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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

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MARCIANO PLATA, et al.,  
*Plaintiffs,*  
v.  
ARNOLD SCHWARZENEGGER, et al.,  
*Defendants.*

Case No. C01-1351 TEH

**RECEIVER AND STATE PERSONNEL  
BOARD'S JOINT STATUS REPORT RE  
PHYSICIAN CLINICAL COMPETENCY  
DETERMINATION POLICIES AND  
PROCEDURES**

1 The Receiver and the State Personnel Board (“SPB”) submit this Joint Status Report re  
2 Physician Clinical Competency Policies and Procedures pursuant to this Court’s Order, date  
3 August 6, 2008 (Docket # 1367). The Status Report is based on the Declarations of Linda  
4 Buzzini, Suzanne Ambrose, and Paul Ramsey, filed herewith.<sup>1</sup> Because the Receiver and SPB  
5 differ over the information that they each believe is necessary for the Court’s consideration and,  
6 in some cases, their recollections of events differ, the Report has been organized into sections  
7 reflecting each party’s position.

8 Since the Receiver’s Further Report Re Physician Clinical Competency Determination  
9 Policies and Procedures (Docket # 1347 filed 8/1/08), the Receiver’s staff has continued to  
10 confer on a regular basis with the SPB regarding its implementation plan. Following this Court’s  
11 May 23 Order, Ms. Buzzini prepared a draft of proposed policies and procedures, together with a  
12 graphic flow chart to describe the peer review process. She forwarded them to the SPB and  
13 UAPD on June 2, 2008 and to the parties on June 3, 2008. Although the Court ordered SPB to  
14 “take the lead in preparing an implementation plan” for the new procedures, she also forwarded  
15 suggestions for the implementation plan to assist SPB’s efforts.

16 Funding and Additional Staff

17 Receiver’s Information and Position

18 On August 11, 2008, Ms. Buzzini discussed with Mr. Ramsey the fact that the SPB would  
19 be submitting a Budget Change Proposal to the Department of Finance seeking the addition of  
20 one new administrative law judge (ALJ), one appeals assistant and one legal secretary for the *six*  
21 *cases* it projects hearing *annually*. This differed from SPB’s original projection of needing one  
22 new ALJ plus support staff for every 10 hearings conducted annually. Ms. Buzzini informed Mr.  
23 Ramsey that the Receiver could not support additional funding that exceeded a reasonable  
24 projection of SPB’s actual costs. She also informed Mr. Ramsey that its staff-to-hearing ratio  
25 was excessive. Ms. Buzzini and Mr. Ramsey also discussed use of a transparent billing system  
26 so that the Receiver would know that SPB was being reimbursed for actual costs.

27  
28 <sup>1</sup> The parties apologize to the Court for the late filing of this Status Report.

1 On August 14, 2008, Mr. Ramsey provided the Receiver with proposed billing rates for  
2 an administrative law judge, legal secretary, and appeals assistant. SPB proposed an hourly rate  
3 which is based on annualized salaries, benefits, \$17,000 in operating expenses for each of the  
4 three positions discussed, plus a 20% overhead charge.

5 On August 15, 2008, SPB Executive Officer Suzanne Ambrose informed Receiver Kelso  
6 that SPB was submitting a Budget Change Proposal (BCP) for up to one ALJ, one legal  
7 secretary, a .6 analyst and \$715,000. She also stated SPB would only bill the Receiver for actual  
8 expenses incurred which, according to Ms. Ambrose, means the Receiver may only end up  
9 funding a portion of these positions. The Receiver understands this to mean that SPB may be  
10 submitting a BCP for additional staff justified on the basis of the Court's order which from the  
11 outset, SPB understands will exceed its reimbursements given a realistic projection of actual  
12 workload and costs.

13 On August 18, 2008, Ms. Buzzini spoke with SPB Executive Officer Suzanne Ambrose  
14 and explained the Receiver was willing to reimburse SPB for necessary, reasonable and actual  
15 costs. I asked SPB's Chief Administrative Law Judge what data the Board used to arrive at the  
16 proposed 20% overhead rate. On September 11, 2008, Mr. Ramsey provided me with a copy of a  
17 memorandum from SPB's fiscal officer explaining why SPB seeks an overhead fee. On or about  
18 September 11, 2008, I informed Mr. Ramsey I had hoped to receive data from SPB that explains  
19 how it arrived at a proposed rate of 20%. Mr. Ramsey informed me SPB was unable to provide  
20 that information because it did not have any data to rely upon. Mr. Ramsey suggested a  
21 negotiated rate of 5-10% instead.

22 SPB's Information And Position

23 On June 4, 2008, members of the SPB Executive staff and representatives of the  
24 Receiver's Office and the California Department of Corrections and Rehabilitation met to discuss  
25 the future implementation of a process incorporating both physician peer review and State civil  
26 service disciplinary procedures into a single hearing pursuant to the court's May 23, 2008 order.  
27 SPB would have responsibility for implementation of this hearing process.

28 Following the June 4, 2008, meeting, SPB Chief Administrative Law Judge (ALJ) Paul

1 Ramsey contacted the Office of Administrative Hearings to discuss relevant experience in  
2 conducting medical quality hearings for the Medical Board of California in order to understand  
3 the complexity and workload demands associated with such hearings. Mr. Ramsey also arranged  
4 for specialized training for SPB Administrative Law Judges to address the requirements for  
5 conducting medical quality hearings to occur in early August, 2008. The Appeals Division  
6 developed internal procedures to ensure timely processing of medical quality hearings as  
7 contemplated in draft procedures prepared by the Receiver's Office. Additionally, Mr. Ramsey  
8 contacted the Institute for Medical Quality (hereinafter "IMQ") to discuss entering into a contract  
9 such that the IMQ would recruit and provide qualified physicians to conduct medical quality  
10 hearings as required by this court's May 23, 2008 order.

11 During the week of July 14, 2008, the Fiscal Office for SPB contacted the IMQ to obtain  
12 details identifying IMQ staff having responsibility for managing the proposed contract. A draft  
13 contract was completed and forwarded to the SPB Legal Division for review.

14 On July 17, 2008, Mr. Ramsey provided a draft Implementation Plan to Linda Buzzini,  
15 attorney for the Receiver's Office, for discussion at a meeting involving SPB Executive staff,  
16 representatives of the Receiver's Office, representatives of the California Department of  
17 Corrections and Rehabilitation, and representatives of the Union of American Physicians and  
18 Dentists, scheduled for July 21, 2008. At that time, Mr. Ramsey informed Ms. Buzzini that  
19 contract negotiations with the IMQ were continuing.

20 In telephone conversations with the IMQ held on July 17 and 18, 2008, the IMQ informed  
21 Mr. Ramsey that additional time was required to create a pool of qualified physicians peer review  
22 panels so that Medical Quality hearings could be conducted. Also, the Institute would require  
23 eight weeks from date of notification to create a panel to conduct a medical quality hearing. As a  
24 result of this information, the draft Implementation plan was amended. The amended draft  
25 Implementation Plan was delivered to Ms. Buzzini on July 21 in advance of the scheduled  
26 meeting.

27 At the July 21, 2008 meeting, between SPB Executive staff, representatives of the  
28 Receiver's Office, representatives of the California Department of Corrections and

1 Rehabilitation, and representatives of the Union of American Physicians and Dentists, the  
2 participants discussed the issues raised by the IMQ. Both the Union and the Receiver's Office  
3 objected to an 8 week period for the identification of qualified physicians to establish a peer  
4 review panel. Mr. Ramsey informed the parties that this matter would be discussed further with  
5 the IMQ. Also, both the Union and the Receiver's Office clarified that while the number of  
6 appeals per year would be approximately 30, it was estimated that six appeals would go to  
7 hearing.

8 On July 28, 2008, Mr. Ramsey provided Ms. Buzzini a revised Implementation Plan  
9 based upon the meeting of July 21, 2008 and the discussions with the IMQ. All training for SPB  
10 staff had been completed. The primary issues to be resolved involved completing contracts with  
11 the IMQ, support from the Receiver's Office for additional staff necessary to process medical  
12 quality hearings, and an agreement with the Receiver's Office and the California Department of  
13 Corrections and Rehabilitation for reimbursement for processing appeals involving medical  
14 quality issues. Believing that appropriate support would be forthcoming from the Receiver's  
15 Office, the plan provided that SPB would begin receiving and processing appeals from the  
16 California Department of Corrections and Rehabilitation physicians concerning medical quality  
17 actions and related employment discipline on October 13, 2008.

18 On August 8, 2008, Mr. Ramsey received a telephone call from Melinda Gonser at the  
19 California Department of Corrections and Rehabilitation. She informed Mr. Ramsey that she  
20 was working with the IMQ to establish a contract for so that physician peer review panels would  
21 be established to work with the Office of Administrative Hearings on a temporary basis while  
22 SPB establishes its medical quality hearing process. She understood that SPB had established a  
23 process for retaining physicians as consultants to conduct medical quality hearings and was  
24 seeking information so that her department could proceed in the same fashion. Mr. Ramsey  
25 placed her in contact with the Assistant Chief of SPB Administrative Services to facilitate their  
26 process.

27 On August 11, 2008, Mr. Ramsey recalls discussing with Ms. Buzzini the need for SPB  
28 to establish one additional administrative law judge and one additional legal secretary position.

1 Mr. Ramsey explained these two additional positions would ensure that medical quality hearings  
2 could be conducted without causing disruption to ongoing appeals not involving medical quality  
3 hearings. Presently, the SPB Appeals Division receives in excess of 200 evidentiary appeals per  
4 month. Without the additional staff, existing resources would be required to vacate calendared  
5 hearings so that 30 peer review panels could be established and voir dired and approximately six  
6 medical quality hearings initiated within the 60 day time period required by the medical quality  
7 hearing process. Further, the two additional positions were required to ensure timely preparation  
8 of the decisions by both the peer review panel and the administrative law judge for consideration  
9 by the Board within 45 days of the submission of the case. Ms. Buzzini was also informed that  
10 the California Department of Corrections and Rehabilitation would be billed for actual time  
11 expended working on a medical quality hearing and not for the entire cost of the positions of the  
12 administrative law judge and legal secretary. In particular, Mr. Ramsey informed Ms. Buzzini  
13 that SPB would bill the administrative law judge at the rate of \$122 per hour as opposed to the  
14 \$187 per hour rate charged by the Office of Administrative Hearings. The rate for a legal  
15 secretary would be \$54 per hour. Mr. Ramsey also informed Ms. Buzzini that the billing rate for  
16 an appeals assistant would be \$51 per hour and would be no more than ½ hour per case for the  
17 initial creation of an appeal. Accordingly, SPB would not seek an additional full appeals  
18 assistant position. Ms. Buzzini requested detailed costs for these billing rates. Mr. Ramsey  
19 informed Ms. Buzzini that he would request the information from the SPB Fiscal Office.

20 During their conversation on August 18, Ms. Ambrose made clear to Ms. Buzzini that the  
21 SPB was submitting a Budget Change Proposal (BCP) requesting authority to collect  
22 reimbursements from the Receiver for up to \$715,000 which would include funding for up to one  
23 ALJ position, one legal secretary position and a .6 analyst position, in addition to the costs  
24 associated with the physicians. Ms. Ambrose reiterated to Ms. Buzzini what she had stated to  
25 Receiver Kelso that the Receiver's Office would only be billed for actual costs associated with  
26 the PPEC process. Because these positions are reimbursable rather than general funded, SPB  
27 needs to ensure that the actual workload materializes and will be permanent workload before  
28 hiring permanent, full-time civil service employees. Therefore, the SPB anticipates utilizing

1 part-time or retired annuitant staff on an as-needed basis, depending upon the volume of the  
2 workload. As Ms. Ambrose explained to Ms. Buzzini, if the projected workload does not  
3 materialize, then the Receiver will not be billed for the maximum amount and the SPB will not  
4 receive reimbursements for the maximum amount. In other words, "reimbursement authority" is  
5 the authorization to receive funds up to that amount; it is not actual funding.

6 On September 5, 2008, having not heard from Ms. Buzzini regarding the billing rates and  
7 related details, Mr. Ramsey contacted her to ask if she had any questions or concerns. He also  
8 asked if her office had completed the final procedures for the medical quality hearing process.  
9 Later that day, Ms. Buzzini replied that there were concerns regarding the 20% overhead built  
10 into the billing rate. She requested information regarding this portion of the rate. Ms. Buzzini  
11 also asked the status of reaching an agreement with the IMQ. Mr. Ramsey responded that he  
12 would seek more information regarding the 20% overhead from the SPB Fiscal Office.

13 Ms. Buzzini then informed Mr. Ramsey that she had hoped to receive data from SPB that  
14 explains how it arrived at a proposed rate of 20%. Mr. Ramsey indicated that SPB was unable to  
15 provide that information because it did not have any data to rely upon. Mr. Ramsey suggested a  
16 negotiated rate of 5-10% instead. On September 11, 2008, Mr. Ramsey provided a copy of a  
17 memorandum from SPB's fiscal officer explaining why SPB seeks a 20% overhead fee  
18 According to Mr. Ramsey, he informed Ms. Buzzini that the overhead pays for nearly all of the  
19 administrative support provided to programs. On the evening of September 11, 2008, Ms.  
20 Buzzini responded that she believed the justification for the overhead was inadequate and  
21 requested more information. Ms. Buzzini also requested that Mr. Ramsey contact her by  
22 telephone to discuss the question of indemnification.

23 On September 12, 2008, Mr. Ramsey informed Ms. Buzzini that he was scheduled for  
24 meetings most of the day and would try to contact her after 4:00 p.m. Mr. Ramsey telephoned  
25 Ms. Buzzini and left her a message after 4:00 p.m. He did not hear back from her before he left  
26 at approximately 5:30p.m.

27 On September 15, 2008, Mr. Ramsey telephoned Ms. Buzzini. During the telephone  
28 conversation, he informed her that the SPB Fiscal Office had recently informed him that the

1 calculations used to arrive at the 20% overhead rate were now a number of years old. Mr.  
2 Ramsey also informed Ms. Buzzini that the SPB Fiscal Office was tasked with the project of  
3 recalculating the rate for overhead in light of the various program changes incurred by SPB in  
4 recent years and that the prior calculations may no longer apply. Ms. Buzzini acknowledged the  
5 program of conducting medical quality hearings involved support from SPB units such as  
6 personnel, fiscal, IT, and business services. Mr. Ramsey then informed Ms. Buzzini that because  
7 the workload associated with medical quality hearings is relatively small in comparison to the  
8 workload for the entire SPB Appeals Division, he proposed to set the overhead rate between 5%  
9 and 10% until the new overhead rate is established. She agreed to this proposal and suggested  
10 7.5%, to which he agreed.

11 Indemnifying IMQ

12 Receiver's Information and Position

13 The SPB's decision not to indemnify the Institute for Medical Quality Assurance, and  
14 apparent inaction with respect to locating another entity for Judicial Review Committee (JRC)  
15 referrals, continues to prevent the SPB from being capable of administering clinical competency  
16 hearings.

17 As reported to the Court on August 1, 2008, the State Personnel Board refused to  
18 indemnify the California Medical Association's Institute for Medical Quality Assurance (IMQ).  
19 The Receiver rejected SPB's proposal to have the Receivership (and thus, effectively, this Court)  
20 indemnify IMQ. As also reported to the Court on August 1, 2008, Ms. Buzzini has on several  
21 occasions inquired about SPB's efforts to identify a source of JRC referrals other than IMQ, such  
22 as the California Medical Board and Kaiser Permanente. The UAPD additionally informed SPB  
23 that the American College of Legal Medicine was interested.

24 On or about August 8, 2008, the five member SPB met and reaffirmed its decision not to  
25 indemnify IMQ. The Receiver is not aware of any efforts being made by SPB to locate any other  
26 entities that can provide JRC panelist referrals. The SPB's decision not to indemnify the IMQ,  
27 and apparent inaction with respect to locating another entity for Judicial Review Committee  
28 (JRC) referrals, continues to prevent the SPB from being capable of administering clinical

1 competency hearings. The Receiver understands that Mr. Ramsey is waiting for IMQ to change  
2 its stance regarding indemnification. The Receiver believes IMQ is unwilling to do so. The  
3 Receiver understands that the SPB also now seeks to have the Department of Corrections and  
4 Rehabilitation indemnify IMQ. In other words, the State (i.e., SPB) will not contract with IMQ  
5 unless the State (i.e., CDCR) indemnifies IMQ.

6 SPB's Information and Position

7 On July 3, 2008, the IMQ delivered a draft Scope of Work to SPB for review and  
8 consideration. Staff for the IMQ also requested that SPB consider agreeing to provide  
9 indemnification for any claims arising out of their participation in agreement with SPB. In turn,  
10 SPB provided an exemplar State contract containing standard terms and conditions for the IMQ's  
11 review and consideration.

12 During the July 21, 2008, meeting between SPB Executive staff, representatives of the  
13 Receiver's Office, representatives of the California Department of Corrections and  
14 Rehabilitation, and representatives of the Union of American Physicians and Dentists, the  
15 Receiver's Office was asked whether the California Department of Corrections and  
16 Rehabilitation or the Receiver's Office would provide indemnification to the IMQ. The parties  
17 were informed that the Board had decided not to provide indemnification to the IMQ. Ms.  
18 Buzzini replied in the negative to this request.

19 In discussions with the IMQ on July 24, 2008, Mr. Ramsey was informed the IMQ did  
20 not consider the lack of an agreement by SPB to indemnify the IMQ to be a "deal breaker."  
21 Further, the IMQ agreed to a 31 day period to identify qualified physicians to establish a peer  
22 review panel.

23 On August 8, 2008, Mr. Ramsey received a telephone call from Melinda Gonser at the  
24 California Department of Corrections and Rehabilitation. She informed Mr. Ramsey that the  
25 California Department of Corrections and Rehabilitation agreed to indemnify the IMQ under the  
26 agreement to create physician peer review panels. When asked the reason for this, Ms. Gonser  
27 replied that the Receiver's Office ordered her department to provide indemnification to the IMQ.

28 During the week of September 2, 2008, Mr. Ramsey learned from the IMQ that they felt

1 justified in requiring SPB to agree to indemnification because the California Department of  
2 Corrections and Rehabilitation had agreed to the request. Mr. Ramsey informed the Institute that  
3 he would renew his request that the California Department of Corrections and Rehabilitation  
4 agree to provide the IMQ indemnification through the SPB process as well.

5 On September 5, 2008, Mr. Ramsey inquired of Ms. Buzzini that, since her office  
6 directed the California Department of Corrections and Rehabilitation to provide indemnification  
7 to the Institute, perhaps this arrangement could be continued while SPB conducts medical quality  
8 hearings.

9 On September 15, 2008, during a telephone conversation with Ms. Buzzini, Mr. Ramsey  
10 asked if the California Department of Corrections and Rehabilitation could continue to provide  
11 indemnification for the IMQ while SPB conducts medical quality hearings. Mr. Ramsey  
12 explained that the Department's agreement with SPB would provide for indemnification for SPB  
13 and its agents involved in medical quality hearings. SPB would then provide pass through  
14 indemnification to the IMQ in the agreement between themselves. Ms. Buzzini stated she would  
15 discuss this with the Receiver and respond. As of today's date, Ms. Buzzini has not provided a  
16 response to this inquiry.

17 FUTTERMAN & DUPREE LLP

18  
19 Dated: September 19, 2008

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/s/Martin H. Dodd  
Martin H. Dodd  
Attorneys for Receiver J. Clark Kelso

20  
21 Dated: September 19, 2008

BRUCE MONFROSS

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/s/ Bruce Monfross  
Bruce Monfross  
Acting Chief Counsel  
California State Personnel Board

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28 I hereby attest that I have on file all holograph  
signatures for any signatures indicated by a



**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17<sup>th</sup> Floor, San Francisco, CA 94104. I am over the age of 18 and not a party to the within action.

I am readily familiar with the business practice of Futterman & Dupree, LLP for the collection and processing of correspondence.

On September 19, 2008, I served a copy of the following document(s):

**RECEIVER AND STATE PERSONNEL BOARD'S JOINT STATUS REPORT RE PHYSICIAN CLINICAL COMPETENCY DETERMINATION POLICIES AND PROCEDURES**

by placing true copies thereof enclosed in sealed envelopes, for collection and service pursuant to the ordinary business practice of this office in the manner and/or manners described below to each of the parties herein and addressed as follows:

— BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

X BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated below. I am readily familiar with Futterman & Dupree's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

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18

19 I declare that I am employed in the offices of a member of the State Bar of this Court at  
20 whose direction the service was made. I declare under penalty of perjury, under the laws of the  
united State of America, that the above is true and correct.

21 Executed on September 19, 2008 at San Francisco, California.

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Lori Dotson