ATTACHMENT C

RESPONDENT'S ARGUMENTS
FACSIMILE TRANSMITTAL

Date: 6/24/2020
To: Cheree Swedensky, Assistant to the Board at CalPERS Executive Office
Fax: 916-795-3972
Re: PHI Air Medical, LLC/OAH Case No. 2019090613; Agency Case No. 2019-0706
From: Gustavo Matheus, Esq., Anderson & Quinn, LLC

Pages: (including cover sheet) 8

Notes:
Comments:

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June 24, 2020

VIA U.S.P.S. PRIORITY MAIL EXPRESS AND FAX (916-795-3972)

Cheerew Swedensky, Assistant to the Board
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P.O. Box 942701
Sacramento, CA 94229-2701
Fax: (916) 795-3972

RE: Respondent’s Argument of PHI Air Medical, LLC; CalPERS Executive Office Case No. 2019-0706; CalPERS Denial of Air Ambulance Transport Services Reimbursement

Dear Ms. Swedensky:

Attached please find PHI Air Medical, LLC’s Respondent’s Argument for the above-captioned matter.

Respectfully yours,

[Signature]

Gustavo Mathews
Counsel for Respondent PHI Air Medical, LLC

Enclosures: Respondent’s Argument

cc: Samuel Harvey (w/ attach.)

via U.S. Priority Mail Service
Ms. Cheree Swedensky
June 24, 2020
Page 2

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RESPONDENT'S ARGUMENT

Now comes Respondent, PHI Air Medical, LLC ("PHI") and for its Response to the June 9, 2020 Proposed Decision (the "Proposed Decision") in this case, states as follows:

INTRODUCTION

The CalPERS Board of Administration (the "Board") should decline to adopt the Proposed Decision, as it is arbitrary, capricious, and contrary to the evidence in the record. Specifically, the Proposed Decision is erroneous, because it relies on the factual inaccuracy that
ground transportation was available on the date of service.

The medical necessity of the air ambulance transportation services (the "Services") provided to Mr. Harvey in this case must be viewed through the lens of the emergency room physician who ordered the Services. As the testimony of Dr. Rudnick proved, no ground ambulance in Shasta County, California performs interfacility transportation services, except for in rare circumstances and subject to a pre-approval process. Thus, the standard of care for an emergency room physician in this geographical area must be to order air ambulance transportation for ill patients requiring interfacility transports.¹

The testimony of Dr. Eric Rudnick, the only individual who reviewed the records in this case who is familiar with ground ambulance availability in the Falls River Mills, California area, proved that ground ambulance is not typically available for inter-facility transports. Thus, considering Mr. Harvey's condition and the fact that the ground ambulances in Shasta County, California do not typically perform inter-facility transports, air ambulance transportation was appropriate.

A. The testimony of Dr. Rudnick proves that ground ambulance transport was not appropriate.

The evidence in the record proves that none of the ground ambulance companies servicing Shasta County, California—AMR Shasta Regional Ambulance, Burney Fire District, Mercy Redding Ambulance, and SEMSA ALS—could have transported Mr. Harvey.

AMR Shasta Regional Ambulance is an advanced life support ground ambulance service contracted with Sierra-Sacramento Valley Emergency Medical Services Agency to provide 911 ambulance services within Shasta County.² AMR's services are reserved for "emergency response," which is defined as "responding immediately at the BLS or ALS1 level of service to a

¹ Though disregarded by the Office of Administrative Hearings, a requirement for emergency room physicians to call each ground ambulance in Shasta County to confirm whether it can perform an interfacility transport — and despite each ambulance's concurrent obligations to the 911 system — ignores the time-sensitive nature of ER-to-ER transports.
² Tr. 128:5-7; PHI Exhibit 22.
911 call or the equivalent in areas without a 911 call system." The EMS Agreement defines an "emergency" to which AMR must respond, as "the function involved in responding to a request for an ambulance to transport or assist persons in apparent sudden need of medical attention in accordance with the request of Shasta County Public Safety Answer Point" — the Shasta County 911 dispatcher. The EMS Agreement further indicates that AMR can only respond to scheduled non-emergency interfacility transfers when "the Dispatch Center has released the unit for such non-emergency use, and there are other ALS 9-1-1 ambulances staffed and immediately available to meet performance standards as defined herein." Thus, under very limited circumstances ignored by the Office of Administrative Hearings, AMR could have hypothetically transported Mr. Harvey. However, Dr. Rudnick confirmed that AMR does not typically perform interfacility transports, and therefore, should not be relied upon by emergency room physicians for such transports, stating, "Earlier it was said that AMR could do the transport and pass. Actually their primary responsibility is also to the 911 system in Redding." Thus, AMR could not have transported Mr. Harvey.

The MMH ground ambulance was also unavailable. As Dr. Dykes stated in his addendum to Mr. Harvey's medical records, MMH's "ground unit was out on a separate call and it was not felt prudent or in patient's best interest to await their return to the hospital." Further, the Director of the Emergency Department at MMH indicated that MMH's ground ambulance is for 911 response, not for interfacility transports. While the administrative law judge in this case gave Dr. Dykes's amendment to the medical records no weight, CalPERS did not object to the

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3 42 CFR 414.605.
4 PHI Exhibit 22, p. 2.
5 Note that while PHI maintains that Mr. Harvey's condition was emergent, it is common in the industry to define all interfacility transfers as "non-emergent" transfers, as opposed to 911 transports, which are defined as "emergency" transfers.
6 PHI Exhibit 22, p. 8.
7 Tr. 128:5-10.
8 PHI 0119.
9 Tr. 201:25; 202:1-6.
10 Proposed Decision, p. 21.
amendment and no assertion has been made that the amendment is untruthful. Accordingly, it was erroneous for the ALJ to disregard the amendment. The amendment should be accepted as proof that MMH's ground ambulance was not available to transport Mr. Harvey.

Regarding Burney Fire, Dr. Rudnick stated, "Burney Fire, they are considered a nontransport agency and are not accredited to transport patients out of the area. They are known as the first responders, so they will respond and start trying to stabilize the patient in the field. They are not allowed to transfer patients from Mayers or from the scene of an accident to other facilities." Thus, Burney Fire could not have transported Mr. Harvey.

Dr. Rudnick is the only expert witness or medical professional who reviewed Mr. Harvey's records who had knowledge of the ground ambulance transportation system in Shasta County. Thus, his testimony should be given more weight than the independent medical reviewers for AMR and Claims Eval and CalPERS expert witness, Dr. Curtis. In fact, Dr. Rudnick's testimony should be considered dispositive of the fact that the ground ambulances in Shasta County, California could not have performed the interfacility transport of Mr. Harvey.

CONCLUSION

The Proposed Decision is arbitrary, capricious, and contrary to the evidence in the record, because it relies on a factual scenario where ground ambulances are routinely available to transport patients between facilities. That is not the case, and the standard of care in Shasta County, California is to transport interfacility patients via air ambulance. Accordingly, the Proposed Decision should be rejected by Board and CalPERS should be ordered to reimburse PHI for the Services.

11 Tr. 127:5-11.
Respectfully Submitted,

[Signature]

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Certificate of Service

I hereby certify that on this ___ day of June, 2020, I served a true copy of the foregoing Respondent's Answer on the following parties via USPS Priority Mail service:

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