ATTACHMENT B

STAFF'S ARGUMENT

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STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Joven B. Aromin (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision (PD) dated July 24, 2026. For reasons discussed below, staff argues the Board should deny the Petition and uphold its decision.

Respondent was employed as a Registered Nurse for California Medical Facility, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment with Respondent CDCR, Respondent was a state safety member of CalPERS. On September 13, 2023, Respondent submitted an Application for Service Retirement Pending Industrial Disability Retirement (SR pending IDR) based on orthopedic conditions (right knee and left shoulder). Respondent retired for service effective July 2, 2023, and began receiving service retirement benefits as of that date.

To be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

As part of CalPERS' review of Respondent's medical condition, Nasser Heyrani, M.D., a board-certified orthopedic surgeon, performed an Independent Medical Examination (IME). Dr. Heyrani interviewed Respondent, reviewed work history and job descriptions, obtained a history of past and present complaints, and reviewed medical records. Dr. Heyrani opined that Respondent was not substantially incapacitated for the performance of his usual and customary duties as a Registered Nurse.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of his position.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on July 13, 2026. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing despite receiving timely and proper notice, and a default was taken as to Respondent CDCR only, under Government Code section 11520, subdivision (a).

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet, answered

Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, a CalPERS Investigator testified that she conducted online surveillance of Respondent by reviewing content posted on his and his wife's social media accounts. She limited her search to the period after Respondent's April 2020 injury through October 2023 (approximately one month after he filed his application for SR pending IDR). Videos posted on Respondent's and his wife's accounts showed him engaging in strenuous activities, including kayaking, climbing stairs, riding bicycles, hiking, riding ATVs, and walking on rugged and uneven terrain. The social media posts and an investigation report summarizing their contents were admitted into evidence.

At the hearing, Dr. Heyrani testified consistently with his examination of Respondent and his IME reports. He stated that Respondent demonstrated only a slight reduction in strength and range of motion in both his left shoulder and right knee. Objective findings on examination revealed only clinically insignificant joint degeneration, a common age-related change. In short, the physical examination did not reveal significant abnormalities or major pathology. Dr. Heyrani further testified that Respondent's subjective complaints of pain and physical limitations were inconsistent with both the objective examination findings and the sub rosa evidence of Respondent engaging in strenuous activities. Accordingly, Dr. Heyrani concluded that Respondent was not substantially incapacitated from performing his usual job duties due to any orthopedic condition.

Respondent testified on his own behalf that he has not worked in any capacity since he was placed on leave by CDCR in May 2020. On cross-examination, however, he admitted that he operated a multi-level marketing business promoting a travel company until 2025 and operated a solar company involving door-to-door sales until 2023. He also testified that he renewed his RN license in order to assist in opening a medical spa with his daughter. Respondent claimed that many of the photographs and videos on social media were staged and did not accurately reflect his physical limitations.

Respondent did not call any other witnesses or medical professionals to support his position. He sought to introduce the medical records previously reviewed by Dr. Heyrani in connection with the IME or supplemental IME report. Those records were admitted as administrative hearsay. Hearsay evidence may be used to supplement or explain other evidence, but it is not sufficient in itself to support a finding.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ reasoned that Respondent did not meet his burden to present competent, objective medical evidence to establish that he was permanently disabled or substantially incapacitated from performance of his usual duties as a Registered Nurse at the time he filed his SR pending IDR application. Instead, the competent medical evidence established that Respondent's orthopedic conditions did not render him incapacitated to perform his usual job duties. The ALJ further found Respondent's claims of physical limitations unpersuasive in light of the social media evidence.

Respondent's Petition for Reconsideration attaches medical records related to a July 15, 2026, revision of his right total knee replacement, performed two days after the hearing. Although these records post-date the hearing, they present nothing the ALJ did not already consider. The record established that Respondent underwent a right total knee replacement on January 11, 2023; that the implant was later determined to be too large; that a workers' compensation QME found revision surgery necessary due to ongoing pain; and that the revision was scheduled for July 15, 2026. (PD, pp. 5, 12–13, 17, Factual Findings 10, 20, 35.) With that history before him, Dr. Heyrani examined Respondent and reviewed his medical records. He concluded that although Respondent may have some pain or difficulty performing his duties, he did not have a right knee or left shoulder impairment rising to the level of substantial incapacity from the usual duties of a Registered Nurse. (PD, pp. 15–16, Factual Findings 28–30, 32.)

The ALJ found Dr. Heyrani's opinion most persuasive. It was corroborated by Respondent's social media posts from June 2020 through October 2023, which showed strenuous activity and included Respondent's own statements, in the months around his application, that he felt great and had cured his medical conditions. (PD, pp. 17–18, Factual Findings 36–38.) The issue decided was whether Respondent was substantially incapacitated when he filed his application on September 13, 2023. (PD, p. 2, Factual Finding 1; pp. 20–21, Legal Conclusions 5, 7; *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876; *Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 697.) The records show only that the revision surgery, which was already known and scheduled at the time of hearing, went forward as planned. The records do not establish that Respondent was substantially unable to perform his usual duties nearly three years earlier. Undergoing treatment for a condition is not the same as being substantially incapacitated by it. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 862–864.) The new records neither undermine any finding in the PD nor bear on Respondent's capacity at the time of his application. Therefore, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

November 18, 2026

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