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J. Clark Kelso

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

Case No. C01-1351 TEH

**DECLARATION OF LINDA BUZZINI IN
SUPPORT OF RECEIVER AND STATE
PERSONNEL BOARD'S FURTHER
JOINT STATUS REPORT RE
PHYSICIAN CLINICAL COMPETENCY
DETERMINATION POLICIES AND
PROCEDURES**

1 I, Linda Buzzini, declare as follows:

2 1. I am an attorney licensed to practice before all the courts of the State of California and before
3 this Court and employed as a staff attorney for Receiver J. Clark Kelso, specializing in
4 employment and labor relations matters. I make this declaration in support of the Receiver
5 And State Personnel Board's Further Joint Status Report Re Clinical Competency
6 Determination Policies And Procedures. The facts set forth herein are based on my own
7 personal knowledge and, if called as a witness, I could competently testify thereto.

8 2. Since the filing of the Receiver And State Personnel Board's Joint Status Report Re
9 Physician Clinical Competency Procedures ("Joint Status Report"), filed on September 19,
10 2008 (Docket # 1501), I have continued to confer with the State Personnel Board ("SPB")
11 regarding its implementation planning.

12 3. Funding and Additional Staff

13 a) On September 19, 2008, the SPB informed the Court that it was submitting a budget
14 change proposal ("BCP") to the Department of Finance so that it could collect
15 reimbursements from the Receiver of up to \$715,000 "which would include funding for
16 up to one Administrative Law Judge position, one legal secretary position and a .6 analyst
17 position." (Docket # 1503, ¶ 2) SPB further advised the Court that "[b]ecause these
18 positions are reimbursable rather than general funded, SPB needs to ensure actual
19 workload materializes and will be permanent . . . before hiring permanent, full-time
20 employees." (Id.)

21 b) The Receiver's staff recently received a copy of the BCP, a true and correct copy of
22 which is attached hereto as Exhibit A. The BCP indicates that it was prepared by SPB
23 Chief Administrative Law Judge, Paul Ramsey, and approved by SPB Executive Officer
24 Suzanne Ambrose. The BCP bears a date of August 15, 2006 [sic], *i.e.*, prior to the filing
25 of the Joint Status Report and related documents on September 19, 2008. Despite the
26 SBP's statements in connection with the Joint Status Report, in the BCP the Board
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- 1 requests "approval for \$715,000 in reimbursement authority and to *permanently* hire 1.0
2 ALJ II, 1.0 Legal Secretary and .6 Staff Services Analysts." (Emphasis added.)
- 3 c) On September 19, 2008, SPB informed the Court that it had recently determined that the
4 20% overhead rate it was proposing to charge the Receiver was a number of years old and
5 that calculations used to arrive at that rate may no longer apply. The Board further
6 advised the Court that the Receiver and the SPB had consequently agreed to a 7.5%
7 overhead reimbursement rate instead. (Docket # 1504, ¶ 19.)
- 8 d) On or about October 15, 2008, the Department of Finance (DOF) contacted the
9 Receiver's staff to determine if the Receiver was going to reimburse SPB consistent with
10 the authority sought by SPB in the BCP. While it is difficult to determine, due to a lack
11 of detail in the BCP, it appears that the BCP includes a 20% overhead rate. As noted
12 above, the BCP clearly seeks approval to hire permanent full-time staff and, based on my
13 own experience with and expectations about the peer review process, I believe that the
14 workload projections to support the number of positions requested are significantly
15 overestimated.
- 16 e) On October 21, 2008, Lori Gillihan, the SPB's Chief of the Administrative Services
17 Division, asked the Receiver's staff to notify DOF that the Receiver will absorb from his
18 existing funds the amount SPB that seeks in reimbursement. This was the first time that
19 the issue of the Receiver absorbing these costs from existing funds had been raised.
- 20 f) On Saturday, October 25, 2008, Paul Ramsey sent me an email seeking to discuss a
21 contract between the Receiver's Office and SPB regarding clinical competency
22 determination hearings.
- 23 g) Contrary to the representations made in the SPB's submissions in connection with this
24 joint report, I did communicate with the SPB concerning the outstanding issues between
25 August and November 2008, as the remainder of this declaration demonstrates. For
26 example, on October 27, 2008, I spoke with Mr. Ramsey. We discussed four issues: (1)
27 whether an agreement concerning reimbursement for SPB's expenses would be between
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1 the Board and CDCR or the Board and the Receiver; (2) whether the salary and benefit
2 rates proposed by SPB were reasonable; (3) the BCP and its request for budget
3 augmentation via reimbursement from the Receiver; and, (4) the indemnification being
4 insisted upon by the California Medical Association, Institute for Medical Quality
5 (“IMQ”) which is discussed below.

6 h) During our October 27 conversation, I advised Mr. Ramsey that I had not yet spoken with
7 the Receiver’s Chief of Staff regarding a 7.5% overhead rate but anticipated that it would
8 be acceptable. Likewise, I also expressed no concerns whatsoever about the hourly rate
9 that SPB proposed to charge for the ALJ or the benefits to be paid. Mr. Ramsey advised
10 me that DOF was seeking confirmation that the Receiver would reimburse the Board. I
11 once again reiterated that the Receiver would reimburse SPB for reasonable, necessary
12 and actual costs, but the issues to be addressed were the details of the BCP itself. A
13 discussion ensued regarding the amount of reimbursement authority contained in the
14 BCP. In particular, we discussed the fact that the BCP assumes that the Board will
15 receive 30 appeals requiring some amount of attention by the Board and that, of those,
16 approximately six would culminate in an actual hearing. I raised this issue because it is
17 not consistent with the Receiver’s projections. I advised Mr. Ramsey that while the
18 Receiver’s staff estimates approximately 30 cases being submitted for peer review
19 annually, we believe that no more than 10-12 will reach the appeal phase and, of those,
20 only six of those will make it as far as an evidentiary hearing (except during the first year
21 when a few more may go to hearing). In other words, the Receiver estimates that the
22 Board will be involved in some fashion in only about a dozen cases per year. In fairness
23 to the Board, I believe there was an honest misunderstanding about this distinction which
24 had its roots in a meeting many months ago and I so indicated during my discussion on
25 October 27, 2008 with Mr. Ramsey. In the end, however, Mr. Ramsey did not suggest
26 that the BCP would be modified or amended to address the concerns or questions that I
27 had raised.

- 1 i) On November 3, 2008, I appeared before the five-member SPB regarding matters
2 unrelated to the physician clinical competency determination process. SPB President
3 Sean Harrigan spontaneously observed the Receiver was refusing to reimburse SPB for
4 clinical competency determination hearings. I publically corrected Mr. Harrigan's
5 misunderstanding by advising him and the other members of the Board that, since at least
6 August 18, 2008, the Receiver had on several occasions advised SPB staff and had stated
7 in his report to the Court that he would reimburse SPB for all necessary, actual and
8 reasonable costs associated with SPB administration of the hearings. I further advised the
9 Board that certain "details" associated with SPB's BCP had not yet been resolved. By
10 way of example, I advised the Board that the SPB had not offset or deducted from the
11 amounts in the BCP the reimbursement authority it already possesses to conduct
12 physician adverse action hearings that will now be replaced by the new process.
- 13 4. On November 10, 2008, the Receiver's Chief of Staff, John Hagar, sent a letter to the SPB
14 Executive Officer and DOF Director. A true and correct copy of the letter is attached hereto
15 as Exhibit B. In the letter, Mr. Hagar states the Receiver does not support the Board's BCP
16 for two reasons. First, it "grossly over-estimated the staffing and funding necessary for
17 Clinical Competency determinations" and fails to consider the "significant workload
18 reduction" that the PPEC process will bring to SPB. Second, DOF has taken the position that
19 the Receiver must reimburse SPB using his existing budget "while disregarding the fact that
20 the State failed for years to establish an adequate peer review process."
- 21 5. Indemnification of IMQ
- 22 a) To the best of my knowledge, SPB continues to maintain it will not enter into a contract
23 with the IMQ because IMQ seeks an indemnification clause in the agreement.
- 24 b) Originally, the Board sought to have the Receiver (*i.e.*, effectively, this Court) indemnify
25 IMQ on the Board's behalf. More recently, the Board has sought to have the Receiver
26 instruct CDCR to provide indemnification on behalf of the Board. Contrary to the
27 representation in the SPB's submissions in connection with this joint report, I responded
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1 on behalf of the Receiver regarding the SPB's requests regarding indemnification on at
2 least two occasions. First, on October 9, 2008, I responded to an email from Paul
3 Ramsey regarding the indemnification issue. I advised Mr. Ramsey that the Receivership
4 does not have the authority to instruct CDCR to indemnify SPB. I advised Mr. Ramsey
5 that whether CDCR stands behind SPB for purposes of indemnifying IMQ is an issue for
6 the State to decide on its own. I further advised Mr. Ramsey that the Receiver's Chief of
7 Staff was available to meet with SPB's Executive Officer if the Board wanted to discuss
8 this matter further. To the best of my knowledge, the SPB Executive Officer has not
9 contacted Mr. Hagar.

10 c) Second, on October 27, 2008, when I spoke with Mr. Ramsey, we discussed the
11 indemnification issue. SPB continued to insist that the Receiver "order" CDCR to
12 indemnify IMQ on behalf of the Board. Mr. Ramsey noted that CDCR is currently
13 indemnifying IMQ at the Receiver's request, and he questioned why Receiver would not
14 order CDCR to indemnify IMQ on behalf of the Board. I explained that CDCR currently
15 has an agreement with IMQ which includes an indemnification clause because, at the
16 present time, CDCR employees are administering those aspects of the hearing process.
17 When these responsibilities transfer to the Board there will be no reason for CDCR
18 involvement. Consequently, I advised Mr. Ramsey there would be no basis for the
19 Receiver to order CDCR to indemnify IMQ. I also said I thought it was unlikely that
20 CDCR would volunteer but that was for CDCR, SPB and the State to decide.

21 d) I will continue to work with the SPB to address the outstanding issues pertaining to
22 implementation of the PPEC process.
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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Dated: November 21, 2008

/s/Linda Buzzini
Linda Buzzini

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6 I hereby attest that I have on file all holograph signatures for any
7 signatures indicated by a "conformed" signature (/s/) within this
8 efiled document.

/s/Martin H. Dodd
9 Martin H. Dodd
10 Attorneys for Receiver J. Clark Kelso
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CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17th 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 November 21, 2008, I served a copy of the following document(s):

DECLARATION OF LINDA BUZZINI IN SUPPORT OF RECEIVER AND STATE PERSONNEL BOARD'S FURTHER 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.

Andrea Lynn Hoch Benjamin T. Rice Legal Affairs Secretary Office of the Governor Capitol Building Sacramento, CA 95814 Robin Dezember, Director (A) Division of Correctional Health Care Services CDCR P.O. Box 942883 Sacramento, CA 94283-0001

Molly Arnold Chief Counsel, Dept. of Finance State Capitol, Room 1145 Sacramento, CA 95814 Matthew J. Lopes Pannone, Lopes & Devereaux, LLC 317 Iron Horse Way, Suite 301 Providence, RI 02908

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John Chiang
Richard J. Chivaro
State Controller
300 Capitol Mall, Suite 518
Sacramento, CA 95814

22 I declare that I am employed in the offices of a member of the State Bar of this Court at
23 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.

24 Executed on November 21, 2008 at San Francisco, California.

25
26 _____
Lori Dotson

EXHIBIT A

STATE OF CALIFORNIA
BUDGET CHANGE PROPOSAL - COVER SHEET
FOR FISCAL YEAR 2009-2010
 DF-46 (WORD Version)(REV 04/08)
 Please report dollars in thousands.

Department of Finance
 915 L Street
 Sacramento, CA 95814
 IMS Mail Code: A-15

BCP # 2	PRIORITY NO. 2	ORG. CODE 1880	DEPARTMENT State Personnel Board
PROGRAM 10	ELEMENT	COMPONENT	

COURT ORDERED MEDICAL QUALITY HEARINGS

SUMMARY OF PROPOSED CHANGES

Provide 1.0 Administrative Law Judge II, 1.0 Legal Secretary, .6 Staff Service Analyst positions and \$715,000 reimbursement authority to perform medical quality hearings in combination with employee discipline for physicians employed by the California Department of Corrections and Rehabilitation (CDCR). The requested positions and reimbursement authority will fulfill the need to create a new appeals program required by court order of the U.S District Court in *Plata v. Schwarzenegger, et al.* All positions will reside in the Appeals Division.

REQUIRES LEGISLATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	CODE SECTION(S) TO BE AMENDED/ADDED	BUDGET IMPACT—PROVIDE LIST AND MARK IF APPLICABLE <input checked="" type="checkbox"/> ONE-TIME COST <input type="checkbox"/> FUTURE SAVINGS <input type="checkbox"/> FULL-YEAR COSTS <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> FACILITIES/CAPITAL COSTS
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PREPARED BY Paul R. Ramsey	DATE August 15, 2008	REVIEWED BY Janet Nannini	DATE August 15, 2008
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DEPARTMENT DIRECTOR <i>[Signature]</i>	DATE August 15, 2008	AGENCY SECRETARY <i>[Signature]</i>	DATE 11 th Sept 08
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DOES THIS BCP CONTAIN INFORMATION TECHNOLOGY (IT) COMPONENTS? YES OR NO

IF YES, DEPARTMENT CHIEF INFORMATION OFFICER SIGNATURE _____ DATE _____

FOR IT REQUESTS, SPECIFY THE DATE A SPECIAL PROJECT REPORT (SPR) OR FEASIBILITY STUDY REPORT (FSR) WAS APPROVED BY THE OFFICE OF THE CHIEF INFORMATION OFFICER (OCIO), OR PREVIOUSLY BY THE DEPARTMENT OF FINANCE.

DATE _____ PROJECT # _____ FSR OR SPR

IF PROPOSAL AFFECTS ANOTHER DEPARTMENT, DOES OTHER DEPARTMENT CONCUR WITH PROPOSAL?

YES NO ATTACH COMMENTS OF AFFECTED DEPARTMENT, SIGNED AND DATED BY THE DEPARTMENT DIRECTOR OR DESIGNEE.

**DEPARTMENT OF FINANCE ANALYST USE
 (ADDITIONAL REVIEW)**

CAPITAL OUTLAY ITCU FSCU OSAE CALSTARS OCIO

DATE SUBMITTED TO THE LEGISLATURE: _____ PPBA: _____

**STATE OF CALIFORNIA
BUDGET CHANGE PROPOSAL--FISCAL DETAIL
STATE OPERATIONS**

DF-46 (WORD/EXCEL) (REV 07/06)

Please report dollars in thousands.

BCP No.: 2	DATE: August 15, 2008	TITLE OF PROPOSED CHANGE: MEDICAL QUALITY HEARINGS				
PROGRAM: 1880	ELEMENT:	COMPONENT:				
	PERSONNEL YEARS			DOLLARS		
	CY	BY	BY + 1	CY	BY	BY + 1
TOTAL SALARIES AND WAGES ¹	0.0	2.6	2.6	\$0	\$174	\$174
SALARY SAVINGS	0.0	-0.1	-0.1	0	-9	-9
NET TOTAL SALARIES AND WAGES	0.0	2.5	2.5	\$0	\$165	\$165
STAFF BENEFITS ²				0	64	64
TOTAL PERSONAL SERVICES	0.0	2.5	2.6	\$0	\$229	\$229
OPERATING EXPENSES AND EQUIPMENT ³						
GENERAL EXPENSE				0	18	9
PRINTING				0	3	3
COMMUNICATIONS				0	6	6
POSTAGE				0	3	3
TRAVEL-IN STATE				0	3	3
TRAVEL-OUT OF STATE				0	0	0
TRAINING				0	3	3
FACILITIES OPERATIONS				0	39	18
UTILITIES				0	0	0
CONSULTING & PROFESSIONAL SERVICES: Interdepartmental ³				0	0	0
CONSULTING & PROFESSIONAL SERVICES: External ³				0	0	0
DEPT OF TECHNOLOGY SERVICES CONSOLIDATED DATA CENTER				0	3	
DATA PROCESSING				0	3	3
EQUIPMENT ³				0	0	0
DEBT SERVICE				0	0	0
OTHER ITEMS OF EXPENSE: (Specify below)				0	405	405
\$5,000 finding fee, 5 member selection committee, 3 member panel						
TOTAL OPERATING EXPENSES AND EQUIPMENT				\$0	\$486	\$456
SPECIAL ITEMS OF EXPENSE ⁴				\$0	\$0	\$0
TOTAL STATE OPERATIONS EXPENDITURES				\$0	\$715	\$685
SOURCE OF FUNDS						
	APPROPRIATION					
	ORG	REF	FUND			
GENERAL FUND						
SPECIAL FUNDS						
FEDERAL FUNDS						
OTHER FUNDS (SPECIFY)						
REIMBURSEMENTS	1880	501	0995	\$0	\$715	\$685

Fiscal Detail (Continued)

LOCAL ASSISTANCE AND DETAIL OF STAFF BENEFITS AND PERSONAL SERVICES

DF-46 (WORD/EXCEL) (REV 07/06)

LOCAL ASSISTANCE							
SOURCE OF FUNDS	APPROPRIATION						
	ORG	REF	FUND				
GENERAL FUND							
SPECIAL FUNDS							
FEDERAL FUNDS							
OTHER FUNDS (SPECIFY)							
REIMBURSEMENTS							
DETAIL OF SALARIES AND WAGES							
CLASSIFICATION ⁵	POSITIONS			SALARY/RANGE	AMOUNT (Whole Dollars)		
	CY	BY	BY + 1	(Whole Dollars)	CY	BY	BY + 1
Adm Law Judge II	0.0	1.0	1.0	\$8,125 - \$9,832	\$0	\$107,496	\$107,496
Legal Secretary (B)	0.0	1.0	1.0	\$3,190 - \$3,878	\$0	\$42,204	\$42,204
Staff Service Analyst	0.0	0.6	0.6	\$2,817 - \$4,446	\$0	\$24,213	\$24,213
Temporary Help							
TOTAL SALARIES AND WAGES ⁷	0.0	2.6	2.6		\$0	\$173,913	\$173,913
STAFF BENEFITS DETAIL (WHOLE DOLLARS)					CY	BY	BY + 1
OASDI					\$0	\$13,304	\$13,304
HEALTH INSURANCE					0	18,817	18,817
RETIREMENT ⁶					0	28,817	28,817
WORKERS' COMPENSATION					0	1,610	1,610
INDUSTRIAL DISABILITY LEAVE					0	94	94
NON-INDUSTRIAL DISABILITY LEAVE					0	661	661
UNEMPLOYMENT INSURANCE					0	458	458
OTHER					0	77	77
TOTAL ⁷					\$0	\$63,838	\$63,838

**SUPPLEMENTAL INFORMATION
DF-46 (WORD/EXCEL) (REV 07/08)**

Please report dollars in thousands.

DEPARTMENT: State Personnel Board	BCP No: 2		FISCAL YEAR: 2009-10
	CURRENT YEAR	BUDGET YEAR	BUDGET YEAR ONE
PROPOSED EQUIPMENT			
TOTAL	\$0	\$0	\$0
PROPOSED CONTRACTS (BOTH EXTERNAL AND INTERDEPARTMENTAL)			
TOTAL	\$0	\$0	\$0
ONE-TIME COSTS (LIST BY ITEM)			
Computer/Printer	0	6	0
Furniture/Supplies	0	3	0
Modular Furniture	0	21	0
TOTAL	\$0	\$30	\$0
FUTURE SAVINGS			
TOTAL	\$0	\$0	\$0
FULL-YEAR COST ADJUSTMENTS			
TOTAL	\$0	\$0	\$0
FACILITIES/CAPITAL COSTS⁸			
Modular Furniture (one-time costs)		21	
TOTAL	\$0	\$21	\$0

ADDITIONAL ADJUSTMENTS OR INFORMATION (Use this space for any other supplemental information.)

¹ Itemized detail on page B-2 by classification (as in Salaries and Wages Supplement)

² Provide detail on page B-2.

³ Provide list on page B-3.

⁴ Special Items of Expense must be titled. Please refer to the Uniform Codes Manual for a list of the standardized special items of expense that may be used.

⁵ Use standard abbreviations per the Salaries and Wages Supplement. Use footnotes to reflect any effective date or limited term if position is not proposed for a full year. Note: Information provided should appear in the same format as it would on the Schedule 2 (Changes in Authorized Positions).

⁶ List type of retirement, i.e., miscellaneous, safety, industrial, etc.

⁷ Totals must be rounded to the nearest thousand dollars before posting to page B-1.

⁸ Indicate one-time or ongoing.

**STATE PERSONNEL BOARD
MEDICAL QUALITY HEARING
APPEALS WORKLOAD CHART
FY 2009-10 BUDGET CHANGE PROPOSAL**

Medical Quality Hearing Admin Duties	Fiscal Year 2008-09*			Fiscal Year 2009-10		
	Staff Hours	Units Per Year	TOTAL HOURS	Staff Hours	Units Per Year	TOTAL HOURS
Administrative Law Judge						
Review case and prepare for hearing	8	30	240	8	30	240
Convene Initial 5 member panel/conduct voir dire	8	30	240	8	30	240
Preside over hearing	56	6	336	56	6	336
Review transcripts, exhibits, conduct research, and write a detailed opinion concerning the medical and employment issues arising in the case.	168	6	1,008	168	6	1,008
Travel to and from hearing location	16	6	96	16	6	96
Total			1,920			1,920
Total Hours Required			1,920			1,920
Total Positions Required (Hours 1776)			1.8			1.8
Resources Currently Allocated			0.0			0.0
Permanent			0.0			0.0
Temporary/Overtime			0.0			0.0
Positions Requested			1.0			1.0
Legal Secretary						
Case set up: Create file/update database/prepare initial correspondence/calendar applicable timelines	3	30	90	3	30	90
Engage and Coordinate with IMQ for practice specialty, hearing region, start date and number of days required	4	30	120	4	30	120
Schedule/arrange for participation of 5 physicians with requisite qualifications	4	30	120	4	30	120
Schedule Panel Voir Dire with Physicians, ALJ, and Attorneys	5	30	150	5	30	150
Schedule Hearing with all Parties and Physicians/Locate Hearing Space/Prepare Hearing Notices	14	30	420	14	30	420
Send notification of hearing letters to all parties of interest	1	30	30	1	30	30
Communication with physicians	6	30	180	6	30	180
Support for physicians: receive dictation, prepare, review, and edit peer review decisions/make travel arrangements/Coordinate Execution of Physician Decision/Process Travel Claims	39	6	234	39	6	234
Support for ALJs: review, edit, final preparation of ALJ written decision/finalize and issue Interim orders/make travel arrangements/manage correspondence/process travel claims	50	6	300	50	6	300
Organize, Log, and File all Hearing Exhibits	6	6	36	6	6	36
Transmit Physician and ALJ decisions to Board for final review and determination, monitor timeliness of determination, issue final determination to all parties/close, store, and archive file	4	6	24	4	6	24
Track ALJ/Physician Billable Hours and associated hearing costs/Provide to ASD Fiscal Office	6	30	180	6	30	180
Total			1884			1884
Total Hours Required			1884			1884
Total Positions Required (Hours 1776)			1.1			1.1
Resources Currently Allocated			0.0			0.0
Permanent			0.0			0.0
Temporary/Overtime			0.0			0.0
Positions Requested			1.0			1.0

A. NATURE OF REQUEST

Provide 1.0 Administrative Law Judge II, 1.0 Legal Secretary, .6 Staff Service Analyst positions and \$715,000 reimbursement authority to perform medical quality hearings for the California Department of Corrections and Rehabilitation (CDCR) as provided for in the order issued by the U.S. District Court in *Plata v. Schwarzenegger, et al.* Specifically, the order of the court requires SPB to create a new program within the Appeals Division and hire additional staff to fulfill this obligation.

This proposal would provide medical quality hearings exclusively for CDCR.

B. BACKGROUND/HISTORY

The State Personnel Board (SPB) is the neutral body responsible for administering a merit system of civil service employment within California state government. The SPB's authority to enforce the civil service laws and SPB rules derives from Government Code sections 18577 and 18701. As part of this responsibility, the State Personnel Board (SPB) Appeals Division receives appeals concerning disciplinary action taken against employees within the state civil service system.

In the matter of *Plata v. Schwarzenegger, et al.*, the court appointed a Receiver to improve medical care and treatment for inmates incarcerated within the California prison system. The Receiver determined that the process of reviewing the medical care provided by CDCR physicians, that in turn required a subsequent disciplinary hearing before the SPB, was inadequate and cumbersome. On May 23, 2008, at the Receiver's request, the court ordered SPB to develop and implement a plan for conducting medical quality hearings that would include any related disciplinary action. The hearings are to be modeled after the peer review process provided for in Business and Professions Code sections 809 et seq.

Pursuant to the court's order, SPB will schedule hearings within 60 days of the file date for appeals involving medical quality concerns by CDCR physicians. Upon receipt of an appeal, SPB staff must retain 5 neutral, objective physicians to create a peer review panel for evaluating the medical quality issues in question. SPB will then assign an Administrative Law Judge (ALJ) to conduct the proceedings. The ALJ will convene the panel of 5 physicians for voir dire by the litigants. At the conclusion of voir dire, each party will strike one of the physicians, leaving a panel of 3 for the hearing itself.

The role of the ALJ during the course of the scheduled hearing is to direct all procedural aspects and make appropriate evidentiary rulings. The peer review panel will evaluate the sufficiency of the evidence presented in connection with CDCR's action to restrict, suspend, or revoke the medical privileges of the physician employee. At the conclusion of the hearing, the peer review panel will prepare a written decision regarding the quality of medical care at issue and the appropriateness for restricting privileges. This written decision will be prepared with the assistance of SPB staff. The ALJ will subsequently prepare a separate proposed decision discussing affirmative defenses raised by the appellant and the sufficiency of the evidence relied upon by the peer review panel. Both decisions must be delivered to the Board within 90 days after the hearing.

C. STATE LEVEL CONSIDERATIONS

The California Constitution and Government Code require SPB to receive appeals from employees within state civil service who are being subjected to disciplinary action. The federal court and the Receiver's Office have determined that a hearing process integrating medical quality peer review and SPB disciplinary hearings is necessary to achieve constitutionally required reform in the provision of medical care within the California prison system.

D. FACILITY/CAPITAL OUTLAY CONSIDERATIONS

SPB may not be able to accommodate all proposed positions within its current allotted space. We will pursue renting additional office space if we cannot accommodate staff within the SPB headquarters facility.

E. JUSTIFICATION

The Receiver's Office indicates SPB will receive an average of 30 medical quality appeals per year with an average of six cases proceeding to hearing. Hearings concerning medical quality issues and related employee discipline are complicated, challenging, and time consuming. These hearings will require a minimum of 7 days though it is not uncommon for cases involving numerous medical issues to take 3 or 4 weeks. After completion of the hearing, the assigned ALJ must review the transcript and exhibits, conduct research, and write a detailed opinion concerning the medical and employment issues arising in the case. The ratio for writing time to hearing time for these cases is normally 3 to 1.

Conservatively assuming that a medical quality hearing will last 7 days (56 hours), the time necessary to write a decision would be 168 hours. Therefore, each case will take 224 hours of hearing and writing time. In addition each case will take an average of 16 hours of traveling to and from the hearing location. The total average number of hours necessary to hear a medical quality case is 240. All 30 appeals will require the ALJ to expend 1 day (8 hours) in advance of the hearing to review the case and prepare for the hearing, and 1 day (8 hours) to convene the initial 5 member panel and conduct the voir dire.

Accordingly, 6 appeals multiplied by 240 hours equate to 1,440 hours and 16 hours for 30 appeals equate to 480 hours, totaling 1,920 hours. One Personnel Year (PY) is equivalent to 1,776 hours. 1,920 hours divided by 1,776 is 1.0 ALJs.

Further, implementation of the court's order will require administrative support. Given the short time frame to hold the medical quality hearing, substantial time must be expended to schedule 5 physicians with the requisite qualifications to participate in each medical quality hearing throughout the state. The process for scheduling and issuing requisite hearing notices for a medical quality hearing deviates from existing procedures. To ensure compliance with the court order, staff dedicated to the medical quality hearing process must operate independent from existing appeal processes. Administrative support must be provided to the physicians for the preparation, review, and editing of peer review decisions as well as the ALJ's proposed decisions. Accordingly, 1.0 Legal Secretary position is required to support 1.0 ALJ and the scheduling of 30 panels totaling 150 physicians in varying locations throughout the state.

This proposal also requests an augmentation of .6 positions within the Administrative Services Division to provide for growth in this reimbursable program. Further, this proposal will allow timely compliance with processes and procedures set by control agencies, including the Department of Finance, Department of General Services, and the State Controller's Office.

The administrative workload to support reimbursable programs includes the following:

- Recruitment
- Hiring and support of reimbursable positions
- Contracting
- Billing, collection, and overdue payment follow up
- Continuous cash flow monitoring
- Constant monitoring of reimbursable income and expenditures
- Contracting and purchasing for services, supplies, and equipment
- Facilities management, mail, and reproduction services

F. OUTCOMES AND ACCOUNTABILITY

Approved positions will be recruited and interviewed for in advance of the new fiscal year. New staff will be hired upon enactment of the budget. The new staff will receive immediate training specific to their assignment. Performance will be measured based upon number of cases received, the timeliness for scheduling each case for hearing, and the timeliness for delivery of written decisions to the 5-member Board. The Receiver's office, CDCR, and the Union of American Physicians and Dentists will also be surveyed for customer satisfaction. Quarterly reports based upon collected data will be prepared for SPB management.

G. ANALYSIS OF ALL FEASIBLE ALTERNATIVES

Approval of this request will add positions to the SPB Appeals Division and Administrative Services Division. These divisions are currently unable to absorb the court ordered program of conducting medical quality hearings. There are no available vacancies at the ALJ, Legal Secretary, or Staff Services Analyst levels. Current staffing levels will not allow the SPB Appeals Division to comply with the order of the U.S. District Court.

1. Approve SPB's request for \$715,000 reimbursement authority and to permanently hire 1.0 ALJ II, 1.0 Legal Secretary and .6 Staff Services Analysts.

Pros: Ensures sufficient staffing to meet the timeframes imposed by court order. This alternative provides for an additional 2.6 positions and will allow SPB to provide a forum for conducting medical quality hearings as required by court order.

Cons: Increased reimbursement authority.

2. Approve expenditure authority for fewer staff than requested.

Pros: This alternative would alleviate some of the additional workload resulting from the court's order.

Cons: With only partial approval, SPB may fail to comply with the court's order resulting in further legal action by the Receiver's office.

3. Reject SPB's request altogether.

Pros: No increase in reimbursement authority.

Cons: This alternative would cause SPB to violate the court's order and may subject SPB to court ordered sanctions.

H. TIMETABLE

With approval, SPB will begin to advertise, recruit, and select personnel to begin employment.

I. RECOMMENDATION

Approve alternative 1 and authorize 1.0 Administrative Law Judge II, 1.0 Legal Secretary, .6 Staff Service Analyst, and \$715,000 reimbursement authority.

EXHIBIT B

**CALIFORNIA
PRISON HEALTH CARE
RECEIVERSHIP CORP.**

J. Clark Kelso
Receiver

November 10, 2008

Michael C. Genest, Director
Department of Finance
State Capitol, Room 1145
Sacramento, CA 95814-4998

Suzanne Ambrose, Executive Officer
California State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

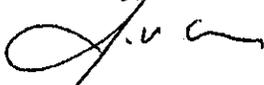
Dear Mr. Genest and Ms. Ambrose,

It is my understanding that the State Personnel Board (SPB) has submitted a Budget Change Proposal (BCP) for 1 Administrative Law Judge II, 1 Legal Secretary, .6 Analyst, and \$715,000 to fund *Plata* Clinical Competency Hearings. This letter affirms that the Receiver does not support SPB's BCP for the following reasons:

- a) SPB has grossly over-estimated the staffing and funding necessary for Clinical Competency determinations and at the same time has not considered, in its submission, the significant workload reduction that the Professional Practice Executive Committee (PPEC) process will bring to SPB.
- b) The Department of Finance has taken the position that the Receiver must fund the SPB request out of its existing budget, disregarding the fact that the State failed for years to establish an adequate peer review process.

Until the above issues are resolved, the Receiver cannot support SPB's BCP regarding Clinical Competency Hearings.

Sincerely,



John Hagar
Chief of Staff

cc: J. Clark Kelso, Receiver, California Prison Receivership
Linda Buzzini, Staff Attorney, California Prison Receivership
Martin Dodd, Counsel for the Receiver, Futterman & Dupree LLP
Joyce Hadnot, Chief Clinical Operations Support Branch, California Prison Health Care Services

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