

ATTACHMENT C
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August 1, 2014

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CalPERS Board Unit

SENT VIA U.S. MAIL AND FAX

Re: APPLICANT/RESPONDENT SHAHIDA NAZ LETTER BRIEF
TO CALPERS BOARD

In the Matter of the Application of Disability Retirement
of Shahida Naz, Respondent, et al.
Respondent Case No.: 9439

Dear Gentle persons:

Thank you for this opportunity to address the CalPERS Board by letter in the above captioned matter.

The purpose of this letter is to urge the Board to adopt the Proposed Decision of the Honorable James Ahler, Administrative Law Judge, Office of Administrative Hearings in the above referenced matter. The Proposed Decision of Judge Ahler thoroughly addresses all of the factual and legal issues that were presented at the hearing of this matter, and his proposed decision in favor of granting applicant/respondent Shahida Naz' application for a CalPERS disability retirement is supported by the evidence and legal issues that were to be decided in this matter.

As the Proposed Decision indicates, Dr. Naz was employed by the State of California as a physician for the Department of Correction and Rehabilitation at Calipatria State Prison. At the hearing in this matter, Dr. Naz presented evidence that she, inter alia, sustained a low back injury such that she was permanently disabled or incapacitated from performing the usual and customary duties as a physician working in a prison with the Department of Corrections.

Calipatria State Prison is located in the Imperial Valley. It houses approximately 3500 to 4000 inmates, some of whom were Level 4 (i.e. had been convicted of violent crimes, rape, murder, aggravated assault, etc.) inmates. The prison population is all males. The prison is on 300 acres

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of land, and is divided up into four separate stand alone units with housing, exercise yards, and auxiliary buildings, including a medical clinic.

The prison also has a centralized infirmary, urgent care facility and administrative offices utilized by the entire prison population.

I. Dr. Naz' Job Duties as a Physician at Calipatria State Prison

The physicians and medical staff at the prison would treat the inmates health problems, these would consist of normal minor health problems, colds, flu, stomach problems, etc; physical injuries from exercising on the yard, lacerations and puncture wounds from fighting and stabbing between the inmates; and the inmates chronic illnesses including heart disease, diabetes, pulmonary disease, gastro intestinal problems, and mental disorders.

Dr. Naz would begin her work day making rounds at the prison infirmary. This would include checking on the patients that had severe psychiatric problems, who were assigned to a cell with no bed and would lay on the floor, Dr. Naz would be required to perform a mental assessment by squatting or kneeling on the floor, to speak with and assess the patient/inmate. Other patients in the infirmary required physical examinations, including resistance assessment for shoulder injuries, and straight leg testing for sciatic injuries to the low back.

Upon completion of the rounds in the infirmary, Dr. Naz would go to the urgent care center, and treat the inmates who needed urgent care. Frequently these inmates/patients had suffered injuries from falls or fights with other inmates. Some of them had suffered shoulder dislocations that required manipulation of the joint to reduce the dislocation to permit the bone to go back in the socket. This procedure required substantial force.

Many of the inmates that sought treatment at the urgent care facility, feigned their injuries in an attempt to obtain narcotic pain medications. Dr. Naz would have to evaluate all inmate injuries to determine the validity of the claimed injury. She would do this by conducting range of motion evaluations with the inmates' extremities, by testing the sciatic nerve inflammation by performing straight leg raises, and through assessing muscle strength by using resistance techniques. All of these procedures require considerable strength, the physicians. Including Dr. Naz had to stand, plant their legs and perform these tests. The majority of the inmates would engage in physical work outs for hours each day, and would be large individuals with heavy limbs.

Upon finishing her work at the infirmary and urgent care facility, Dr. Naz would then go to her assigned clinic at the stand alone prison unit for that day to see the inmates and treat their medical problems. The clinics are each approximately one half mile from the infirmary. The prisoners' charts were kept at a central location adjacent to the infirmary. The charts for the

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prisoners that were going to be seen each day were taken in the morning from the infirmary to the clinic by the clinic staff. However, the physicians, including Dr. Naz would take additional charts to the clinics as well each day. The stack of charts could be as much as a foot high and weight up to 25 pounds.

At the clinic Dr. Naz would see inmate/patients. She would be assisted by a correction officer/medical technician, and a nurse. She would see patient/inmates in examining rooms without staff assistance. She would have to perform the same types of physical examinations as she performed in the urgent care and infirmary. The work of seeing the clinic patients/inmates would take six to seven hours per day.

From time to time, injuries to inmates would occur on the yard. An inmate would sustain a serious sports related injury to a lower extremity, or be the victim of a stabbing. When this occurred Dr. Naz would have to go out into the yard and render first aid. She would have to kneel or squat, and bend over the inmate to make an assessment of the injury and immobilize the limb or apply pressure to the wound to control the bleeding. An ambulance would come and the inmate would be transported to the urgent care center. Dr. Naz would ride in the back of the ambulance. The ambulance rear floor was several feet off the ground. Dr. Naz would have to either climb in or accept assistance from one of the inmates to be boosted into the ambulance. Sometimes the ambulance would go to the exercise yard without Dr. Naz and then stop to pick her up at the clinic where Dr. Naz would have to climb into the rear of the ambulance and go with the injured inmate to the urgent care center. All of this required considerable strength and dexterity.

The actual job duties of the prison physician were summarized in various documents presented at the hearing which were consistent with what Dr. Naz and lay witnesses described at the hearing. Lifting up to 75 pounds, on occasion, lifting 11 to 25 pounds up to three hours per day, required to kneel, squat, bend and twist up to three to six hours per day.

II. Dr. Naz' Injury and Course of Medical Treatment

Dr. Naz sustained two separate back injuries at Calipatria Prison. The first injury occurred during Thanksgiving weekend in 2003. Dr. Naz had been sitting in a rolling office chair, and it somehow malfunctioned causing Dr. Naz to fall from the chair injuring her neck, shoulder and lower back. Dr. Naz sought medical treatment and continued working. When she did not improve she was eventually referred to Dr. Larry Dodge, an orthopedic lower back specialist with his practice in San Diego. Dr. Dodge tried conservative care, periods of time off work and work hardening exercises. Dr. Naz did not improve. In June of 2005 Dr. Naz aggravated her lower back injury when she was assisting a large inmate from a chair in the clinic's waiting area to the examining room. Dr. Dodge took Dr. Naz off work again at that time and Dr. Naz was never able to return to work.

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Dr. Dodge diagnosed Dr. Naz with lumbosacral strain and contusion with resultant aggravation or propagation of a lumbar disc herniation at L5-S1 with associated stenosis causing a compression of the left S1 nerve root and continual low back pain. Dr. Dodge initially restricted Dr. Naz from repetitive bending and stooping, prolonged standing or walking, and lifting more than 15 pounds. The Department of Corrections was unable to accommodate these restrictions. Later Dr. Dodge modified the restrictions to no repetitive bending and stooping and heavy lifting. Although Dr. Dodge considered lumbar spine surgery, he ultimately decided against it, concluding that it would not provide sufficient relief to offset the risk of surgery. In the opinion of Dr. Dodge, Dr. Naz could not perform the usual and customary duties of a physician assigned to a prison at the California Department of Corrections and Rehabilitation.

At the hearing in this matter, Dr. Dodge testified that the prophylactic and actual restrictions that were necessary as a result of the injuries Dr. Naz sustained as a result of her employment with the State of California Department of Corrections were the initial work restrictions that he had imposed of no repetitive bending and stooping, no prolonged standing or walking, and no lifting more than 15 pounds. Based on this assessment and his understanding of the work Dr. Naz was required to perform at Calipatria prison in providing patient care, Dr. Naz could not perform that work; she was substantially incapacitated and disabled from performing her usual and customary duties as a physician with the California Department of Corrections.

III. The Lay Witness Testimony Supported the Job Description

At the hearing, two lay witness testified regarding the actual job requirements of a physician at Calipatria prison. Dr. Martin Levin was the prison's Health Care Manager and Chief Medical Officer, he was Dr. Naz supervisor. Although Dr. Levin seldom observed Dr. Naz treating the patients/inmates, he was familiar with the duties that physicians are required to perform at the prison from his many years of experience as a prison physician and supervisor. He testified that Dr. Naz would have been required to lift up to 75 pounds, on occasion, lift 11 to 25 pounds up to three hours per day, and was required to kneel, squat, bend and twist up to three to six hours per day.

The other witness to testify at the hearing was Petra Balierrez, who had worked with Dr. Naz at the Calipatria prison clinics. Nurse Balierrez testified that she observed Dr. Naz conducting patient assessments requiring Dr. Naz to bend and kneel for prolonged periods of time, kneeling in the prison yard to treat inmates, forcefully reducing shoulder dislocations in the prison urgent care center, forcefully examining inmates who resisted examination, carrying patient charts weighting up to 15 pounds or more from the central administration building to the clinics, a distance of one half mile, and she observed Dr. Naz needing assistance from inmates to climb in and out of the ambulances.

The testimony of Dr. Levin and Nurse Balierrez supports the testimony of Dr. Naz as to the physical

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requirements of working as a physician at Calipatria prison.

IV. Based on the Accurate Job Description, the Medical Evidence Introduced at the Hearing Supports Dr. Naz Application for a Disability Retirement

At the hearing, two orthopedists testified. Dr. Larry Dodge, and Dr. Robert Horner. By his own admission, Dr. Horner has not specialized in injuries of the spine. He testified that he was trained as a hand specialist. Dr. Horner testified that he does not currently have a medical office where he practices medicine, although he does volunteer in some capacity at the Loma Linda School of Medicine. Dr. Horner wrote an initial report and then two supplemental reports. In his initial report, Dr. Horner concluded that based on the job description with the lifting and bending and stooping requirements that Dr. Dodge considered, Dr. Naz was substantially incapacitated and disabled from performing her duties as a physician with the California Department of Corrections. Dr. Horner was then asked to write a supplemental report and reconsider his opinion, and Dr. Horner again reached the same conclusion.

Dr. Horner was then further asked to consider whether Dr. Naz was substantially incapacitated from performing her job as a physician at Calipatria prison if she didn't have to reduce shoulder dislocations, she didn't have to climb in and out of ambulances, she didn't have to kneel, squat or bend to examine patients, and she did not need to lift or carry heavy items. Based on this and a reversal of his initial findings on physical examination and review of medical records, and without examining Dr. Naz further or reviewing additional medical records, Dr. Horner reached completely different conclusions than he had in his initial report and his first supplemental report and concluded that Dr. Naz could perform the duties of a prison physician. However, at the hearing it was conclusively established that the second job description given to Dr. Horner did not accurately describe Dr. Naz' duties and the physical requirements of a physician working at Calipatria Prison.

Accordingly, based on the actual job duties of a physician working at Calipatria prison, and the industrial caused lumbar spine injury sustained by Dr. Naz, it is respectfully requested that the Board adopt the considered and well reasoned proposed decision of Administrative Law Judge James Ahler, and grant Dr. Shahida Naz' Application for Disability Retirement.

Dated: August 1, 2014

LAW OFFICE OF THOMAS HOEGH

By: 

Thomas Hoegh
Attorney for Shahida Naz, M.D.