

ATTACHMENT C

RESPONDENT'S ARGUMENTS

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JUN 24 2020

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

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RE: Respondent's Argument of PHI Air Medical, LLC: OAH Case No. 2019090613;
Agency 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,



Gustavo Matheus
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

cc: Kevin Matthew Kreutz, Esq. (w/ attach.)
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8 **BOARD OF ADMINISTRATION**

9 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

10
11 In the Matter of the Appeal Regarding Denial
12 of Payment of Air Ambulance Transport
13 Services Provided to/by

14 SAMUEL E. HARVEY

15 Respondent,

16 and

17 PHI AIR MEDICAL, LLC,

18 Respondent.

Agency Case No. 2019-0706

OAH NO. 2019090613

**PHI AIR MEDICAL, LLC'S
RESPONDENT'S ARGUMENT**

Hearing Date: February 18,2020
Hearing Time: 9:00 am
Hearing Location: Sacramento, CA

19 **RESPONDENT'S ARGUMENT**

20 Now comes Respondent, PHI Air Medical, LLC ("PHI") and for its Response to the June
21 9, 2020 Proposed Decision (the "Proposed Decision") in this case, states as follows:

22 **INTRODUCTION**

23 The CalPERS Board of Administration (the "Board") should decline to adopt the
24 Proposed Decision, as it is arbitrary, capricious, and contrary to the evidence in the record.
25 Specifically, the Proposed Decision is erroneous, because it relies on the factual inaccuracy that

1 ground transportation was available on the date of service.

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

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

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

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

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

24 ¹ Though disregarded by the Office of Administrative Hearings, a requirement for emergency
25 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.

1 911 call or the equivalent in areas without a 911 call system.”³ The EMS Agreement defines an
2 “emergency” to which AMR must respond, as “the function involved in responding to a request
3 for an ambulance to transport or assist persons in apparent sudden need of medical attention in
4 accordance with the request of Shasta County Public Safety Answer Point” – the Shasta County
5 911 dispatcher.⁴ The EMS Agreement further indicates that AMR can only respond to scheduled
6 non-emergency interfacility transfers⁵ when “the Dispatch Center has released the unit for such
7 non-emergency use, and there are other ALS 9-1-1 ambulances staffed and immediately available
8 to meet performance standards as defined herein.”⁶ Thus, under *very limited circumstances*
9 ignored by the Office of Administrative Hearings, AMR could have hypothetically transported
10 Mr. Harvey. However, Dr. Rudnick confirmed that AMR does not typically perform interfacility
11 transports, and therefore, should not be relied upon by emergency room physicians for such
12 transports, stating, “Earlier it was said that AMR could do the transport and pass. Actually their
13 primary responsibility is also to the 911 system in Redding.”⁷ Thus, AMR could not have
14 transported Mr. Harvey.

15 The MMH ground ambulance was also unavailable. As Dr. Dykes stated in his addendum
16 to Mr. Harvey’s medical records, MMH’s “ground unit was out on a separate call and it was not
17 felt prudent or in patient’s best interest to await their return to the hospital.”⁸ Further, the
18 Director of the Emergency Department at MMH indicated that MMH’s ground ambulance is for
19 911 response, not for interfacility transports.⁹ While the administrative law judge in this case
20 gave Dr. Dykes’s amendment to the medical records no weight,¹⁰ CalPERS did not object to the

21 ³ 42 CFR 414.605.

22 ⁴ PHI Exhibit 22, p. 2.

23 ⁵ Note that while PHI maintains that Mr. Harvey’s condition was emergent, it is common in the
24 industry to define all interfacility transfers as “non-emergent” transfers, as opposed to 911
25 transports, which are defined as “emergency” transfers.

24 ⁶ PHI Exhibit 22, p. 8.

24 ⁷ Tr. 128:5-10.

25 ⁸ PHI 0119.

25 ⁹ Tr. 201:25; 202:1-6.

25 ¹⁰ Proposed Decision, p. 21.

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Respectfully Submitted,



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Counsel for Respondent PHI Air Medical, LLC

Certificate of Service

I hereby certify that on this 24th 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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