRESIDENT MATHUR: Please start the clock for
15 three minutes for staff's -- for staff's rebuttal.

16 Now, you may proceed.

17 SENIOR ATTORNEY RODRIGUEZ: Thank you.

18 CalPERS operates under the law. The PERL has
19 specific requirements for how we follow the rules of the
20 Administrative Procedures Act. And all these hearings are
21 conducted appropriately and legally.

22 Hearsay testimony is not sufficient under the
23 Administrative Procedures Act to make a determination.
24 Dr. Fedder did not appear having someone else talk about
25 his reports is insufficient to give those statements the

1 weight sufficient to carry this determination.

2 Scenarios can always be thought up that will
3 frighten or make us insecure about legal decisions we have
4 to make. There's always worst case scenarios where no one
5 can fix a situation of danger for the citizens of the --
6 of the State.

7 That is not the reliable and fair way to conduct
8 a hearing and to make a determination for whether or not
9 someone has met the standards required. Incidences that
10 happened in 2000, 2001, 2003 that an employee continued to
11 work for 10 to 15 years afterwards without a break do not
12 offer sufficient evidence to make those determinations,
13 particularly when there are no reports of those incidents,
14 no medical substantiation of them, and no reason to assume
15 that those will create an incapacity without competent
16 medical evidence.

17 Officers who work alongside somebody are not
18 competent to offer medical evidence of their capacity.
19 That is done through the doctors who appear, and the
20 doctors who offer testimony, and direct evidence. In this
21 case, we were fortunate to have three physicians testify,
22 two of whom were doctors of Officer Patten. And the --
23 and the very experienced Administrative Law Judge was able
24 to determine that they did not present sufficient evidence
25 to establish a medical incapacity, substantial incapacity

1 to perform her job duties.

2 The standards which CalPERS has followed for
3 many, many years, have created a reliable platform for
4 members to understand how to present their issues and to
5 be determined to be capacitated or not. And it creates a
6 fair and reasonable way to determine a very important
7 issue, which is whether or not someone is legally entitled
8 to the relief they are seeking. Without that, CalPERS
9 would be making an individualistic decision based on
10 non-admissible evidence in every case.

11 We ask again that the Board follow the proposed
12 decision of the Administrative Law Judge.

13 Thank you.

14 PRESIDENT MATHUR: Thank you, Ms. Rodriguez.

15 Ms. Breslau, would you like to offer rebuttal?

16 MS. BRESLAU: Sure, your Honor. Thank you very
17 much.

18 PRESIDENT MATHUR: Then please -- oh, sorry,
19 before you start, please start the clock for another three
20 minutes for Officer Patten's rebuttal.

21 Please proceed.

22 MS. BRESLAU: Thank you.

23 First of all, there was dispute as to all the
24 injuries. There was no dispute as to the accidents,
25 again to -- at no dispute as to the injuries. If there

1 was, Dr. Henrichsen would have disputed every single
2 injury. He just disputed the extent of the low back
3 injury.

4 Now, counsel thinks these scenarios or this one
5 scenario is funny. And I would -- or is not accurate we
6 can look at the worst case. These have been happening all
7 over the country. And a worst case scenario in
8 California, I would ask you had you ever heard the name
9 Officer Don Burt, because that scenario happened to him,
10 and it is a training scenario in every police academy in
11 this country.

12 So, you know, we're not trying to scare anybody,
13 but you have a duty. And the Highway Patrol has a duty.
14 They have a duty to pull alcoholic officers off the road,
15 drug using officers off the road, psychiatrically-disabled
16 officers off the road. Those superiors are supposed to
17 know that, and officers are supposed to know that.

18 They also have a duty not to put an officer who
19 can't pull all of us out of a vehicle. Maybe she can get
20 me. Maybe she can get you, Madam President. Maybe she's
21 not going to be able to pull out somebody else here, or
22 maybe she can get a couple of little kids out of a -- out
23 of a burning car. Maybe she can do some of these.

24 Please, look at the doctor's testimony for what
25 they can do and what they can't. For Dr. Henrichsen to

1 say, hey, she can do this five times a day if need be.
2 Five times a day? No, the only credible testimony came
3 from Dr. Richman and Dr. Shin. And when you read the
4 reports, you should be able to see that.

5 But, you know, CalPERS -- CalPERS -- I just have
6 to go back to this and I have to go back to 2268 of the
7 Vehicle Code section, she can't work -- continue to work.
8 She can't work light-duty permanently. CHP has no such
9 jobs for her permanently. Therefore, she is entitled to a
10 disability retirement, and she has earned that, leaving
11 pieces of her body in three different divisions of the
12 State of California Department of the Highway Patrol.

13 This woman is -- she's actually -- there's only a
14 handful -- there have only been a handful of female
15 motorcycle officers. Ramona Prieto who retired out of
16 Commissioner's office; Captain Gretchen Jacobs who retired
17 out of the Antelope Valley office; Sergeant Karen
18 Johidi[phonetic] retired out of West Valley. And Mary
19 Anne -- Ann Marie, who's name I can't recall, retired out
20 of West Valley.

21 Right now, the ranking female motorcycle officer
22 in the state of California is Denise Patten. Don't you
23 think she would rather keep that. She would love to go
24 back and sit on that motorcycle and ride around and serve
25 the people of California. But one of the things that is

1 said in all of these cases, including Hosford, is you must
2 know what your own limitations are. She would be doing
3 none of us a favor, and you would be doing none of us a
4 favor putting her on the road in a hazardous situation,
5 which is reasonably foreseeable that a citizen could be
6 hurt.

7 PRESIDENT MATHUR: Thank you

8 Thank you. At this time, I will entertain
9 questions from the Board.

10 Are there any questions from the Board?

11 Mr. Costigan.

12 BOARD MEMBER COSTIGAN: I might as well ask a
13 few. So, I'm sorry, I have a little issue with your
14 presentation. What really should have been is expert
15 versus expert.

16 MS. BRESLAU: Um-hmm.

17 BOARD MEMBER COSTIGAN: And what I didn't
18 necessarily hear was you move to disqualify CalPERS
19 medical experts.

20 So, first of all, Officer Patten, appreciate all
21 you do. Okay. As a -- you may or may not know, I sit on
22 the State Personnel Board, so I'm very familiar with our
23 job descriptions. And I appreciate all you do. In fact,
24 I have a high love for the Patrol. I know both the
25 current Commissioner and the past Commissioner very well.

1 So I -- what you do, and any officer on Interstate 80 at
2 2:00 o'clock in the morning, I appreciate all you do.

3 So please don't take questions as to the
4 integrity of you as an officer or what you do, because we
5 can't do what you do, and I really -- I just want to say I
6 appreciate that.

7 But what I didn't hear again was this is just of
8 two different medical experts. You have yours, and you
9 have CalPERS disagreeing as to whether or not she can go
10 back to work. What I don't see in any of this is where is
11 CHP? I know you said you could get the Commissioner to
12 testify, and you had -- but I see no CHP brief. I see no
13 CHP letter. I don't see where she attempted to go back to
14 work, or am I not seeing that in the record?

15 MS. BRESLAU: No. The CHP doesn't generally
16 appear at these things. I'm not even sure if they're. I
17 thought they might be here today just to observe, but they
18 generally do not appear. They are the ones who sent the
19 option letters, and they actually tried to retire her
20 after 2010, but didn't.

21 BOARD MEMBER COSTIGAN: And I appreciate that.
22 This is what concerned me. And I'm --

23 MS. BRESLAU: I had -- I had --

24 BOARD MEMBER COSTIGAN: I'm familiar with CHP is
25 when you said you could have had the Commissioner here.

1 MS. BRESLAU: No, no, no, not here.

2 BOARD MEMBER COSTIGAN: You could have had his
3 folks here. Well, I'm sorry that's what you said.

4 MS. BRESLAU: Oh, no. I meant if I have to -- I
5 had -- I had two Sergeants, a Captain, and several
6 officers subpoenaed and at the Office of Administrative
7 Hearing. Only the Captain hadn't actually shown up. I
8 had one there who sat there all day, and he was thrown off
9 the stand, because the ALJ decided he didn't need to hear
10 any more about the 14 critical tasks, even though Ted
11 White's testimony was uncontroverted. It's in his
12 decision.

13 BOARD MEMBER COSTIGAN: And that goes back to the
14 point I was making, is --

15 MR. BRESLAU: I had --

16 PRESIDENT MATHUR: Excuse me, Mr. Costigan, if we
17 could just let -- let her finish her answer.

18 BOARD MEMBER COSTIGAN: Okay.

19 PRESIDENT MATHUR: Thank you.

20 MS. BRESLAU: I wanted to put them all on. The
21 ALJ who's been going this for five years did not want to
22 hear anymore of them. He said, pick two. I picked
23 Sergeant Ted White, the motor training instructor at the
24 academy who testified about the 14 criticals. He didn't
25 want to hear that any more. And he said while that

1 testimony was uncontroverted -- this in his decision --
2 while that testimony was uncontroverted, he was going to
3 go with the 14 criticals, a piece of paper.

4 PRESIDENT MATHUR: Okay.

5 MR. BRESLAU: I -- what I'm saying is, you know,
6 if I have to go take depositions, and counsel didn't want
7 depositions, and counsel opposed my trying to put Fedder
8 on, she said we would oppose anything about having -- and
9 I tried to make a motion to put him on via video or
10 something from home, and it was conditioned.

11 It would have been not even at the Board down
12 there. It would had to be from his house. I couldn't
13 bring the other -- by the way, doctor's, orthopedic
14 surgeons that she had they're not practicing anymore,
15 they're retired. They gone. They're out.

16 PRESIDENT MATHUR: Okay.

17 MS. BRESLAU: But, yeah, if I had to do
18 depositions or put a subpoena on them, I could put a --
19 I've been doing this for 30 years with these -- over 30
20 years with CHP. I know all those people also.

21 So if you're asking me why disability and
22 retirement didn't file a brief, I mean, you know, you
23 really have to ask them. They...

24 PRESIDENT MATHUR: Mr. Costigan, did you have
25 further questions?

1 BOARD MEMBER COSTIGAN: No.

2 PRESIDENT MATHUR: Okay. Thank you.

3 Mr. Miller.

4 BOARD MEMBER MILLER: Yes, I've got a couple of
5 questions. And first of all, my understanding was with
6 these 14 requirements that a Highway Patrol Officer has to
7 be able to do all 14. That if I came out of the academy
8 and couldn't do any one of them, I couldn't be hired. Not
9 whether I could do any one of them, you know, every few
10 months, or just one of them today and maybe a few of them
11 tomorrow.

12 And so it's very troubling to me that this
13 standard, this sheet of paper it seems very one
14 dimensional, and it doesn't seem to really recognize what
15 we as citizens expect these officers to do for us, let
16 alone their own personal safety, which, to some extent,
17 is, well, that's what they signed up for.

18 But that's -- as a citizen, that's not what I
19 signed up for. So I wonder if you could speak a little
20 bit to how someone who even the Board Certified orthopedic
21 specialist says cannot squat even three-quarters of the
22 way down to grab someone, or pull them, or look under a
23 car, or do those routine activities, not the extraordinary
24 fighting with armed felons, which is just beyond what most
25 of us could even imagine having to do, but that kind of

1 routine work that we see Highway Patrol Officers out in
2 traffic doing all the time, removing things from the road,
3 checking under vehicles, those type of things, if you
4 can't even bend down all the way?

5 SENIOR ATTORNEY RODRIGUEZ: Thank you. The issue
6 here is that the physicians who testified -- the two
7 physicians who testified on behalf of Officer Patten did
8 not present evidence that established she couldn't do them
9 in the mind of the administrative Law Judge and from the
10 evidence that is contained within the transcript.

11 The rebuttal to that Dr. -- the independent
12 medical examiner's testimony was that she actually can
13 perform each of those tasks. There may be something she
14 has to do in substitution, she may have to lean over more
15 than she squats over, but that she can perform all of
16 those tasks.

17 The law is quite clear from Mansperger and
18 Hosford that the fact that something is difficult or even
19 that it's dangerous, that it's difficult for them to
20 perform, or that performing them may mean that you're in
21 risk of being injured, those are sort of always present
22 risks in these type of jobs. And they do not mean that
23 she is disabled if there -- if there is discomfort.

24 They specifically address things that are not
25 comfortable or are -- or are dangerous are insufficient to

1 find incapacity to perform those tasks.

2 The testimony from the medi -- independent
3 medical examiner, which is actually only significant if
4 there had been testimony earlier that the court found --
5 showed she was incapacitated, which there was not. The
6 testimony from the independent medical examiner was that
7 she could perform the tasks.

8 Contrary to what has been said here, the Judge
9 did not throw anybody off the stand. The judge admonished
10 counsel that non-doctors couldn't give competent medical
11 examination -- competent medical evidence as to capacity.

12 We had doctors who gave medical testimony. And
13 then there was an attempt to get medical abilities from
14 the officers. And the court said that that was not
15 allowed, that those officers could only testify as to what
16 their job duties were.

17 And when that became repetitive, the Judge said
18 we're done with the testimony on what those 14 critical
19 well-established tasks are. And in this case, it was
20 established by the medical evidence that she could perform
21 those duties.

22 I understand that everybody wants -- everybody
23 would like the most competent people to do it. And the
24 findings of competency are medical. And in this case, the
25 finding was that she was competent able -- competent and

1 able to perform the 14 critical tasks.

2 BOARD MEMBER MILLER: Yeah. I guess my concern
3 is that -- and I went through the, you know, 600-some
4 pages that were presented to us. And it seemed -- and I
5 know this is your job, but to try to cast those things in
6 a way that didn't seem perfectly clear from -- for
7 example, Dr. Shin in the transcripts I read, seemed to
8 clearly say in my medical she cannot do these things. He
9 didn't it was a psychological condition.

10 There's -- he tried to explain, to some extent,
11 some of these sensory motor conditions that go along with
12 chronic pain conditions. But when it comes right back to
13 whether someone who cannot bend all the way down, again, I
14 would say if an officer was being considered for selection
15 and they said, well, I can't really bend down all the way,
16 but maybe I can twist, maybe if I'm having to do it in an
17 opportunity that would allow me to do some really
18 interesting and different approaches, than bending down
19 and grabbing and pulling Mr. Miller out of his burning
20 car, maybe I could kind of lean to the side and twist real
21 weird, and do things that a regular uninjured officer
22 wouldn't have to do, it just -- I have a hard time
23 understanding.

24 And this business with the frequency, I think
25 that's my understanding was what those officers were

1 intended to testify about was is it realistic the way
2 those 14 critical tasks are explained? And this -- how
3 frequency, nobody says anything about the frequency, or
4 whether you might have to sprint, not run, but slowly
5 after a suspect or up an embankment and over a barricade.
6 It just seemed like a very constricted way to look at
7 things that -- and who knows, maybe that's something that
8 needs to be fixed in the long run in a different forum,
9 but it just didn't make sense.

10 PRESIDENT MATHUR: Do you have a question, Mr.
11 Miller?

12 BOARD MEMBER MILLER: So could you tell -- what
13 I'm asking is how do you -- how do you kind of balance
14 that out in terms of what's really required of an officer
15 to do the job? It just doesn't seem credible that anyone
16 could come to the conclusion that someone who can't
17 even -- and it doesn't seem to be any argument that the
18 officer cannot bend, cannot squat down could do all those
19 tasks on a repetitive basis without some kind of very
20 strange kinesthetic, you know, modifications to the way
21 they do their job.

22 SENIOR ATTORNEY RODRIGUEZ: It's my understanding
23 from being at the hearing, and then reviewing the
24 transcript several times that Dr. Henrichsen did testify
25 that she could do the tasks at hand, and that the

1 testimony of Dr. Shin was, what we call, prophylactic,
2 that there were risks, and those risks had effects on her
3 desire and ability, her thought process, when she
4 didn't -- no longer wanted to undertake them, that caused
5 a fear of these risks, that she didn't feel when she first
6 entered this job.

7 And having changed her mind about consciously or
8 subconsciously about the desire to take on those risks,
9 that does not create an incapacity that is due to a
10 medical condition that would give her a right to an early
11 retirement through disa -- the industrial disability
12 retirement process. You're right, people who are 20 are
13 probably always -- always faster runners and better
14 squatters than people who are at retirement age of 50.

15 And perhaps someone needs to think about those
16 changes. And yet, if they are able to perform the 14
17 critical tasks, which we have testimony here, the
18 competent testimony is that she is, then it is our duty to
19 follow that standard under the law, and allow them to
20 return to work, whether this is an employer stating that
21 an employee should be no longer allowed to work because
22 he's -- he or she is slower, or overweight, or has been
23 injured, or is a gender that has less capacity with the
24 size of the person they're combating, those are not the
25 relevant standards.

1 The relevant standard here is medical capacity.
2 And I think the testimony -- the specific testimony of the
3 competent medical specialist who testified does not
4 indicate anything other than prophylactic restriction on
5 her work. And if she is restricted only due to risk,
6 which is the tenor of his testimony from, I think, about
7 page 85 through 95, then that is not sufficient to retire
8 her.

9 If it -- if it were, then everybody who starts to
10 get nervous performing tasks that they like to perform 20
11 years ago, 30 years ago would be eligible for a disability
12 retirement. And that's not what we want in this
13 situation. It's not the reliable or fair way to make a
14 determination of disability in the ways that we had
15 previously -- we, and the courts of appeal, have
16 previously seen as the standard for disability retirement.

17 PRESIDENT MATHUR: Thank you, Ms. Rodriguez.

18 BOARD MEMBER MILLER: My final question there is,
19 when you -- when you -- you talk about that -- it seemed
20 like that really was a line of questioning that you
21 followed, but that Dr. Shin consistently said she's not
22 capable of doing those things. But beyond that, there
23 would also be this expectation that those could cause
24 further damage or harm. But I guess, did you not -- do
25 you not recognize that there was an element of a clear

1 medical opinion that she could not do that -- couldn't or
2 was not capable of performing those tasks? And that it
3 wasn't simply a matter of an aversion to doing them, that
4 there were medical reasons.

5 Motor dysfunctions are not a psychological choice
6 with chronic pain conditions. And on a number of those
7 tasks, everyone -- all the medical experts that I saw in
8 any of the transcripts, with the exception of the
9 independent medical examiner indicated that there was a
10 lack of capability to do those things, not on an aversion.

11 And even the independent medical examiner had
12 documented that the person could not bend all the way down
13 for example. Those are things that relate to an actual
14 incapacity. So were those all just discounted?

15 SENIOR ATTORNEY RODRIGUEZ: They were neither
16 discounted by me, nor were they discounted by the
17 Administrative Law Judge who had all of these documents in
18 front of him when me made this determination. And the
19 primary issue here is risk aversion versus actual injury.
20 And for whatever reason that risk aversion arises, that
21 was, in my opinion, and in the Administrative Law Judge's
22 opinion, the tenor of the expert testimony, that it was --
23 that it was risk aversion, risks that had always been
24 there, risks that every officer in the field takes every
25 day.

1 An officer with or without injury can be
2 seriously injured at any time in the difficult and
3 dangerous work that they do. And the fact that someone
4 has a harder time squatting at different times in their
5 life, and is at risk for further injury is, by case law
6 and rulings, the -- not the consideration that we use to
7 make a decision of competent medical support for the
8 incapacity.

9 I understand that it's compelling, that someone
10 has had injuries, and that bodies change over years, and
11 are no longer the same as they were originally. But that
12 doesn't mean that they cannot perform the duties of their
13 job, and without substantial incapacity as determined by
14 medical evidence as the Administrative Law Judge found.

15 We enter a new field of danger for sustaining
16 civil service positions if we go upon prophylactic
17 concerns of possible future risks. And those contain many
18 different kinds of dangers for civil servants to lose
19 their jobs, because they're not the perfect specimen they
20 might have been at one time.

21 PRESIDENT MATHUR: Thank you.

22 MS. BRESLAU: May I respond just briefly?

23 PRESIDENT MATHUR: Yeah, please

24 MS. BRESLAU: Okay. First of all, risk aversion
25 is -- right now, that term is really upsetting my client,

1 because she's proved she's not risk averse.

2 The loss of motor control wisdom was specifically
3 as to jumping. The only prophylactic restriction given on
4 any -- on any portion of her body was her neck only, where
5 the disc replacement is by Dr. Fedder. And finally, the
6 ALJ did not -- you saw the transcript. He wouldn't even
7 consider Dr. Richman. You know, it kind of makes me feel
8 like that old Paul Newman movie The Verdict. He's a
9 doctor, isn't he? He's the one who did the EMG. S1
10 radiculopathy is a nerve issue. We have nerves in our
11 back. So I don't understand why counsel keeps saying
12 everything is prophylactic. It isn't not. That is just
13 wrong.

14 PRESIDENT MATHUR: Thank you.

15 Are you concluded, Mr. Miller?

16 BOARD MEMBER MILLER: Yes.

17 PRESIDENT MATHUR: Thank you.

18 Ms. Taylor.

19 BOARD MEMBER TAYLOR: Thank you. So I had a
20 couple of questions here.

21 Dr. Henrichsen -- and I'm sorry, I've forgotten
22 your name.

23 SENIOR ATTORNEY RODRIGUEZ: Cynthia Rodriguez.

24 BOARD MEMBER TAYLOR: Cynthia Rodrigues. I am so
25 sorry Cynthia.

1 SENIOR ATTORNEY RODRIGUEZ: No problem.

2 BOARD MEMBER TAYLOR: One of the things that
3 stuck out in something that was said is that Dr.
4 Henrichsen basically stated that a 25-pound gun belt is
5 supportive, and that isn't an additional a drag on
6 something who has a back injury. Is that true? Is that
7 something that was -- I was looking through it and I was
8 trying to find it, and I couldn't find it.

9 SENIOR ATTORNEY RODRIGUEZ: He did say that
10 studies that he had reviewed stated that in some cases,
11 and not just police work, but also -- I'm sorry, I can't
12 think of an example, but people who work a work belt with
13 tools on it for construction type, et cetera --

14 BOARD MEMBER TAYLOR: All kinds of work.

15 SENIOR ATTORNEY RODRIGUEZ: Right -- that were as
16 or more heavy than these. Some of them found the -- the
17 strapping of the belt around them to be actually a support
18 for their back as opposed to a drag on them.

19 And --

20 BOARD MEMBER TAYLOR: So you are aware -- and I'm
21 sorry to interrupt you -- you are aware that -- and I
22 believe it is even the State Labor Code that wearing a gun
23 belt for any long period of time is considered a done deal
24 when it comes to a back injury?

25 SENIOR ATTORNEY RODRIGUEZ: Yes, I don't think

1 what he was saying was that she ought to be happy to wear
2 a gun belt. He was actually citing to studies. Upon
3 questioning about didn't that mean she was going to be
4 worse off, he said some people find it makes you worse,
5 and some people don't. And he actually was citing to a
6 specific review.

7 BOARD MEMBER TAYLOR: Okay. So based on that --
8 that itself doesn't go along with law that's already
9 settled.

10 But in any event, I had a couple other questions.
11 There was -- you had said something about an insufficient
12 argument about meeting the standards, but I was reading
13 through Dr. Richman's and Dr. Shin's arguments. And in
14 each and every question on whether she could perform the
15 duties, it wasn't prophylactic, it was can she perform the
16 duties now, and there answers were no. And I'm not -- I'm
17 unclear as to how that doesn't meet the standards.

18 SENIOR ATTORNEY RODRIGUEZ: I think what counsel
19 for Officer Patten referred to is the answer to that. And
20 that is that when Dr. Richman was testifying, he was not
21 testifying to his findings, he was testifying to findings
22 of the orthopedist and to Dr. Fedder, and to other
23 doctors, which were hearsay bringing in information from
24 other physicians.

25 His issues -- his neurologic -- the issues that

1 he addressed, he did not find incapacitating. His
2 testimony was about findings of other doctors. That's
3 hearsay testimony. And it's not supported or sufficient
4 upon which to make a decision.

5 BOARD MEMBER TAYLOR: That's not what I was
6 reading here though. This is not what I was reading here
7 at all. The questions were directed can she perform this
8 duty? He said no.

9 SENIOR ATTORNEY RODRIGUEZ: I don't want to be
10 too hair splitting, but actually again, as I said in my
11 earlier statement, the issue here is why he said no, just
12 as why Dr. Shin said no. He said no. He testifies,
13 because of reports he read of other doctors, not his own
14 examination. Reports he read of doctors who had findings.
15 He did not have findings in his area of expertise that
16 showed disability. He had to rely on other areas of
17 expertise to talk about disability.

18 When asked is she disabled, he answers yes, but
19 then with it's explained where that comes from, it's not
20 from his findings. It's from other or doctors. And Dr.
21 Shin --

22 BOARD MEMBER TAYLOR: Okay. So you don't think
23 that a doctor, a certified neurologist, is qualified to
24 read reports and study the patient as well, and make a
25 declaration?

1 SENIOR ATTORNEY RODRIGUEZ: I think he's
2 qualified to do his exam and to come to opinions. But
3 when he states that the opinions -- and we're -- we have
4 to follow the law. When he states his opinions only come
5 from other people and not from his own findings --

6 BOARD MEMBER TAYLOR: I didn't see that in here.

7 SENIOR ATTORNEY RODRIGUEZ: -- his neurologic
8 findings, because he states his neurologic findings do not
9 make her incapacitated. His findings about dizziness or
10 headaches are not the reasons for her incapacity. Only
11 when he looks at other doctors findings does he see
12 incapacity.

13 And Dr. Shin specifically also says, oh, yes,
14 she's disabled. But only on cross-examination does he
15 explain why he thinks she's disabled, and he thinks she's
16 disabled because it's -- he believes it's medically unsafe
17 to do things that are risky, and that is not the standard
18 of --

19 BOARD MEMBER TAYLOR: That's not what it said.

20 PRESIDENT MATHUR: Please don't interrupt.
21 Please let her finish her thought.

22 SENIOR ATTORNEY RODRIGUEZ: I can only refer you
23 to those are areas I've read several times, as did the
24 Administrative Law Judge. And I do believe that that is
25 the correct interpretation of their testimony. And it's

1 the interpretation that is explained at length in the
2 proposed decision, because it's possible to separate the
3 two.

4 Do you think this person is incapacitated, and
5 why do you think this person is incapacitated? When you
6 hear stories of people being in accidents or having
7 surgeries, it can also often be compelling to believe this
8 person couldn't possibly perform jobs. And yet, so many
9 of us have been through that, have had significant medical
10 events. And just as Officer Patten gone on to work 15,
11 20, 30 years, without being disabled.

12 Significant medical events luckily are often
13 survivable and recoverable. And having had medical
14 findings previously is not a finding that you cannot do
15 things.

16 Dr. Henrichsen is looking -- the orthopedic
17 surgeon, these are orthopedic issues, he's looking
18 specifically at orthopedic capacities that come from the
19 testing that he did. And he finds that she is capable in
20 those specific areas. I think it's very possible for a
21 doctor to look at and learn much from other doctor's
22 statements, but that doesn't make them their competent
23 medical opinion.

24 We have -- we have doctors all the time who would
25 like to reflect on other issues, but always we want them

1 to testify in their area of expertise. We use Board
2 Certified physicians in their area of expertise, and in
3 the injuries that people claim, so that we can have the
4 specific understanding of how that particular issue works
5 in capacity to perform job duties.

6 BOARD MEMBER TAYLOR: So two things I will say.
7 One is Dr. Henrichsen is doing the thing that you are
8 claiming her doctors can't do, which is reading reports
9 and making -- and yes, he had his own review as well, just
10 like Dr. Richards[SIC] did, but making a declaration on
11 those reports that he's reading. So that's number one.

12 But number two, my other question is, Dr. Richard
13 Fedder, who is the orthopedic surgeon, right, wrote in his
14 July 3rd, 2017 report, "With regard to lower back, the
15 patient is limited to light work. She cannot resume her
16 pre-injury occupation as a motorcycle officer with the
17 CHP. Dr. Fedder found her objectively unable to perform
18 her duties. Dr. Fedder reported that Ms. Patten cannot
19 resume her pre-injury occupation with the CHP
20 primarily..." -- I'm sorry, you guys, I have allergies
21 today -- "...primarily because of her lower back. She
22 cannot wear the Sam Browne belt and use the bullet proof
23 vest, and she cannot do the lifting, carrying, pushing,
24 pulling required to perform the duties of a Highway Patrol
25 Officer".

1 So my question to you is that was entered into
2 the court -- into the testimony, and it -- I don't
3 understand why it was not allowed? It seemed like it
4 wasn't allowed. I mean, it was -- it's here, but it
5 seemed like it was discounted. So I was wondering how
6 come that happened?

7 SENIOR ATTORNEY RODRIGUEZ: We do follow the
8 rules of the Administrative Procedures Act, which says
9 that testi -- that evidence not presented in court is
10 hearsay. I will point to page 1504 of Dr. Fedder's of
11 your document --

12 ASSISTANT CHIEF COUNSEL SEABOURN: It's D --

13 PRESIDENT MATHUR: Use your microphone, please
14 Ms. Seabourn.

15 SENIOR ATTORNEY RODRIGUEZ: It's Respondent's
16 Exhibit D, page 23 of 39, in which at the bottom Dr.
17 Fedder states, "Clearly, work restrictions with regard to
18 the cervical spine on a prophylactic basis limit the
19 patient from repetitive or other work".

20 So even Dr. Fedder's report, which is not as here
21 as direct evidence, but which is what Dr. Richman
22 testifies to, admits that these restrictions are
23 prophylactic. And in this case that is insufficient. Dr.
24 Henrichsen did -- not only did a review of other reports,
25 and did -- doctors do consider other reports in coming to

1 their opinion, but their opinion is based on their
2 examination.

3 In other words, a doctor wouldn't simply read
4 other reports, they would do an examination. He did
5 testing, measurements, objective -- looked at objective
6 findings that he did himself to determine that she was
7 capable of making the movements necessary and performing
8 the physical tasks that are required in the -- in the law
9 for a CHP Officer.

10 BOARD MEMBER TAYLOR: So I appreciate all of
11 that. And I couldn't -- I couldn't turn to it fast enough
12 but I question objectivity when a doctor says that a 25
13 pound gun belt is supportive, but I would like to hear --

14 SENIOR ATTORNEY RODRIGUEZ: And if I could just
15 answer that. Again, that was brought up on
16 cross-examination. When he was asked about a gun belt and
17 the various issues with it, and he referred to a study.
18 He did not suggest in his exam or in his direct testimony
19 that people should wear a gun belt for support. He was
20 talking about the various studies, and what they've shown
21 about gun belts in response to that question.

22 BOARD MEMBER TAYLOR: All right. Thank you.

23 PRESIDENT MATHUR: Thank you.

24 BOARD MEMBER TAYLOR: Could I have some response?

25 MS. BRESLAU: Sure. Thank you very much, by the

1 way. The prophylactic restriction was solely on her neck.
2 Read Dr. Fedder's report. I think you had --

3 BOARD MEMBER TAYLOR: Yes, I do.

4 MS. BRESLAU: -- nailed it had quite well.

5 Dr. Henrichsen said, "Some people find..." -- I'm
6 giving you a direct quote from memory -- "...a gun belt
7 supportive". He also what he was testifying to is he saw
8 no studies and no literature anywhere saying that a gun
9 belt would be causing these low-back problems. Denise
10 Patten didn't file for the gun-belt presumption. And that
11 gun-belt presumption was not given to the CHP members by
12 the legislature for fun and giggles.

13 BOARD MEMBER TAYLOR: Right.

14 MS. BRESLAU: It was -- it's based on -- I don't
15 have the studies. I mean, if I need to find them, I need
16 to find them. But it was years of studies. And the Peace
17 Officer Research Council, and the National Peace Officers
18 Association, they have all of that.

19 This -- I mean, really? You know, is there
20 somebody here with a gun belt that, you know, we could all
21 put it on and kneel down? You know, I'd love to do that.
22 We do that in front of juries sometimes.

23 Thank you. I think you nailed it.

24 PRESIDENT MATHUR: Thank you.

25 Mr. Gillihan.

1 BOARD MEMBER GILLIHAN: Thank you, Madam
2 President. I would just like to say as the employer of
3 State Employees on behalf of the Governor, I get to spend
4 a fair amount of time with the CHP, at the academy,
5 graduations, at memorial services every year. And sadly,
6 last year, at the funeral for Officer Lucas Chellew who
7 was killed in a motorcycle wreck on patrol in South Sac.
8 So a tremendous amount of respect and a deep appreciation
9 for the work you do.

10 My question had to do with options letter the
11 Department provided Ms. Patten. And could you tell us
12 what those options were that the Department offered Ms.
13 Patten?

14 MS. BRESLAU: The options letter says something
15 to the effect of you can file for industrial disability
16 retirement if you can no longer do this job. You can
17 request us to file for it. You can go find some other
18 State job, that kind of thing.

19 BOARD MEMBER GILLIHAN: So the Department did not
20 dispute her injuries?

21 MS. BRESLAU: No, they're not disputing them at
22 all. As a matter of fact in 2010, after the 1/29/2010
23 accident, she got -- well, they didn't -- she -- they
24 didn't send her an options letter. They came over to her
25 house and they took her badge and her gun. She testified

1 to that in the hearing, because they thought she was going
2 to have to go.

3 And what it was is there was some confusion about
4 some things that I don't know if it was Dr. Richman or Dr.
5 Fedder had written, which resulted in a reversal of, you
6 know, or clarification, so she was back on the road, and
7 as you said bravely assuming all risks.

8 And, yes, and I've been to a lot of those
9 funerals too, sir. But, no, the options letter -- I mean,
10 she is entitled. If you find that she is, in fact,
11 disabled from performing these critical tasks, and she
12 can't just do something one to three times per month. You
13 have demonstrations here. What if you have to drag them
14 out? And you have a hundred officers and you have 5000
15 people, you know, how many are you going to drag out, that
16 kind of thing?

17 But if she is disabled from doing this job, then
18 she is entitled, under 2268 of the Vehicle Code, to an
19 industrial disability retirement. And what she does that
20 will comport with her current injuries thereafter is
21 something else.

22 I mean, she's not supposed to go and I'll go be a
23 DMV clerk. Not that there's anything wrong with being a
24 DMV clerk, but that's essentially what the options letter
25 says, is these other alternatives.

1 BOARD MEMBER GILLIHAN: Thank you.

2 SENIOR ATTORNEY RODRIGUEZ: I'm sorry, can I
3 respond briefly to that?

4 PRESIDENT MATHUR: Please.

5 SENIOR ATTORNEY RODRIGUEZ: The reference to the
6 gun and badge incident is a completely unrelated 2010
7 incident.

8 The issue of the option letters after she filed a
9 workers' compensation claim and did not return to work,
10 CHP informed her that if she was not going to return to
11 work, she had several options. She could file for
12 disability, she could retire, whatever options were
13 checked in a form letter. That's not evidence that the
14 CHP believed she should off -- be off work.

15 CalPERS determination is to medical competence.
16 And if Ms. -- if Officer Patten is returned to work, CHP
17 is entitled to conduct its own review of her capacity to
18 perform different things that she may or may not be
19 required to do. And then there is an entire legal process
20 for her to respond to that, and to be given opportunities
21 to take several options that exist.

22 This is not the place where we would make a
23 determination as to a response to whether or not Cal --
24 California Highway Patrol institutes some line of
25 questioning about her capacity.

1 PRESIDENT MATHUR: Okay. Thank you.

2 Mr. Slaton.

3 MS. BRESLAU: For the record, ma'am, she was off
4 14 1/2, 15 months before she got that letter.

5 PRESIDENT MATHUR: Okay. Thank you.

6 Mr. Slaton.

7 BOARD MEMBER SLATON: Thank you. Thank you for
8 your service. There seems to be somewhat of an argument
9 about doctors. I played a doctor on TV, but that doesn't
10 mean I --

11 (Laughter.)

12 BOARD MEMBER SLATON: -- I'm a doctor. So I want
13 to come back to Dr. Richman. And out of your testimony, I
14 want a reaction from CalPERS staff. Dr. Richman is Board
15 Certified in Neurology, peripheral nerve disorders, and
16 spine disorders.

17 So I -- I thought I heard staff say that he
18 merely relied on other examinations. And that's not what
19 I read in the case presented that he saw her in May of
20 2017. And that he discussed primary complaints. And then
21 he testified that he examined her and performed an
22 electrodiagnostic study. I don't know what that is, but

23 MS. PATTERN: It hurts.

24 BOARD MEMBER SLATON: I presume it has to do with
25 things hurt and nerves don't work right.

1 So I want to hear from staff did he examine her
2 or did he not? Is this testimony truthful that I see here
3 that he examined her? And if so, then -- then his
4 conclusions that she could not perform the tasks. So can
5 you explain to me, am I reading it incorrectly?

6 SENIOR ATTORNEY RODRIGUEZ: We are not
7 challenging the idea that -- the fact that he examined her
8 or that he performed -- that I believe it's called EMG
9 test. As a matter of fact, he specifically refers to that
10 test in saying - and as does Dr. Henrichsen, and I believe
11 also Dr. Shin in saying that that test did not establish
12 incapacity.

13 When he goes on to talk about her incapacity, he
14 refers to her orthopedic condition as the incapacity.
15 He has a right to review all those records. All that
16 we're saying is that his -- his reviews specifically - and
17 I'm sorry I can't locate the lines where he specifically
18 talks about it - but the neurologic condition was not what
19 made her incapacitated. But it's not a question of
20 whether or not he examined her.

21 We will have sometimes a physician who will come
22 in, and you know they spend some amount of time with a
23 patient and say, well, you know, her orthopedic condition
24 is fine, but she certainly seems to have a psychiatric
25 problem.

1 And the answer is, well, you know, perhaps a
2 conversation demonstrates that, but an orthopedic surgeon
3 is not necessarily qualified to make a judgment on a
4 psychiatric problem.

5 So the fact that this neurologist is finding that
6 she doesn't have a neurologic problem, but that he trusts
7 a lot of other -- Dr. Fedder's reports to tell him that
8 she does have an orthopedist -- pedic problem is sort of a
9 mix of hearsay on the orthopedic issue, because he's
10 taking it from another person who's not in court, who
11 cannot be cross-examined, and who therefore is presenting
12 hearsay testimony.

13 And his own examination, which as he says at one
14 point, my recollection is is about the symptoms that she
15 came in as to vertigo, dizziness, those issues was not --
16 did not lead to a finding of substantial incapacity.

17 BOARD MEMBER SLATON: So -- and I come from a
18 family that sees orthopods regularly for knees and all
19 sorts of conditions. I don't think orthopedic doctors
20 really work on nerve issues so much as it is bone and
21 connective tissue issues.

22 So again, I read Dr. Richman saying his nerve
23 study resulted in positive findings at the S1 nerve root.
24 And then he discussed the 14 critical tasks and opined on
25 her ability or inability to perform those tasks.

1 So I'm a little confused, because I see a Board
2 Certified doctor saying there's nerve damage, and then
3 opining on the ability to do tasks. So what am I missing
4 from this? What am I not seeing?

5 SENIOR ATTORNEY RODRIGUEZ: Again, I -- I mean, I
6 can look for the testimony, but --

7 BOARD MEMBER SLATON: This is on respondent's
8 argument page 9 of 20.

9 SENIOR ATTORNEY RODRIGUEZ: Oh, I -- and I'm
10 sorry, I'm looking actually in the transcript around page
11 125, which is where he testifies to what he found. And
12 it's my recollection that he first testifies about his
13 examination, and then he -- and then he later talks about
14 her capacity, but he does not link her capacity to his
15 neurologic findings, and said he links them to other
16 physician's findings.

17 I believe he actually found that -- he states, at
18 some point, that the neurologic test and neurologic
19 finding is not one is -- demonstrates incapacity.

20 BOARD MEMBER SLATON: All right. Let me ask you
21 a bit of a different question. You mentioned earlier you
22 talked about, and you used two terms, desire and ability
23 to do the job. And you were differentiating between those
24 two things. And again, we've been talking about
25 prophylactic and fear of additional injury.

1 First of all, let me ask you this question, is --
2 is a mental condition medical?

3 SENIOR ATTORNEY RODRIGUEZ: A mental condition
4 can be medical.

5 BOARD MEMBER SLATON: Okay. So --

6 SENIOR ATTORNEY RODRIGUEZ: Fearing things that
7 everyone may fear, dangerous or risky things to do is not
8 indicative of a medical condition.

9 BOARD MEMBER SLATON: I understand, so let me go
10 beyond the issue of fear. If I've had a diagnosis that
11 tells me if I do X, Y will occur, not the fear that Y will
12 occur, but it will occur, and I have -- I've gotten
13 medical advice that that will occur. If I do this task, I
14 will suffer an injury. Is that different than the fear of
15 the possibility of an injury?

16 SENIOR ATTORNEY RODRIGUEZ: Fairly philosophical
17 question, but yes, I think it is different, because this
18 is -- they're not saying if you do this activity, you will
19 have this injury.

20 The prophylactic restriction is the risk of
21 injury. And that risk, not the certainty of it, but the
22 risk, you know, the -- that has always been there -- and,
23 you know, if we did studies on safety versus non-safety
24 employees, we would probably find that safety employees
25 have less of a fear of risks. But if you develop a fear

1 of risks that normal people always have, that's one of the
2 regular human options to be afraid to jump off the high
3 dive as opposed to being willing happily to jump off the
4 high dive, that's not an indication of a medical problem.
5 It's just an indication of a tolerance, and your tolerance
6 can always change.

7 BOARD MEMBER SLATON: Okay.

8 SENIOR ATTORNEY RODRIGUEZ: That's not a mental
9 insufficiency or --

10 BOARD MEMBER SLATON: All right. Last question.
11 The ability to go get another job. And again, I'm not
12 that familiar with State service, and, you know, how the
13 rules work. But if you go to work for the CHP and you now
14 are told you cannot do the job that you were hired to do,
15 are you -- I guess if there's no other job that you can do
16 in the CHP, in the whatever ranking you have, then you are
17 forced then to go to retire, forced to go outside? I
18 mean, I thought the issue of disability dealt with you
19 cannot do the job that you are hired to do.

20 SENIOR ATTORNEY RODRIGUEZ: I don't think that
21 the findings -- certainly not the findings that we
22 presented, nor the finding of the Administrative Law Judge
23 was that she could not do the job. She no longer is
24 willing to take those risks, whether that's a physical or
25 a conscious decision, or just she's no longer that person

1 who can do those risks, it's -- the CHP would be able to
2 make that determination and see if they had other jobs.

3 And there's are certainly -- it's not a matter of
4 she's not -- she's being turfed out by us at all. She's
5 able to go back to the CHP and a new set of decisions will
6 be made there, available jobs, et cetera.

7 The emphasis on -- you know, the CHP has no light
8 duty. CHP has no built to do this or that. That's
9 actually not a finding that we make here. And it's not a
10 consideration. If she's not medically incapacitated, then
11 she goes back to CHP and they make decisions there.

12 And they may have jobs for her. They may not.
13 That's not amongst the considerations that we address.

14 But certainly we are not saying that someone who
15 is found to have a medical condition that means they
16 cannot do their work, not a change of perspective on risk
17 taking, we don't -- we don't make them leave. They can
18 choose to leave if they don't want to. Certainly, we see
19 this regularly in safety jobs and regular jobs.
20 Correctional officers who no longer wish to take those
21 risks with their life, who see other things happen.
22 Safety officers, people who works at Park and Rec, any
23 type of job, they may decide that the -- the qualities of
24 danger, or comfort level, or whatever at their job are not
25 for them. And that is a decision they can make.

1 And when they make that decision, if the outcome
2 of it is that they're going to leave their employment,
3 that's -- that's their right to do.

4 BOARD MEMBER SLATON: Okay. Thank you.

5 PRESIDENT MATHUR: Thank you. I just want to
6 ask. You were looking for a ref -- a spot in the
7 testimony where Mr. -- Dr. Richman, rather, referred to
8 Dr. Fedder's report, are you looking for page 132, 133? I
9 think I -- that's where he says he was referring to Dr.
10 Fedder's prior report, I believe.

11 SENIOR ATTORNEY RODRIGUEZ: Luckily we have a
12 wealth of medical testimony in this case.

13 PRESIDENT MATHUR: Indeed.

14 SENIOR ATTORNEY RODRIGUEZ: Yes, he does refer
15 specifically to Dr. Fedder's report on those pages and the
16 findings that he believes from having reviewed those
17 reports. Thank you.

18 PRESIDENT MATHUR: Okay. Mr. Feckner.

19 VICE PRESIDENT FECKNER: Thank you, Madam Chair.

20 First of all, I want to thank you for your
21 service. But upon reading the ALJ's decision, and
22 especially paying attention to our independent counsel's
23 complete review of the case, I move that the Board adopt
24 the proposed decision as its own in its entirety.

25 PRESIDENT MATHUR: There's the motion.

1 Is there a second to the motion?

2 BOARD MEMBER RUBALCAVA: Second.

3 PRESIDENT MATHUR: Sorry. Motion and seconded
4 by, I'm sorry, Mr. Rubalcava.

5 So that is the motion on the table.

6 On the motion, Mr. Miller.

7 BOARD MEMBER MILLER: Back to me to speak.

8 PRESIDENT MATHUR: Back to you to speak, but on
9 the motion.

10 BOARD MEMBER MILLER: Okay. Oh, on the motion.

11 PRESIDENT MATHUR: On the motion. Now there's a
12 motion before us.

13 BOARD MEMBER MILLER: Yeah, I'm -- I'm opposed to
14 the motion. I feel that there's still real unanswered
15 questions in my mind. I feel that there's this, kind of
16 as Mr. Slaton referred to, this battle of the expertise.
17 And it's sounding more to me like a lot of this hinges
18 upon someone putting orthopedic ahead of the real issue of
19 the neurological symptoms. And I'm very concerned, and
20 almost offended a little bit, that something like a motor
21 dysfunction as the result of chronic pain, which is a real
22 physical organic condition that is medical, and is not a
23 matter of choice or a decision of the patient to be risk
24 averse.

25 I mean, that keeps coming up as that's the

1 interpretation here. And that's not what the testimony of
2 Dr. Shin or anyone else would lead me to believe having
3 looked at it and read it, is a concern that really makes
4 me unwilling to support that decision.

5 PRESIDENT MATHUR: So I think your options would
6 be to move a substitute motion, either with a different
7 determination or for the Board to go into closed session
8 to further -- to further deliberate and then come back
9 with a decision. Those are two options before you.

10 BOARD MEMBER MILLER: Yeah, I would move that we
11 go in there, because I'd like to further explore exactly
12 the implications of the options we have before us, and
13 also in the light of the respondent's --

14 PRESIDENT MATHUR: So the motion is to recess
15 into closed session to further deliberate.

16 BOARD MEMBER MILLER: Yeah.

17 BOARD MEMBER GILLIHAN: Second.

18 PRESIDENT MATHUR: Motion is made and seconded.

19 Any discussion on the motion?

20 I'm sorry the seconder was Mr. Gillihan.

21 Any discussion on the motion?

22 I have a few requests to speak. Are those on the
23 motion?

24 Okay. All those in favor?

25 (Ayes.)

1 PRESIDENT MATHUR: All those opposed?

2 Motion passes.

3 We will now recess to deliberate in closed
4 session.

5 (Off record: 10:54 a.m.)

6 (Thereupon the meeting recessed
7 into closed session.)

8 (Thereupon the meeting reconvened
9 in open session.)

10 (On record: 11:27 a.m.)

11 PRESIDENT MATHUR: Okay. I am going to reconvene
12 the open session.

13 And before I move to any requests from the Board,
14 I just wanted to note for the record that Mr. Juarez for
15 John Chiang had to leave, and so he will not be voting,
16 and that Mr. Slaton has recused himself and he will not be
17 voting. With that, I will turn to Ms. Taylor.

18 BOARD MEMBER TAYLOR: Thank you, Madam Chair. So
19 I would like to make a motion to overturn the ALJ
20 decision.

21 BOARD MEMBER MILLER: Second that.

22 PRESIDENT MATHUR: Motion made by Taylor and
23 seconded by Miller.

24 Any discussion on the motion?

25 Seeing none. All those in favor say aye?

1 (Ayes.)

2 PRESIDENT MATHUR: All those -- oh, actually, I
3 think we need to take a roll call vote, is that right?

4 We need to take a roll call vote. So let's use
5 the buttons.

6 (Thereupon an electronic vote was taken.)

7 PRESIDENT MATHUR: Motion passes.

8 The results are that the -- so the motion passes.
9 So the ALJ's decision is overturned.

10 (Applause.)

11 PRESIDENT MATHUR: I'm sorry -- oh, not everybody
12 voted. I'm sorry. Let's do that again, please. So there
13 are buttons to vote with, all the members. It's the
14 green, yellow, and red one.

15 PRESIDENT MATHUR: She's going to turn it back
16 on. Just give us a minute.

17 Okay. Now, please.

18 (Thereupon an electronic vote was taken.)

19 PRESIDENT MATHUR: Okay. The motion -- the
20 motion passes, and the ALJ decision is overturned.

21 And that adjourns the full Board hearing. Thank
22 you all very much.

23 That brings us back to the regular Board of
24 Administration agenda. And to Agenda Item number 12,
25 which is State and federal legislative update.

1 DEPUTY EXECUTIVE OFFICER PACHECO: Good morning,
2 Madam President and members of the Board. Brad Pacheco,
3 CalPERS team.

4 I know it's been a long morning already, so I'll
5 try to keep the update brief. It's been a very active
6 time in the legislature. I've received some live updates
7 as we've been sitting here this morning.

8 So let me start with the CalPERS sponsored
9 legislation first. Pleased to share with you that
10 Assembly Bill 2415 that adds a Chief Health Director and
11 Chief Operating Officer to the list of key executives, for
12 which the Board has salary-setting authority, passed the
13 Assembly PERS Committee on April 4th. It was heard in
14 Assembly Appropriations today, and it has been placed on
15 the suspense file without prejudice.

16 We had two other sponsored bills that were heard
17 by the Assembly PERS Committee this morning. Assembly
18 Bill 2196, that would require members that purchase or
19 convert service credit in the future to pay any remaining
20 balance upon retirement. And the second bill that was
21 heard was our housekeeping bill, Assembly Bill 3245. They
22 have both passed out of the Committee and been placed on
23 the consent calendar.

24 I did want to let the Board know that there were
25 several provisions removed from our housekeeping bill that

1 you had approved back in December of last year. The
2 Retired Public Employees Association filed an opposition
3 letter against ending any new direct authorizations from
4 retiree warrants. And they also opposed reducing death
5 benefit contract options that the team here believed were
6 under-used and would have helped reduce complexity of the
7 funds. Because it is a housekeeping bill, the consultant
8 removed those provisions due to the opposition.

9 The other provisions that were removed were due
10 to opposition by the California Professional Firefighters.
11 That would have allowed CalPERS to collect benefit
12 overpayments after the death of a benefit recipient. CPF
13 also opposed provisions in the bill that the team believed
14 would strengthen CalPERS disability/industry disability
15 determination processes.

16 So the legislative and program teams will be
17 considering these provisions for future policy bills, and
18 we'll bring those back to you as appropriate. And then
19 finally, Senate Bill 1022 that shortens the timeframe in
20 which a contracting agency can voluntarily terminate its
21 contract with CalPERS, and also requires the employer to
22 notify the members on its intent to terminate, will be
23 heard next Monday by the Senate PERS Committee.

24 We have worked with our stakeholders on one
25 amendment. Originally, the bill called for employers to

1 notify their employees of its intent to terminate within
2 seven business days. We've agreed to amend that, so the
3 notification is within 30 business days.

4 So just moving on to a couple of other
5 significant bills that we're covering and following.
6 Assembly Bill 2571, this would require any public pension
7 fund in California to ask, what the bill says, its
8 alternative investment vehicles. For purposes for us,
9 that would be our real estate and private equity partners.
10 In turn, to have those partners ask the companies that
11 they invest in if that company is in the hospitality
12 sector to report annually two pieces of information:
13 specified race and gender pay equity, and the existence,
14 status, and financial terms of any sexual harassment claim
15 or settlement going back five years.

16 So the team has met with the sponsor and the
17 author to share our concerns on this bill. We do believe
18 that it potentially could place California pension funds
19 at a serious disadvantage and jeopardize our competitive
20 role in the private equity and the real estate classes --
21 asset classes. It was pulled from the calendar this
22 morning in the Assembly PERS Committee. So we'll continue
23 to monitor for its progress.

24 We're also closely monitoring Assembly Bill 1912.
25 That would hold joint powers of authority -- authority's

1 member agencies jointly and severally liable for all
2 retirement obligations. We favor many provisions of this
3 bill. We do have one concern that we've been talking to
4 the author and sponsor about, and that's the requirement
5 that this Board file a civil action against the member
6 agencies in the event the JPA defaults, or there's a
7 dissolution.

8 Our concern there is we really believe that that
9 decision should be left to this Board, and that there
10 shouldn't be in law a requirement that we file a civil
11 action that may not be frugal -- fruitful and cost the
12 system assets. It also -- it -- this bill did pass out of
13 the Assembly PERS Committee this morning, and it will go
14 to the Assembly Judiciary Committee next Monday.

15 In addition, Senate Bill 1413 would establish a
16 pension prefunding vehicle, or a 115 trust that would be
17 managed by CalPERS. It's going to be heard next money --
18 Monday, excuse me, in the Senate PERS Committee. And we
19 plan to bring this bill back to the Board for a
20 recommended support position in May.

21 And finally, I just wanted to note Assembly Bill
22 3087, it's not on the list that's before you, because it
23 was amended last Monday. It would establish a California
24 Health Care Cost Quality and Equity Commission as an
25 independent State agency to control in-state health care

1 costs.

2 It appears to operate similar to the PUC
3 regulating communications and power providers. It would
4 be controlled by a nine-member governing body, including
5 an appointee of the CalPERS Board. It's scheduled to be
6 heard by the Assembly Health Committee on April 24th. And
7 we internally are meeting and preparing to talk to our
8 member and labor stakeholders about this bill.

9 And then just a couple notes on federal
10 activities. On April 2nd, our Chief Health Director,
11 Liana Bailey-Crimmins, and members of our LAD staff,
12 Gretchen Zeagler, met with representative Ami Bera to
13 discuss CalPERS federal health care priorities.

14 As reported last month, Representative Bera is
15 part of bipartisan Health Care Innovation Caucus tasked
16 with advancing a legislative agenda to encourage
17 innovative policy ideas, improve quality of care, and
18 lower costs to consumers. And we'll be following that
19 Committee closely.

20 And this week, CalPERS will be responding to a
21 letter - you might have seen this in the news - from
22 representative Mark DeSaulnier who has requested that we
23 consider divestment from automobile manufacturers that
24 produce cars failing to meet California's groundbreaking
25 emissions standards. And this is -- his request is in

1 reaction to the EA -- EPA's announcement that fuel
2 efficiency standards established in 2012 by the former
3 administration will be rolled back.

4 So let me stop there and ask if there's any
5 that's that we can answer.

6 PRESIDENT MATHUR: Thank you.

7 Margaret -- oh, sorry, Margaret has left the
8 room.

9 Ms. Taylor.

10 BOARD MEMBER TAYLOR: Yes. Thank you.

11 So one of the first things you talked about made
12 me push the button, which is AB 1214, which was us getting
13 additional pay for our Health Director and I forgot the
14 other position.

15 DEPUTY EXECUTIVE OFFICER PACHECO: Cheap
16 Operating Officer, Assembly Bill 2415, sorry if I said
17 1215.

18 BOARD MEMBER TAYLOR: 2415.

19 DEPUTY EXECUTIVE OFFICER PACHECO: 2415.

20 BOARD MEMBER TAYLOR: So -- and I thought you
21 said placed on suspense, is that correct?

22 DEPUTY EXECUTIVE OFFICER PACHECO: It has --
23 that's correct.

24 BOARD MEMBER TAYLOR: What does that mean?

25 DEPUTY EXECUTIVE OFFICER PACHECO: Which

1 essentially it's on suspense. It will be voted. We
2 expect that it will go through Appropriations and move on.

3 BOARD MEMBER TAYLOR: Oh, okay. So it's going to
4 move on. Okay.

5 DEPUTY EXECUTIVE OFFICER PACHECO: Yes.

6 BOARD MEMBER TAYLOR: And then on AB 2571, the
7 race and gender pay equity in our, I believe you said,
8 real estate and private equity?

9 DEPUTY EXECUTIVE OFFICER PACHECO: Correct, real
10 estate and private equity.

11 BOARD MEMBER TAYLOR: It has been pulled from the
12 calendar, and our -- I think it's just -- from what you
13 said here is it's data gathering basically? It's just
14 reporting on data.

15 DEPUTY EXECUTIVE OFFICER PACHECO: So it started
16 out as what I would consider more like a divestment bill.
17 It would have excluded future investments in these
18 companies if there wasn't specified gener and race pay
19 equity. We've worked with the author and the sponsor.
20 It's now what I would consider a reporting bill.

21 But we do still have, and I don't -- Matt is here
22 from the Investment Office, if he would like to speak, but
23 we do have some concerns, in particular with the private
24 equity partners. So we would be asking -- we would be
25 required to ask the general partners to then in turn ask

1 the portfolio companies that they invest to disclose this
2 information on an annual basis.

3 You might remember that there was some laws
4 passed around transparency of private equity performance
5 several years ago. Within the law, it was stated that
6 portfolio companies really for lack of better words, trade
7 secret to the general partner. So we don't disclose
8 portfolio companies nor do we disclose their performance.

9 That's all rolled up and aggregated with the
10 performance of the general partner. So there is some
11 concern that this would be reaching down into those
12 portfolio companies and asking them to disclose this
13 information.

14 Not to mention --

15 BOARD MEMBER TAYLOR: So it's not not -- it's not
16 specific enough for us to say it's only going to ask for
17 the general partner's information? It's too broad?

18 DEPUTY EXECUTIVE OFFICER PACHECO: Well, it's --
19 it's asking for the disclosure to come from the companies
20 that the GP invests in --

21 BOARD MEMBER TAYLOR: Okay.

22 DEPUTY EXECUTIVE OFFICER PACHECO: -- that are in
23 THE hospitality sector.

24 BOARD MEMBER TAYLOR: Okay. Got it. Okay.
25 So -- so given where we want to be on race and gender

1 equity, I -- I agree with this. I would like us to figure
2 out a way to -- if we can, figure out a way to get on
3 Board. I don't know if working with the author to pull
4 that portion might be something we want to do. But I --
5 and I see you shaking your head, Marcie. Go ahead.

6 (Laughter.)

7 CHIEF EXECUTIVE OFFICER FROST: I was -- my
8 comments would simply these are limited partner
9 arrangements that we have, both on the real estate side,
10 at least the way that we've structured the real estate
11 relationship, as well as private equity. So we have to be
12 really careful in not overreaching as a limited partner.
13 And I think we would bring back an agenda item where we
14 could talk -- continue to talk about engagement with
15 public companies, the reporting of certain conditions or
16 certain issues that we think are really important.

17 That work is before this Board. We'll continue
18 to engage with the bill author on where we think there
19 could be problems with the language in this bill. And
20 some of this again is the relationship between a general
21 partner and a limited partner like CalPERS. You know, we
22 have to be certainly careful there.

23 BOARD MEMBER TAYLOR: Certainly. Okay. Thank
24 you.

25 DEPUTY EXECUTIVE OFFICER PACHECO: Thank you.

1 PRESIDENT MATHUR: Thank you.

2 Ms. Brown

3 BOARD MEMBER BROWN: It's from another time.

4 Thank you.

5 PRESIDENT MATHUR: Oh, okay. Ms. Paquin.

6 ACTING BOARD MEMBER PAQUIN: Thank you.

7 So I had a question also on AB 2571. Do you
8 believe it will be rescheduled for hearing this spring?

9 DEPUTY EXECUTIVE OFFICER PACHECO: You know, Ms.
10 Paquin, I just got that information from my colleague
11 that's over at the Capitol this morning. So I'll have to
12 talk with the team. I expect that it probably will get
13 rescheduled. There's another meeting at the end of April.
14 So they may just be taking some time to continue to talk
15 to stakeholders.

16 ACTING BOARD MEMBER PAQUIN: Thank you.

17 PRESIDENT MATHUR: Okay. That exhausts the
18 questions of the Committee, but we do have a couple of --
19 oh, did you have something else to add, Mr. Pacheco?

20 DEPUTY EXECUTIVE OFFICER PACHECO: No. No, I'm
21 fine. Thank you.

22 PRESIDENT MATHUR: We do have a couple members of
23 the public who've requested to speak. Mr. Behrens and Mr.
24 Darby and Ms. Snodgrass. If you could all please make
25 your way down. We have these two seats open to my left --

1 three seats open to my left. The microphones will be
2 turned on for you. And if you could identify yourself and
3 your affiliation for the record. You'll have three
4 minutes to speak.

5 MS. SNODGRASS: It's still good morning. Thank
6 you. Donna Snodgrass, Retired Public Employees
7 Association. I'm here in place of Al Darby. He had to
8 leave. He had another meeting.

9 He asked me to speak on the subject of AB 1912,
10 the JPA bill. RPEA has a special interest in JPAs and
11 special districts due to our comprehensive coverage of
12 retirees from all jurisdictions contracted with CalPERS.

13 The mission of CalPERS mandates that it act in
14 the interest of members to ensure benefits be paid to the
15 members. This means that legal actions by CalPERS, in our
16 opinion, must be initiated when member benefits are in
17 danger, either unlawfully or otherwise, by employer
18 actions that can impair those benefits.

19 CalPERS tried, rightfully so in our opinion, to
20 assist retirees legally in the Stockton bankruptcy, where
21 it was determined that there was no standing. So RPEA
22 expects CalPERS full-throated legal defense of members in
23 any case where it has standings, for example, as in AB
24 1912 violations.

25 Thank you for the consideration.

1 PRESIDENT MATHUR: Thank you very much.

2 Mr. Behrens.

3 MR. BEHRENS: Good morning, Madam Chair and Board
4 Members. Tim Behrens President of the California State
5 Retirees.

6 California State Retirees is dedicated to
7 protecting the hard-earned pensions of CalPERS retirees
8 and retirees in every other public pension system in
9 California.

10 That is why we strong support AB 1912 Rodriguez,
11 which seeks to ensure that public agencies keep their
12 pension promises to their employees. AB 1912 requires
13 that Joint Powers Authority, or JPA as it's referred to,
14 public agency members that contract with CalPERS and other
15 pension funds to provide retirement benefits will be
16 jointly and severally liable to fully meet those
17 retirement obligations.

18 AB 1912 became necessary because of 19 -- or 2017
19 the East San Gabriel Valley Human Services JPA defaulted
20 on its pension payments forcing CalPERS to reduce pension
21 payments for nearly 2000 employees by up to 63 percent.
22 That's not a letter I want to receive from you all.

23 JPA members, the cities of Azusa, Covina,
24 Glendora, and West Covina, and their leaders made a
25 conscious decision to break their pension promises to

1 employees. And for those employees, the consequence is
2 severe, a much less secure retirement.

3 The California State Retirees urges you to
4 support AB 1912 in hopes that you stand with us by
5 requiring all public agency employers to keep their
6 pension promises they make to public servants and their
7 retirees.

8 And having heard the presentation by CalPERS
9 staff, I think I would agree that we would support taking
10 language out of the AB 1912 that has any fingerprints from
11 the legislature on it, because we want you to control the
12 pension fund, not the legislature.

13 And with that, I thank you for your time.

14 PRESIDENT MATHUR: Thank you very much.

15 Okay. That brings us to number -- to Agenda Item
16 number 13, which is a Summary of Board Direction. I don't
17 think there was any today.

18 CHIEF EXECUTIVE OFFICER FROST: No.

19 PRESIDENT MATHUR: And then finally to Agenda
20 Item Number 14, Public Comment. We do have two members of
21 the public who wish to speak. Mr. Johnson and Mr. Snow,
22 if you could please make your way down. We have these two
23 seats to my left. The microphones are on.

24 Please articulate your name and your affiliation
25 for the record, and you will have three minutes to speak.

1 MR. SNOW: Good morning, President Mathur.

2 PRESIDENT MATHUR: Good morning.

3 MR. SNOW: My name is a Bryan Snow, and I'm from
4 the Corona Police Officer's Association and a CalPERS
5 member.

6 A lot of praise has been given, as I mentioned
7 earlier to the recent high rate of return and cost savings
8 that CalPERS has done in various areas. So thank you for
9 that.

10 There hasn't been as much or no discussion on
11 the -- or concern publicly to increases to member agencies
12 and CalPERS members, and to retirees that's occurring now
13 and will occur over the next few years.

14 Those areas include the amortization change, the
15 lowering of the assumed rate of return, increases to
16 health care costs for retirees, and that's just to name a
17 few.

18 I don't want to regurgitate a lot of the reasons
19 why I think we need change, because you probably heard us
20 say it a few times over the last year that we've been
21 coming here. And -- plus, I don't know how much it would
22 really sink in.

23 But just because the Board or CalPERS has a lot
24 of power, because there is a lot of money, and you guys
25 have a lot of influence, that doesn't mean it should just

1 be used for personal ideologies or social -- social
2 change.

3 I think the focus really comes down to -- or
4 really comes down to the lack of focus on the mission of
5 CalPERS which is to its members. Instead, it's focused
6 on -- again, on your person ideology, on the environment,
7 social issues, and how you want to influence companies and
8 industries.

9 Those personal biases need to be let go, and the
10 focus needs to be put where it should be, which is on
11 CalPERS members' pensions, reducing member agencies'
12 contributions, and on the vitality of the fund, which is
13 increasing profits and its sustainability.

14 The focus has been on balance. And the policies
15 that are being enacted by the Board, they're -- they're
16 just -- they're interpretations of where you think -- or
17 how you can accomplish that -- that mission of CalPERS.
18 And I think it's in the wrong direction, and I think many
19 others feel that way as well.

20 As costs for agencies increase over the next few
21 years, I think you're going to see a lot more people come
22 up here and put pressure. And when some of -- are in the
23 elected positions, when you're moved from this Board,
24 you'll probably wish you had kind of listened to us a
25 little bit more.

1 We've never asked this Board -- every time, we've
2 come up here we've never asked you anything, but follow
3 the Constitution of the State of California, and the
4 mission of CalPERS.

5 And again, I speak as the Board as a whole, not
6 to individuals. So if you do agree with us, I apologize
7 for being frank and direct, and maybe harsh, but that's
8 how we feel. And that's as a member of CalPERS, and as
9 association representing other CalPERS members.

10 Thank you for your time.

11 PRESIDENT MATHUR: Than you, Mr. Snow.

12 Mr. Johnson.

13 MR. JOHNSON: Neal Johnson, SEIU 1000.

14 Yesterday in Finance and Administration, and then
15 today in approving the Committee report, we adopted the
16 first reading of the budget, and with subsequent
17 transmittal. And we also heard from the actuaries who
18 did -- do very good work in adopting the State and schools
19 evaluations. But one of the things that isn't in that
20 current budget is having PERS instead of -- currently, the
21 State Controller and has they have done -- as the
22 Controller's Office has done for a decade plus, does the
23 OPEB valuation for State employees.

24 We earlier came and requested that work be
25 brought in house and PERS. PERS runs the trust fund that

1 these -- the fund -- the money that is collected from
2 employees will go into, so it makes sense that PERS who
3 has qualified actuaries actually does the work. And we're
4 disappointed that progress -- or that -- bridging that
5 work in-house has not progressed that well.

6 And with that, I really encourage you to try to
7 move that along, so that we don't come here a year from
8 now and say the same thing.

9 Thank you very much.

10 PRESIDENT MATHUR: Thank you.

11 Okay. That concludes the public comment and so
12 we are adjourned.

13 Thanks, everyone. We will not be having a closed
14 session.

15 (Thereupon the California Public Employees'
16 Retirement System, Board of Administration
17 open session meeting adjourned at 11:51 a.m.)
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C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System, Board of Administration open session meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California.

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of April, 2018.



JAMES F. PETERS, CSR
Certified Shorthand Reporter
License No. 10063