ATTACHMENT C

RESPONDENTS ARGUMENT

BEFORE THE BOARD OF ADMINISTRATION CALPERS : State of California

RESPONDENT'S ARGUMENT

OAH Case No.: 2025010666
CalPERS Case No.: 2024-0657

REQUEST FOR DESIGNATION OF BOARD DECISION AS A PRECEDENTIAL DECISION.

Respondent/Applicant **Joven B. Aromin** respectfully submits this Request for Designation of Board Decision as a Precedential Decision pursuant to **California Government Code section 11425.60** and the California Public Employees' Retirement System ("CalPERS") Board's established precedential-decision procedures.

Respondent respectfully requests that, after independently reviewing the complete administrative record and exercising its authority over the OAH Proposed Decision, the Board designate its **final decision, or the appropriate portion thereof, as a Precedential Decision**.

This matter presents significant legal, evidentiary, medical, and policy issues that extend beyond Respondent's individual circumstances and are likely to recur in future CalPERS disability and industrial disability retirement proceedings.

CalPERS expressly provides that its Board may designate an appeal decision, or part of a decision, as precedent when the decision contains a **significant legal or policy determination of general application that is likely to recur**. CalPERS further considers whether the decision contains a clear and complete analysis explaining the factual findings and application of law.

The issues presented include:

1. whether a brief independent medical examination is sufficient to establish sustained occupational capacity for a physically demanding position;
2. whether medical evidence must be evaluated against the employee's actual and customary job duties;
3. whether the cumulative effects of multiple work-related injuries and major surgeries must be considered;
4. whether administrative hearsay may be relied upon as the substantive basis for a material finding after timely objection;
5. whether social-media photographs and videos may be relied upon as evidence of present occupational capacity without adequate foundation concerning their date, context, authenticity, and actual activity;
6. whether an investigator's subjective assumptions concerning photographs may substitute for competent medical or occupational evidence; and
7. what evidentiary safeguards are necessary to ensure a fair and reliable IDR adjudication.

I. THE CENTRAL ISSUE: SUSTAINED OCCUPATIONAL CAPACITY VERSUS MOMENTARY FUNCTIONAL CAPACITY

The central issue presented is not merely whether Respondent can perform an isolated physical movement during a short medical examination.

The relevant question is whether the evidence establishes that Respondent can **substantially and sustainably perform the actual and customary duties of the Registered Nurse position**.

Respondent's position requires sustained performance of physical, cognitive, clinical, and patient-care responsibilities during an approximately:

- eight-hour work shift; five-day workweek; and approximately 40-hour workweek.

The position may require prolonged standing and walking, patient handling, lifting and repositioning patients, pushing and pulling equipment, bending, reaching, repetitive activity, maintaining balance, responding to emergencies, and maintaining clinical judgment and patient safety throughout the workday. Therefore, the recurring question presented is: Can a brief independent medical examination, without adequate occupational analysis of the actual position and sustained work requirements, constitute sufficient competent evidence to establish that a CalPERS member can substantially and safely perform the essential duties of a Registered Nurse throughout an eight-hour shift and approximately 40-hour workweek? This issue has application far beyond Respondent's individual case.

THE APPROXIMATELY 30-MINUTE DR. HEYRANI IME DOES NOT NECESSARILY ESTABLISH SUSTAINED OCCUPATIONAL CAPACITY

The administrative record contains an independent medical examination performed by **Dr. Heyrani**, which Respondent understands lasted approximately 30 minutes. Respondent does not contend that the length of an examination alone determines whether a medical opinion is admissible or competent. Rather, the issue is whether the scope, methodology, foundation, and conclusions of the examination actually address the occupational question before the Board.

A short clinical examination may demonstrate that an individual can perform particular movements at a particular point in time. It does not necessarily establish the ability to:

- stand and walk for prolonged periods; repeatedly lift, move, or reposition patients; push and pull medical equipment; perform repetitive activities; maintain balance throughout an entire shift; tolerate prolonged physical activity; maintain clinical judgment and concentration while fatigued or experiencing pain; respond safely to emergencies; perform physically demanding duties repeatedly; and sustain those functions throughout a 40-hour workweek.

The distinction between **momentary functional capacity** and **sustained occupational capacity** is therefore critical.

Respondent respectfully requests that the Board determine whether Dr. Heyrani's opinion actually evaluated:

1. the complete Registered Nurse job description; the actual physical requirements of Respondent's position; sustained standing and walking; patient transfers and repositioning; lifting and pushing/pulling requirements; repetitive activity; endurance throughout an entire shift; the cumulative effect of Respondent's orthopedic conditions; the effect of pain and fatigue; Respondent's ability to safely perform patient-care duties; and Respondent's ability to sustain those functions throughout an approximately 40-hour workweek.

If the examination did not address those matters, Respondent respectfully submits that the Board should carefully evaluate what conclusions the examination can legitimately support.

III. RESPONDENT'S CUMULATIVE MEDICAL HISTORY REQUIRES CONSIDERATION AS A WHOLE

Respondent's medical history involves multiple significant orthopedic conditions and surgical procedures. The record includes: Total Knee Replacement, Subsequent Revison of the Total Knee Replacement, Left Total Ankle Replacement, sciatica and hip pain, neuropathy, sarcopenia, cumulative effects of anesthesia, long term use of medication, psychological stress following the knee revision and related orthopedic problems, continuing left shoulder pathology and treatments, evaluation for possible left shoulder surgery. Respondent contends that these conditions and procedures arose from or are consequences of work-related injuries. The cumulative nature of these conditions are critical. Respondent respectfully submits that the Board should not evaluate each body part or surgical procedure in isolation while disregarding the combined effect on Respondent's ability to perform the actual duties of a Registered Nurse. Multiple lower-extremity surgeries and continuing shoulder pathology can affect standing, walking, balance, lifting, patient transfers, responding to alarms/emergencies with gurney and emergency bag on hand, pushing and pulling, reaching, bending, repetitive activity and ability to sustain physical ability throughout the entire work shift. Respondent further contends that the repeated injuries, major surgeries, continuing medical

treatment, and resulting limitations have affected Respondent's **physical, psychological, and emotional well-being**. Respondent does not argue that undergoing surgery automatically establishes disability. Respondent's position requires sustained attention, clinical judgment, patient safety, physical endurance, mobility, and the ability to respond appropriately to patient needs throughout an approximately eight-hour shift and 40-hour workweek., Respondent respectfully requests that the Board evaluate whether the **combined functional consequences**, as established by competent medical evidence, permit Respondent to substantially and sustainably perform the actual and customary duties of the Registered Nurse position.

IV. COMPETENT MEDICAL EVIDENCE MUST ADDRESS THE ACTUAL OCCUPATIONAL QUESTION

Government Code § 20026 addresses disability and incapacity for performance of duty under the Public Employees' Retirement Law and refers to competent medical opinion. The relevant question therefore must be connected to the employee's actual employment duties. The Board should determine whether the medical evidence establishes:

That Respondent can substantially and safely perform the actual and customary duties of the Registered Nurse position on a sustained basis.

An opinion establishing that a person can perform certain movements during a brief examination does not necessarily answer that occupational question. The Board should therefore determine whether Dr. Heyrani's opinion adequately considered the complete occupational and medical picture, including Respondent's: Total Right Knee Replacement , Total Right Knee Revision, Left Ankle Replacement, Sciatica and Hip Pain, Shoulder Condition, continuing Treatment, Possible Future Left Shoulder Surgery, Physical Endurance, Repetitive Activity, Prolonged Standing and Walking, and Ability to sustain the required duties for an entire shift and work week.

V. MEDICAL RECORDS FROM DR. NISHIYAMA WERE HIGHLY RELEVANT BUT TREATED AS ADMINISTRATIVE HEARSAY

The OAH Administrative Law Judge considered Respondent's medical records and treatment notes from **Dr. Nishiyama concerning Respondent's right knee condition and the need for a revision total knee replacement**. These records were directly relevant to Respondent's medical condition, functional limitations, and ability to perform the essential duties of a Registered Nurse.

VI. CALPERS INVESTIGATION REPORT NO. 15: SOCIAL-MEDIA EVIDENCE WAS MISINTERPRETED AND REQUIRES CAREFUL REVIEW

Respondent respectfully requests that the Board specifically review **CalPERS Investigation Report** concerning social-media material attributed to Respondent's Facebook and TikTok accounts.

The report states that Investigator **Clive** discovered social-media posts and videos depicting Respondent in various locations around the world and describes images involving recreational activities such as:

- driving an off-terrain vehicle ("ATV"); - The still picture does not depict "driving"
- hiking; The still picture does not depict hiking - It's the investigator's subjective assumption that I was hiking
- kayaking and riding a jet ski - Still picture does not depict actual ride
- dancing , swimming these still pictures and 2-3 seconds videos do not represent the actual activity
- playing golf - erroneous/misleading entry - No picture or videos suggested I was playing golf
- holding a surfboard. Still picture standing next to a surf board does not reflect I participated in the surfing activity.

Respondent respectfully disputes the these assumptions and conclusions drawn from those images. Moreover, Investigation Report #16 bullet#5 On October 11 2020, respondent posted a video of himself jumping up and down celebrating a Lakers basketball win. The video depicts no act of jumping up and down , this was falsely described and erroneously characterized to falsely implicate a certain act. Furthermore Dr Heyrani used misleading, subjective and presumptive words in reference from still photos such as " VIGOROUSLY" " STRENUOUS

ACTIVITIES" "WALKING ON RUGGED AND UNEVEN TERRAIN", "CLIMBING STAIRS"RIDING BIKES,"HIKING" The critical issue is that the existence of a photograph or video on social media does not, by itself, establish the date of the underlying event, the duration of the activity, the circumstances under which the image was taken, the active participation or Respondent's physical capacity at the relevant time. Respondent contends that certain photographs and materials referenced by the investigator were: still photographs, staged/ photoshopped or promotional photographs, reposted materials, materials from prior travel events, materials originating from 2016 before the injury at issue and materials used to promote Respondents business activities as a travel agent/ ambassador associated with direct sales/ network marketing company " Worldventures" Promoting the Product as "Dreamtrips" - a TRAVEL CLUB MEMBERSHIP a curated, wholesale pricing of travel. The fact that an older photograph was subsequently posted, reposted, or remained available on a social-media account does not establish that Respondent was engaging in the depicted activity after the work-related injury.

VI. A PHOTOGRAPH DOES NOT ESTABLISH THE MEDICAL OR OCCUPATIONAL CONCLUSION DRAWN FROM IT

Respondent respectfully submits that there is an important distinction between: what a photograph depicts and what the investigator assumes the photograph proves A photograph showing Respondent holding a surfboard, standing near an ATV, appearing near a kayak or jet ski, standing on a golf course, or appearing in another recreational setting does not necessarily establish:

1. when the photograph was taken; whether the photograph depicts the date it was posted; whether the material was reposted; **whether Respondent actually performed the activity**; how long Respondent performed the activity; the physical demands involved; whether assistance was provided; whether the photograph was staged for promotion of business purposes; whether the image was taken before the work-related injury; or whether the activity demonstrates an ability to perform the essential duties of a Registered Nurse for eight hours per day and approximately 40 hours per week.

Respondent therefore respectfully submits that an investigator's interpretation of a photograph should not be treated as equivalent to competent medical evidence concerning occupational capacity.

VII. THE DATE AND CHRONOLOGY OF THE SOCIAL-MEDIA MATERIAL ARE MATERIALThe chronology of the photographs and videos is particularly important. If an image originated in 2016, (as social media allows post and reposts of these) before the relevant work-related injury, it cannot logically establish Respondent's physical capacity after that injury without additional evidence establishing that the image accurately represents Respondent's post-injury condition. Likewise, the date on which an investigator located a photograph online is not necessarily the date on which the depicted event occurred.

VIII. THESE ISSUES ARE SIGNIFICANT AND LIKELY TO RECUR

The issues presented are not unique to Respondent. Future CalPERS IDR cases may involve:

- conflicting medical opinions ; Dr Heyrani contradicts the need for Total Knee Replacement Surgery despite of the existence of diagnostic procedures, multiple examinations and there were 2 specialty orthopedic surgeons who recommended this procedure. (Dr John Kronick Golden State Ortrhopedics and Dr Norman Livermore Walnut Creek California)
- short IMEs; multiple surgeries; cumulative orthopedic conditions; continuing treatment; physically demanding occupations; social-media photographs; reposted photographs; business promotion material;
- investigators interpreting online activity a still picture subjectively considered active participation administrative hearsay; and disputes concerning whether recreational activities demonstrate occupational capacity.

The recurring issue is therefore: What evidentiary foundation and competent medical analysis are required before CalPERS may rely upon a brief medical examination, administrative hearsay, or social-media imagery to determine that an employee possesses the sustained capacity to perform the essential duties of the employee's actual occupation? This question has general application and is likely to recur in future IDR proceedings.

IX. THE CASE WOULD PROVIDE IMPORTANT PRECEDENTIAL GUIDANCE

Respondent respectfully requests that the Board's final decision provide guidance concerning the following:

1. Sustained Occupational Capacity Whether a medical opinion must address the employee's ability to sustain the essential duties of the actual position for the duration and frequency required by the job. 2. Brief IMEs. The evidentiary significance and limitations of a short IME when the actual occupation requires sustained physical performance. 3. Cumulative Medical Conditions How multiple work-related injuries, surgeries, and continuing conditions should be considered collectively. 4. Administrative Hearsay, The distinction between hearsay used to supplement or explain competent evidence and hearsay relied upon as the substantive basis for a material finding. 5. Social-Media Evidence The evidentiary foundation required before photographs, videos, reposted content, or staged/promotional material may be relied upon as evidence of present occupational capacity. 6. Chronology The importance of establishing when a photograph or video was actually created, rather than assuming that the date it was located or reposted represents the date of the underlying activity. 7. Investigator Inferences The distinction between an investigator's factual observation and a medical or occupational conclusion concerning functional capacity. 8. Recreational Activity The distinction between isolated recreational activity and the ability to perform sustained occupational duties. 9. Fair Adjudication The importance of ensuring that material findings are supported by competent, reliable, and sufficiently founded evidence.

X. REQUEST FOR DESIGNATION AS PRECEDENTIAL: Pursuant to Government Code § 11425.60, Respondent respectfully requests that the Board: A. Consider this Request in connection with the Board's consideration of the OAH Proposed Decision; B. Independently review the complete administrative record; C. Determine whether the issues presented constitute significant legal or policy determinations of general application that are likely to recur; D. Determine whether the Board's final decision contains a clear and complete analysis of the relevant factual, evidentiary, medical, and legal issues; E. Designate the Board's final decision, or the legally appropriate portion thereof, as a Precedential Decision; F. Address the evidentiary significance of the approximately 30-minute Dr. Heyrani IME; G. Address whether medical evidence adequately establishes sustained capacity to perform the actual and customary duties of the Registered Nurse position; H. Address the cumulative effect of Respondent's multiple orthopedic injuries, knee replacement, knee revision, ankle replacement, sciatica/hip pain, and continuing shoulder pathology condition; I. Address the treatment of administrative hearsay under Government Code § 11513; J. Address the evidentiary foundation and reliability of the social-media evidence identified in Investigation Report which still photos don't reflect active participation, and the investigator subjective assumption, use of adverbs " vigorously" " "strenuous activities" as a description from a snapshot or still photo. These are clearly inaccurate, misleading use of words to exaggerate a subjective assumption. K. Address the distinction between social-media imagery and competent evidence of sustained occupational capacity;

XI. CONCLUSION

This case presents issues that extend substantially beyond Respondent's individual circumstances.

Respondent has experienced multiple significant orthopedic conditions and surgical interventions, including a total knee replacement, subsequent knee revision, total ankle replacement, continuing sciatica and hip pain, and a left shoulder condition requiring continuing treatment and evaluation, including possible surgery. Respondent contends that the cumulative consequences of these work-related injuries and repeated surgeries have substantially affected physical functioning and have also affected Respondent's psychological and emotional well-being. At the same time,

the evidence relied upon against Respondent includes an approximately **30-minute independent medical examination**, evidence characterized as administrative hearsay, and social-media photographs and videos that Respondent contends were improperly interpreted without adequate consideration of their date, context, promotional purpose, and whether they actually demonstrated post-injury physical activity. The central issue is not whether Respondent has ever participated in recreational activities. The central issue is whether competent and reliable evidence establishes that Respondent can substantially and sustainably perform the actual and customary duties of a Registered Nurse throughout the required workday and workweek. Similarly, the issue is not merely whether evidence was admitted. The issue is whether the evidence relied upon to make material findings has sufficient foundation, reliability, and probative value to support those findings.

Respondent respectfully asks the Board to carefully distinguish: photographs from assumptions; momentary activity from sustained occupational capacity; recreational activity from professional nursing duties; hearsay from competent substantive evidence; medical findings from investigator inferences; and the existence of evidence from the sufficiency and reliability of that evidence. These issues are significant, have general application, and are likely to recur in future CalPERS IDR proceedings. For these reasons, Respondent respectfully requests that the CalPERS Board of Administration exercise its authority under **California Government Code § 11425.60** and designate its final decision, or the legally appropriate portion thereof, as a **Precedential Decision**. Respondent further respectfully requests that the Board's final decision clearly articulate the evidentiary and legal standards applicable to sustained occupational capacity, cumulative medical impairment, brief IMEs, administrative hearsay, social-media evidence, and investigator inferences in CalPERS Industrial Disability Retirement proceedings.

Respectfully submitted,

JOVEN B. AROMIN

Date: August 18, 2026

P.S.

Respondent has served as a California Registered Nurse since 1998(CALPERS) , providing approximately 28 years of professional service. Respondent respectfully submits that this longstanding history is relevant to the Board's evaluation of his present occupational capacity. For many years, Respondent was able to perform the duties and responsibilities of a Registered Nurse before the progression and cumulative consequences of his work-related injuries, multiple orthopedic surgeries, continuing pain, rehabilitation, and additional medical conditions.

Respondent's lengthy nursing career provides important context for the distinction between **historical ability to perform the occupation and present ability to sustain the essential duties of the position**. Respondent has substantial firsthand experience with the physical and clinical demands of Registered Nursing and is therefore able to explain the difference between performing isolated activities and safely sustaining nursing duties throughout an eight-hour shift and 40-hour workweek.

Respondent is not asserting that years of service, by themselves, establish industrial disability. Rather, the longstanding service history demonstrates that Respondent successfully performed the profession for many years and that the present dispute concerns whether the **cumulative effects of the subsequent injuries, surgeries, continuing medical conditions, and resulting limitations now prevent substantial and sustained performance of the same occupation**.

WILLFUL MISCONDUCT AND CIRCUMSTANCES OF THE APRIL 17, 2020 INDUSTRIAL INJURY

Respondent's industrial injury occurred on **April 17, 2020**, after a persistent water leak in the triage clinic where Respondent worked. Water from a leaking sink repeatedly accumulated on the floor and created a hazardous slipping condition.

Respondent repeatedly reported the condition to supervisors and notified Plant Operations. Despite these reports, the condition was not timely corrected. For approximately **two weeks**, Respondent was required to manage the accumulated water by repeatedly mopping and draining the pooled water with towels and rags in order to continue working.

Despite repeated notice of the hazardous condition, the leak remained unresolved. On April 17, 2020, Respondent slipped and fell on the wet floor, resulting in the injuries that ultimately required extensive medical treatment, including a total knee replacement, subsequent knee revision, total ankle replacement, continuing lower-extremity pain, and additional treatment for the left shoulder.

A separate civil action alleging **willful misconduct** has been filed concerning these circumstances. Respondent does not ask the CalPERS Board to treat the filing of that action, standing alone, as proof of the allegations. Rather, Respondent requests that the Board consider the documented circumstances of the April 17, 2020 injury and any properly authenticated evidence concerning the repeated notice of the hazardous condition, the failure to correct it, and the resulting injury.

These circumstances are relevant to understanding the **origin, progression, and cumulative consequences of Respondent's industrial injuries** and the subsequent medical treatment that is central to this Industrial Disability Retirement proceeding.