



<p><i>Meeting Date</i> 11/06/13 <i>Agenda Item</i> #5</p>

MEMORANDUM

Date: November 6, 2013
To: CCCERA Board of Retirement
From: Kurt Schneider, Deputy Retirement Chief Executive Officer
Subject: Physicians Call Back Pay (Pay Code D16)

Earlier this year it was discovered that "call back pay", which is generally considered overtime and excluded from compensation earnable was being reported by the County as pensionable for some job classifications, and the County had been collecting contributions on these pay items. After analysis, staff notified the County that contributions should not be taken on these pay items, and members who received these pay items were notified that these pay items would not be included in the calculations of their retirement allowance. Members receiving this pay item were also notified of the same.

Members of the Physicians and Dentists Organization of Contra Costa ("PDOCC") requested further analysis of "Physician Call Back Pay," County Pay Code D16. CCCERA staff, including legal counsel, met with and reviewed information provided by the doctors to ascertain whether pay item D16 was for "scheduled" work on the weekend. Enclosed please find CCCERA's written determination dated August 23, 2013.

The physicians asked to address the Board concerning this issue, and have submitted the enclosed three letters from PDOCC representatives. Among other issues addressed in the letters, PDOCC has raised a concern regarding whether CCCERA may exclude call back pay at all in light of the "Stay Order" in the AB 197 lawsuit. Staff is working to analyze the issues that were raised in these letters.

Recommendation: Refer the matter to legal counsel for further analysis.



August 23, 2013

Dr. David MacDonald (Via e-mail)

Re: Physician Call-Back Pay (County Pay Item D16)

Dear David:

Thank you for working with CCCERA staff on the Physician Call-Back Pay issue. Over the course of the past few months, we have had several meetings with you to gather information and gain a better understating of Physician Call-Back Pay.

This letter is to follow-up on the meeting held on August 8, 2013 and documentation provided to CCCERA subsequently by Dr. David Goldstein, Chief Medical Officer of the Contra Costa Regional Medical Center and Health Centers. We appreciate all the information and documentation you and Dr. Goldstein have provided. As agreed, we have reviewed documentation pertaining to one member (with the member's consent) as a sample.

As we have discussed, in late 1997 when the CCCERA Retirement Board first considered including some call-back pay as "compensation earnable" for retirement purposes, the Board adopted a policy that included call-back pay for physicians only if it was "pay for scheduled work on a weekend". Since 1998, however, the County reported all call-back pay as pensionable. In June 2013, CCCERA informed the auditor-controller's office and active CCCERA members who have received call-back pay that call-back pay will no longer be included as compensation for retirement purposes and should not be reported as pensionable to CCCERA.

The purpose of the meeting in August 2013 was to provide information regarding whether and how Physician Call-Back Pay (County pay code D16) is scheduled to be worked. If scheduled on a weekend, the Physicians argued, the call-back pay should be included for retirement purposes. Dr. Goldstein presented timesheets and on-call schedules for a sample member during a sample time period to show what work was scheduled on a weekend. Additional timesheets and schedules were provided to CCCERA in the days and weeks following the meeting.

CCCERA staff has reviewed the documentation provided and found that, with some minor exceptions, the on-call time on the timesheets for weekends and holidays corresponds to the on-call schedules for the sample member during the sample time period. The call-back pay, on the other hand, does not correspond to any time on the schedule (other than it was, for the most part, during time that the member was scheduled to be on-call). Since we cannot confirm that any of the call-back pay was scheduled to be worked on a weekend, we cannot include any compensation reported under pay code D16 as compensation for retirement purposes under the current compensation policy.

Dr. David MacDonald
August 23, 2013
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As we discussed, the argument that call-worked (i.e., call back) is an extension of being on call and should be included on that basis is something the Retirement Board considered in 1997 and reaffirmed in 1999. Time for being on-call was to be included, while time for being called back (even if it results from being on-call) is *overtime* and pay for such time should be excluded.

As mentioned during our meeting, since call back pay is a form of payment for *overtime* work, regular overtime rules apply. Under statutes and Board policy, overtime is generally excluded from compensation for retirement purposes (Govt. Code § 31461.6). The exception is that pay for mandatory overtime that the employer requires all employees in the same job classification to work is included in compensation for retirement purposes.¹ As we discussed, the County is well aware of this overtime exclusion and the exception. For the purposes of this inquiry, however, CCCERA staff has limited its inquiry to whether or not any of the call-back pay is “pay for scheduled work on a weekend” as directed by the standard adopted by the Board in 1997.

If you would like the Retirement Board to reconsider its position, please let me know, so we can put the matter on a future Board agenda.

Sincerely,



Marilyn Leedom
Retirement Chief Executive Officer

Cc: Dr. David Goldstein

¹ Government Code Section 31461.6 defines “compensation earnable” follows: “‘Compensation earnable’ shall not include overtime premium pay other than premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under [the Fair Labor Standards Act].” Government Code Section 31461 defines “compensation earnable” as: “the average compensation . . . for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay.” We have referred you to the *Stevenson* case, *Stevenson v. Board of Retirement of OCERS*, 186 Cal. App. 4th 498 (2010)), in which the court upheld the retirement board’s determination that overtime pay was not “compensation earnable” because it was not required of and worked by all members of the job classification.

October 24, 2013

Board of Retirement
Contra Costa County Employees' Retirement Association
1335 Willow Way, Suite 221
Concord, CA 94520

Re: Physician Call-Back Pay

Dear Members of the Board:

We write on behalf of the Physicians and Dentists Organization of Contra Costa ("PDOCC") regarding CCCERA's recent changes to how it treats "physician call-back pay" in pension calculations. In particular, we ask that the Board reconsider CCCERA staff's decision to now exclude all forms of physician call-back pay, recorded under County pay code D16, from pension benefits. This action does not comport with the CCCERA's historic treatment of call-back pay, disregards the nature of call-back work for CCCERA members represented by PDOCC, and contradicts prior Board policy regarding call-back pay.

By way of background, in its implementation of *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement of Ventura County Employees' Retirement Assn.* (1997) 16 Cal.4th 483, the Board in 1997 determined that what was then County pay code 19 for "Call Back/Weekend" would be included as retirement compensation. As it was described in the policy adopted by the Board on December 5, 1997, this was "[p]ay to med. Personnel if called in on weekend or after hours due to patient illness" and the policy further stated that it would "[i]nclude those that are scheduled" but "[e]xclude those not scheduled." (See Attachment A.) Subsequent documents identifying County pay code 19 as includible pay for purposes of implementing the *Ventura* decision—e.g., the *Paulson* settlement agreement—note that "[w]e understand that this pay item has been used to report time both scheduled and unscheduled. In [*sic*] this pay item should be used to report pay for scheduled work on a weekend." (Attachment B.)

However, for reasons that remain unexplained to PDOCC, it appears that CCCERA has collected contributions on all call-back pay since implementing its policy in 1997 and has included call-back pay as compensation in retirement calculations. This has been the case for years now and numerous physicians and other employees have retired with call-back pay included in their pension calculations.

Although CCCERA has for more than 15 years collected contributions on call-back pay and has included call-back pay in pension calculations, on June 19, 2013, CCCERA announced that it

would cease doing so. Additionally, CCCERA made its decision retroactive to April 2013, stating that retirement calculations finalized in April 2013 already excluded these payments. Given the extensive period of time that CCCERA has collected contributions on call-back pay and included it in pension calculations, this sudden shift came as a surprise to many CCCERA members, and it was made without any warning or notice to them. This change significantly affected the retirement benefits of several employees—including PDOCC members—who were contemplating or planned on retiring and who have opted not to retire at this time because of CCCERA's apparent change in policy.

Upon hearing about the retirement system's new treatment of call-back pay, PDOCC contacted CCCERA to understand why this change had been made and to explain why PDOCC believed physician call back should continue to be included as pensionable. After several meetings with CCCERA staff to discuss the treatment of physician call-back pay, CCCERA staff informed PDOCC that it would not include any physician call-back pay as compensation for retirement purposes. Staff informed PDOCC that "[s]ince we cannot confirm that any of the call-back pay was scheduled to be worked on a weekend, we cannot include any compensation reported under pay code D16 as compensation for retirement purposes under the current compensation policy." (Attachment C.)

PDOCC submits that there are several problems with CCCERA staff's determination regarding physician call-back pay.

First, CCCERA has for many years now been collecting contributions and making pension calculations based on the inclusion of physician call-back pay. Given CCCERA's longstanding practice, PDOCC members have come to understand that this was consistent with CCCERA policy and to rely on the inclusion of physician call-back pay in their future pension calculations. At no point were PDOCC or PDOCC members informed by CCCERA or the County that physician call-back was not pensionable or that scheduled and unscheduled call back needed to be recorded separately in order for call back to be pensionable. For CCCERA to change direction now and exclude call-back pay would be inequitable and unfair to longstanding CCCERA members who understood from the retirement association's own actions that it would be included. Moreover, since this present change affects so-called "legacy" members (as opposed to new "PEPRA" members), it would be contrary to the Board's decision to stay all changes to its treatment of retirement compensation, including call-back pay, while the A.B. 197 litigation is pending.

Second, for physicians, there is little difference between on-call work and call-back work—the primary distinction being whether the physician is physically at the facility or not. Because on-call duty and call-back work (also referred to by physicians as "call worked") are inextricably intertwined, there is good reason to include them both as pensionable compensation.

As a required part of their duties, physicians in the Family Medicine, Surgery, Internal Medicine, and Critical Care departments must perform both on-call and call-back work. Each physician is scheduled to be on call, which requires them to provide consultation and management of patient care issues by phone and to be available to come in to the hospital or clinics in person. Physicians on call, then, are actively working while on call and not simply waiting to be called in to

perform work. When they do come in to the facility while on call, this is an extension of the patient management they are already performing remotely, and at all times the compensation they receive is for necessary services rendered, consistent with CCCERA's policy for determining which pay items are pensionable compensation. Because this work is normally expected to be worked, occurs within a scheduled period of time, and simply reflects a difference in whether the physician is performing the work in person or remotely, it should not be excluded, just as on-call pay is not excluded.

Third, CCCERA staff's decision contradicts CCCERA's policy regarding scheduled weekend physician call back. (See Attachment A.) CCCERA's current policy is that scheduled physician call-back work is includible compensation. But CCCERA's decision excludes all physician call back, even scheduled weekend call back, making it overbroad and a violation of CCCERA's own policies.

When a physician is scheduled to be on call during a weekend or holiday, the physician is required to come in to the hospital to manage inpatient services, and this is an inherent part of the weekend on-call duty. Physicians with weekend on call work must come in to the facility, because they are the only physicians in charge of patient care during that time. Accordingly, they perform rounds and other care management that is normally performed by on duty physicians during the regular workweek. Thus, unlike being on call during the regular workweek, physicians on call during the weekend must be physically present for some portion of the on-call time.

Weekend call-back work is scheduled, because the call worked is a required component of weekend on call, which is scheduled as discussed above. Every time a physician has weekend on call duty, he or she comes in to the facility in the morning to do rounds and other work, recording this time as physician call worked, and only afterwards is the physician free to attend to other things. The only instance in which weekend call worked would not be scheduled is if the physician were called in unexpectedly either before or after having finished his or her duties at the facility for the day. However, this has historically been a small percentage of weekend call worked.

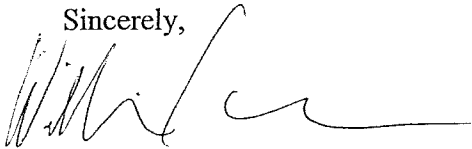
Physician on call and call back at Contra Costa County has been conducted in this manner for decades, including well before the adoption of CCCERA's 1997 policy. In other words, this is precisely the system in place when CCCERA adopted its policy in 1997, and this is the work that was envisioned to be included when CCCERA decided that scheduled weekend work for physicians must be included in pension calculations.

There is no reason this scheduled weekend call back should be excluded given CCCERA's policy. The justification offered in CCCERA's August 23 letter is that staff "cannot confirm that any of the call-back pay was scheduled to be worked on a weekend," however this is not the case. Although all physician call-back pay has been reported together, it is still possible to compare a retiring physicians' call worked with his or her schedule and time sheets to determine what portion of it was worked on a weekend or holiday and thus performed as required by the on-call duty. To the extent some of this time is the result of unscheduled call back work also performed on the weekend, that will constitute only a small portion of this time and it may be possible to estimate or agree to some average percentage of time that would be attributable to unscheduled weekend call.

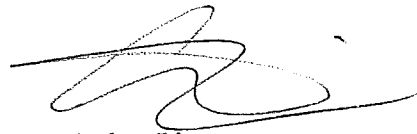
Finally, there has been no indication what CCCERA intends to do with the contributions it has been collecting from employees all these years but will not honor as includible for retirement purposes. It would be entirely unfair for CCCERA to now refuse to include call-back pay as pensionable but nevertheless keep employee contributions made to fund this benefit.

Thus, we hope that you will reconsider CCCERA staff's decision on this matter and include physician call-back pay for retirement purposes. Thank you for your consideration, and we look forward to discussing the matter more fully with you at the Board's November 4, 2013 meeting.

Sincerely,



William Corman
BOGATIN, CORMAN & GOLD



Arthur Liou
LEONARD CARDER, LLP

CONTRA COSTA COUNTY EMPLOYEES RETIREMENT ASSOCIATION

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December 5, 1997

The Board of Retirement met in ^{Special} regular session at 9:00 a.m. on Friday, December 5, 1997 in the Conference Room of the Contra Costa County Employees' Retirement Association, 1355 Willow Way, Suite 221, Concord, CA.

Present: Richard Cabral, R. William Cullen, Ed Fleming, F. Robert Koenig, Louis Kroll, Mohammed Souhayer for Alfred P. Lomeli, Sharon Naramore, Jerome E. Hatfield, and Helen Shea

Staff: Pat Wiegert, Retirement Administrator; Charly Barron, Assistant Retirement Administrator; Kathy Somsen, Retirement Benefits Manager; Rick Koehler, Retirement Accounting Manager; Toni Warren, Retirement Office Services Manager; Ed Lane, Deputy County Counsel

Guests:

Paul Angelo
Bonnie Allen
Vic Westman
Stan A. Williams
Bob Rey
Mary Dressel
Mary Lou Williams
Allen Little
Kathy Foster
Sheila Wendler
Alan Elnick
Debbie Ratcliff

Representing:

William M. Mercer
CCC Sanitary District
County Counsel's Office
SELF
Local #1230
Lewis & Summers Public Relations
Retiree's Association
Contra Costa Fire
Staff
Staff
PDOCC
CCC Sanitary District

Ventura Decision - Potential Cost

Angelo reviewed his memo which provided revised cost estimates based on the Board's action at its November 25 meeting. He noted that the cost to apply the decision retroactively was based on the assumption that it would apply three years retroactively to all current retirees. In response to a question as to whether the county's 50% subvention of employee contributions was included in his estimates, Angelo stated the subvention was included, and that its removal would not materially change the numbers. He also cautioned that the estimated cost of including lump sum payments at termination was probably understated because this change in the treatment of accrued time will likely influence future decisions to take or to accumulate vacation time.

Ventura Decision - Criteria for Inclusion of a Pay Item

It was M/S to adopt the policy with amendments to refer to the Board's concern for continued actuarial soundness and to include Holiday Pay as an example of types of cash payments. During discussion a question arose as to the proposed effective date of October 1, 1997 versus August 14, 1997, the date the Ventura decision was handed down.

ATTACHMENT A

CONTRA COSTA COUNTY EMPLOYEES RETIREMENT ASSOCIATION

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December 5, 1997

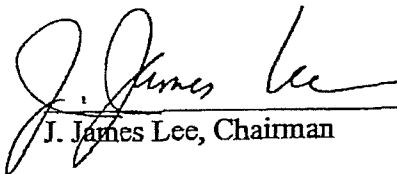
It was noted that the Walden suit was entered between those two dates: September 15, 1997. Selecting an October 1 effective date would leave the group of people who retired between September 15 and October 1 with little legal recourse than to sue as a separate class. After the group agreed that the class in the Walden case could be amended to include this two-week period, the motion carried.

In response to further discussion on the intent behind Principle # 4 as drafted, it was M/S/C to amend Principle #4 to further clarify that only the portion of a lump sum payment at termination which is attributable to the last year (or last three years in the case of Tier II members) is includible as compensation for retirement purposes.

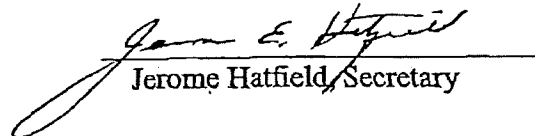
Fleming was not present for subsequent discussion and voting.

Wiegert note that she understood pay items called "FLSA Overtime" and "Overtime Adj. Curr Yr." were not strictly overtime as we would use that term, but rather they denoted time worked which was in excess of the FLSA definition of overtime. Based on this, she recommended that these two pay items be included in compensation for retirement purposes. It was M/S/C to include the pay item "FLSA Overtime" in compensation. It was M/S/C to include the pay item "Overtime Adj. Curr. Yr" in compensation.

There being no further business to come before the Board, the meeting was adjourned.



J. James Lee, Chairman



Jerome Hatfield, Secretary

**COUNTY DIFFERENTIALS AND PAY ITEMS
NOT INCLUDED IN RETIREMENT "COMPENSATION"
1997**

CD TITLE and EXPLANATION

- 10
- NO 01 Taxable Auto
Additional mileage that Assessors receive (2 cents/mile), in excess of the Fed. maximum. Also includes \$3/day charged to employees using a county car to commute.
- YES 13 14 Lump Sum payment - Include that which applies to the includable
Nurses Weekend Bonus
Pay to nurses who work a weekend shift ~~that otherwise wasn't scheduled.~~
- YES 15 Holiday Pay
Pay for hours not otherwise scheduled to work. (1996)
Search Warrant Pay (1997)
- YES 16 Nurses Longevity
Same as Management Pay
- YES 18 Mental Health
MS Lead Differential
Paid to mental health lead positions under terms of the Local 1 contract.
- YES 19 Call Back/Weekend
Pay to med. personnel if called in on weekend or after hours due to patient illness. *Includes those that are scheduled. Excludes those not scheduled.*
- NO 21 FLSA Overtime
Additional pay eligible under FLSA but considered overtime by employer.
- NO 22 Overtime Adj. Prior Yr.
Payroll adjusting entry.
- NO 23 Overtime Adj. Curr. Yr.
Payroll adjusting entry.
- NO 25 Gross Pay Adj.
Used for multiple purposes. Negative offset for SDI buybacks, late time reporting, late WC clearances. All require negative offset to previously taxed wages that are to be changed to nontaxable.
- NO 26 AWOP (negative number)
- YES 27 #2 Base Pay
Used when an employee works a portion of a month at different pay rate. Working out of class or mid-month promotions.
- YES 30 Training Differential
Flat monthly amount paid to Sheriff staff for periods they train staff.
- YES 32 On Call Pay
Pay for being in "on call" status during normal times off. *Include scheduled "on call" status Exclude*
- YES 34 ER Bonus Pay
Emergency room differential

CD TITLE and EXPLANATION

- NO 35 Workers Comp Pay
Paid by WC on account of illness and in lieu of salary. Not taxed.
- YES 37 Word Processing Differential \ _____ Pay for work on keyboards/VDT's
- YES 38 VDT Differential /
- NO 40 Reserve Pay
The regular pay of hourly firefighters working as Reserves. Hourly firefighters are not covered by CCCERA.
- YES 41 OES Differential
Pay for assignment to Office of Emergency Services.
- YES 42 Grade All Differential
Pay for work on a particular piece of equipment.
- YES 43 Investigator Pay
~~District Attorney~~ investigators Sheriff's
- YES 44 Charge Nurse Differential
Assignment to charge nurse duties
- YES 45 Building Inspector Differential
self explanatory
- YES 47 Acting Pay
Pay for work in a temporary assignment - to San Ramon PP only
- YES 49 Double Shift Premium
self explanatory
- YES 52 Shift Pay \ _____ Pay for working ^{any} extra shift after 5:00pm
- YES 53 Shift Pay Adjustment /
- YES 54 Hazard Duty Pay \ _____ Pay for exposure to hazards on the job.
- YES 55 Hazard Pay Adjustment /
- YES 56 Board and Commission Pay
Paid to Board of Supervisors while "sitting" in capacity of a commission. Also to Ret. Bd, Sheriff, Planning Dept & Transportation Dept
- YES 57 Bilingual Pay
Bonus for being bilingual in specified positions.
- YES 58 Truck Allowance
Received by 7 Animal Services and Health Services employees for using a truck while commuting to/from work.
- NO 59 Management Disability Pay
This is in lieu of salary paid to managers under special disability insurance program.
- NO 60 Court Reporter Pay
Per diem paid to hourly court reporters not in CCCERA.

CD TITLE and EXPLANATION

- ES 62 Sale of Vacation
Value of vacation time sold back to county annually.
- ? 63 Vac/PTO Payoff
Lump sum of accumulated, unused vacation, paid upon termination.
- YES 64 Uniform Allowance, Non-Safety
Pay in recognition that uniforms must be worn for the job: plumbers, painters, etc.
- YES 65 Structural Engineer Cert.
Pay for achieving/maintaining this certification.
- YES 67 Officer in Charge
self explanatory
- 69 Canine Allowance
Pay for daily care of assigned dog.
- YES (70) Misc. Differential
Includes performance bonus
- NO 71 Pay in Lieu
Extra amount received by employees who don't receive regular County benefits and aren't covered by CCCERA.
- YES/NO (72) Sickleave Payoff
Paid ~~only~~ to hourly employees, not covered by CCCERA. Also paid on termination to CCCERA members under certain conditions.
- YES 74 ~~Court Appearance Pay~~
~~Treated and paid as overtime. (1996)~~
Advanced Life Support (1997)
- YES 79 Special Bonus
Used to pay bonuses for special assignment.
- YES 83 Evening Clinic Bonus
Similar to shift differential.
- YES 85 Graveyard Pay
Similar to shift differential.
- NO 86 SDI Buyback
Offsetting payments in the state disability ins. pgm. Not wage items.
- YES 87 Rad/Angio Pay
A form of hazardous duty pay.
- YES 90 Phys. Weekend Rounds
A form of shift differential for physicians.
- YES 94 RN Hospital Differential
Registered nurses.
- YES 95 Incident Response Team
Pay for serving on the INC team.
- YES 96 Lead Worker Bonus
self explanatory

MEMO

Date: January 14, 1998

To: Roger Edwards

From: Pat Wiegert *PW*

Subject: County DOE's includible in Compensation under the "Ventura County Decision"

Attached is what we understand to be the complete list of the County's pay items, their DOE code, and an indication of whether or not they are to be reported as "compensation" for retirement purposes pursuant to the Retirement Board's actions on November 25, December 5, and December 9

What's now reported under DOE code 32 (On call Pay) will need to be separated into those pay items that are includible and those which aren't. As I understand it, DOE 32 now includes pay for those times an employee is scheduled to be in "on call" status and pay for time once an "on call" employee is actually called in to work. The first instance is includible compensation, the second is a form of overtime and therefore not includible. Because both types of pay reported under DOE code 32 in the past, the payroll system will need to distinguish between the two in future.

DOE 70 (Miscellaneous) presents a real problem because this, too, could be used to report just about anything. We would prefer that there not be a "Miscellaneous" category at all. This would eliminate the mystery of "What is it?" and avoid the potential for this DOE to be the dumping ground for anything new or unique. If you feel the continued need for a Miscellaneous pay item, we ask that this be included in compensation rather than excluded.

See "Special Notes" on the attached for other pay items of concern,

I understand that Craig was able to handle the problems identified at our recent meeting which had to do with not enough "accumulators" and an old, less than user friendly, payroll system. I understand further that testing of the modifications is being conducted with the hope that it'll all be ready by the February 10 payroll.

I applaud you and Craig for the extraordinary effort you're putting forth on this issue. None of us wanted to be in the position of having to modify the old payroll system when the new PeopleSoft system is just around the corner. Your work is much appreciated!

If you have questions on the attached, give me a call.

attachment



CONTRA COSTA COUNTY
EMPLOYEES RETIREMENT ASSOCIATION
1355 Willow Way, Suite 221, Concord, CA 94520-5728
Telephone: (510) 646-5741. Fax: (510) 646-5747

ATTACHMENT B

**IMPLEMENTING THE "VENTURA DECISION"
 INCLUDIBLE COUNTY PAY ITEMS
 DECEMBER 9, 1997**

Included	Code	Pay Item	Explanation
no	01	Taxable Auto	Additional mileage that Assessors receive in excess of the Fed. Maximum. Also includes \$3/day charged to employees using a county car to commute.
yes	03	Dept Head Auto	Pay for business use of personal auto.
yes	04	Riteoway Pay	Form of hazardous duty pay for work in traffic situations.
yes	05	Longevity Pay	Bonus based upon length of County service.
yes	06	Career Incentive	Similar to Longevity Pay
yes	07	Career Incentive CTG	Similar to Longevity Pay
yes	08	Management Incentive	Similar to Longevity Pay
yes	09	Assessors Education	Bonus for achieving professional certification for certain employees.
yes	10	Holiday Pay	Pay for work on a scheduled holiday.
yes	11	Agric.Differential	For possession of Commisioner License
yes	12	Wght/Meas Incentive	For possession of Weights and Measures License
yes *	13	Lump Sum Payment	
yes	14	Nurses Weekend Bonus	Pay to nurses who work a weekend shift
yes	15	Holiday Pay (1996)	Pay for hours not otherwise scheduled to work.
yes	15	Search Warrant Pay (1997)	Animal Services employees for special assignments
yes	16	Nurses Longvity	Same as Management Pay
yes	17	Watch Commander	Safety category, form of shift differential
yes	18	Mental Hlth Lead Diff.	Paid to mental health lead positions under terms of The Local 1 contract.
yes *	19	Call Back/Weekend	Pay to med. Personnel if called in on weekend or After hours due to patient ilnes.
yes	20	Scheduled FLSA	Overtime that's normally expected to be worked
no	21	FLSA Overtime	

no	22	Overtime Adj. Prior Yr.	Payroll adjusting entry
no	23	Overtime Adj. Curr. Yr.	Payroll adjusting entry
no *	25	Gross Pay Adj.	Used for multiple purposes. Negative offset for SDI Buybacks, late time reporting, late WC clearances. All require negative offset to previously taxed wages that are to be changed to nontaxable. At times has been used for regular or differential pay missed in prior periods.
no	26	AWOP	Reported as a negative number.
yes	27	#2 Base Pay	Used when an employee works a portion of a month at different pay rate. Working out of class or mid-month promotions.
yes	30	Training Diff.	Flat monthly amount paid to Sheriff staff for periods they train staff.
yes	31	BLS Cert-Fire	Basic Life Support Training bonus
yes *	32	On Call Pay	Pay for being in "on call" status.
No *	new	On-Call Overtime	Pay for work when actually called in while in "on call" status.
yes	33	EMT Diff-Fire	Emergency Medical Technician bonus
yes	34	ER Bonus	Emergency room differential
no	35	Workers Comp Pay	Paid by WC on account of illness and in lieu of salary. Not taxed
yes	36	Retirement Allotment	
yes	37	Word Processing	Pay for work on keyboard/VDT's
yes	38	VDT diferential	Pay for work on keyboard/VDT's.
yes	39	Prof Acct Differential	CPA/CIA/CMA certification
no	40	Reserve Pay	The regular pay of hourly firefighters working as Reserves. Hourly firefighters are not covered by CCCERA.
yes	41	OES Differential	Pay for assignment to Office of Emergency Services.
yes	42	Grade All Differential	Pay for work on a particular piece of equipment.
yes	43	Investigator Pay	Paid to Sheriff's investigators.
yes	44	Charge Nurse Diff	Assignment to charge nurse duties.
yes	45	Building Inspector Diff.	Self-explanatory

yes	47	Acting Pay	Pay for work in a temporary assignment. Currently paid to San Ramon firefighters only.
Yes	48	Performance Stipend	
yes	49	Double Shift Premium	self explanatory
yes	52	Shift Pay	Pay for working any shift after 5:00 p.m.
yes	53	Shift Pay Adj.	Adjustment to Shift Pay previously recorded.
yes	54	Hazard Duty Pay	Pay for exposure to hazards on the job.
yes	55	Hazard Pay Adjustment	Adjustment to Hazard Duty Pay
yes	56	Board and Commission	Paid to Board of Supervisors while "sitting" in the capacity of a commission. Also paid to Ret. Bd. Sheriff, Planning Dept. and Transportation Dept.
yes	57	Bilingual Pay	Bonus for being bilingual in specified positions
yes	58	Truck Allowance	Received by 7 Animal Services and Health Services employees for using a truck while commuting to and from work.
no	59	Mgmt. Disability Pay	This is in lieu of salary paid to managers under a special disability insurance program
no	60	Court Reporter Pay	Per diem paid to hourly court reporters not in the Retirement System
yes	62	Sale of Vacation	Value of vacation time sold back to county annually
yes *	63	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was earned in the final comp period.
no *	new	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was NOT earned in the final compensation period.
yes	64	Uniform Allowance	Pay in recognition that uniforms must be worn for the Job. Paid to non-safety employees: animal services, Plumbers, painters, etc.
yes	65	Structural Engineer	Pay for achieving/maintaining this certification.
yes	66	Haz Mat	Pay for working with hazardous materials
yes	67	Officer in Charge	Self explanatory
yes	68	Standby Diff.	Similar to On Call pay
yes	70	Miscellaneous	To the extent that this pay code continues, it will be includible.

no	71	Pay in Lieu	Extra amount received by employees who don't receive regular County benefits and aren't covered by CCCERA
yes *	72	Sickleave Payoff	Paid to hourly employees, not covered by CCCERA. Paid to CCCERA members who terminate without retiring.
yes	73	Physical Fitness	For safety members
yes	74	Crt. Appearance Pay (1996)	Self explanatory
yes	74	Advncd. Life Support(1997)	Pay for achieving/maintaining this certification.
no	76	Hospital Contract Pay	
no	77	Contract Pay	
yes	78	Uniform-Safety	Pay in recognition that uniforms must be worn for the job: safety members
yes	79	Special Bonus	Used to pay bonuses for special assignment.
yes	83	Evening Clinic Bonus	Similar to shift differential.
Yes	84	Holiday overtime adj.	Adjustment to Holiday Pay
yes	85	Graveyard Pay	Similar to shift differential.
no	86	SDI Buyback	Offsetting payments in the state disability insurance program. Not a wage item.
yes	87	Rad/Angio Pay	A form of hazardous duty pay.
yes	90	Phys. Weekend Rounds	A form of shift differential for physicians.
yes	94	RN Hospital Diff.	Registered nurses.
yes	95	Incident Response Team	Pay for serving on this team.
yes	96	Lead Worker Bonus	self explanatory.

* SPECIAL NOTES:

13 We understand that this pay item is used to reflect a variety of lump sum payments not otherwise given their own code. This pay item should be used in the future for only those lump sum pay items which are includible as compensation under the Board's policy.

19 We understand that this pay item has been used to report time both scheduled and unscheduled. In this pay item should be used to report pay for scheduled work on a weekend.

32 The payroll system will have to distinguish between the pay for being in "on call" status (which is includible) versus the additional pay received if an employee is actually called in to work (which is not includible and will need a new pay item code.).

- 63 The payroll system will have to distinguish between that portion of a lump sum payoff which is includible under the Board's policy and that portion which is not includible.
- 72 For those employees who are covered by CCCERA, we will expect that only the portion of a lump sum sick leave payoff which could have been earned in the final compensation period will be reported here.

1/14/98



August 23, 2013

Dr. David MacDonald (Via e-mail)

Re: Physician Call-Back Pay (County Pay Item D16)

Dear David:

Thank you for working with CCCERA staff on the Physician Call-Back Pay issue. Over the course of the past few months, we have had several meetings with you to gather information and gain a better understating of Physician Call-Back Pay.

This letter is to follow-up on the meeting held on August 8, 2013 and documentation provided to CCCERA subsequently by Dr. David Goldstein, Chief Medical Officer of the Contra Costa Regional Medical Center and Health Centers. We appreciate all the information and documentation you and Dr. Goldstein have provided. As agreed, we have reviewed documentation pertaining to one member (with the member's consent) as a sample.

As we have discussed, in late 1997 when the CCCERA Retirement Board first considered including some call-back pay as "compensation earnable" for retirement purposes, the Board adopted a policy that included call-back pay for physicians only if it was "pay for scheduled work on a weekend". Since 1998, however, the County reported all call-back pay as pensionable. In June 2013, CCCERA informed the auditor-controller's office and active CCCERA members who have received call-back pay that call-back pay will no longer be included as compensation for retirement purposes and should not be reported as pensionable to CCCERA.

The purpose of the meeting in August 2013 was to provide information regarding whether and how Physician Call-Back Pay (County pay code D16) is scheduled to be worked. If scheduled on a weekend, the Physicians argued, the call-back pay should be included for retirement purposes. Dr. Goldstein presented timesheets and on-call schedules for a sample member during a sample time period to show what work was scheduled on a weekend. Additional timesheets and schedules were provided to CCCERA in the days and weeks following the meeting.

CCCERA staff has reviewed the documentation provided and found that, with some minor exceptions, the on-call time on the timesheets for weekends and holidays corresponds to the on-call schedules for the sample member during the sample time period. The call-back pay, on the other hand, does not correspond to any time on the schedule (other than it was, for the most part, during time that the member was scheduled to be on-call). Since we cannot confirm that any of the call-back pay was scheduled to be worked on a weekend, we cannot include any compensation reported under pay code D16 as compensation for retirement purposes under the current compensation policy.

ATTACHMENT C

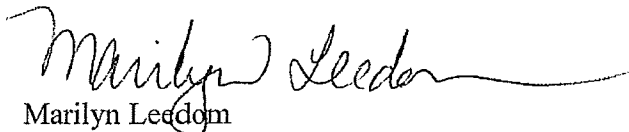
Dr. David MacDonald
August 23, 2013
Page 2

As we discussed, the argument that call-worked (i.e., call back) is an extension of being on call and should be included on that basis is something the Retirement Board considered in 1997 and reaffirmed in 1999. Time for being on-call was to be included, while time for being called back (even if it results from being on-call) is *overtime* and pay for such time should be excluded.

As mentioned during our meeting, since call back pay is a form of payment for *overtime* work, regular overtime rules apply. Under statutes and Board policy, overtime is generally excluded from compensation for retirement purposes (Govt. Code § 31461.6). The exception is that pay for mandatory overtime that the employer requires all employees in the same job classification to work is included in compensation for retirement purposes.¹ As we discussed, the County is well aware of this overtime exclusion and the exception. For the purposes of this inquiry, however, CCCERA staff has limited its inquiry to whether or not any of the call-back pay is “pay for scheduled work on a weekend” as directed by the standard adopted by the Board in 1997.

If you would like the Retirement Board to reconsider its position, please let me know, so we can put the matter on a future Board agenda.

Sincerely,



Marilyn Leedom
Retirement Chief Executive Officer

Cc: Dr. David Goldstein

¹ Government Code Section 31461.6 defines “compensation earnable” follows: “‘Compensation earnable’ shall not include overtime premium pay other than premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under [the Fair Labor Standards Act].” Government Code Section 31461 defines “compensation earnable” as: “the average compensation . . . for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay.” We have referred you to the *Stevenson* case, *Stevenson v. Board of Retirement of OCERS*, 186 Cal. App. 4th 498 (2010)), in which the court upheld the retirement board’s determination that overtime pay was not “compensation earnable” because it was not required of and worked by all members of the job classification.

PHYSICIANS' & DENTISTS' ORGANIZATION OF CONTRA COSTA (PDOCC)

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October 23, 2013

PDOCC Letter to Retirement Board
David MacDonald, MD
President, PDOCC

Dear Retirement Board Members,

Qualifying the call worked (call back) performed by our members as compensation earnable (i.e., pensionable) is just, fair and reasonable.

I would like to address two main issues regarding physician call worked.

First: The nature of our work and how this work qualifies as compensation earnable.

For the inpatient services of Family Medicine/Surgery, Internal Medicine and Critical Care, members must share in the call duty. We are assigned call for patient care on a regular and ongoing basis. Our call responsibilities are to provide consultation and active management of patient care issues for our respective services. This management usually occurs over the phone. At times we must come into the hospital and/or clinics to manage the patient in person. Phone call and call worked are both active endeavors and call worked is an extension of call from afar.

In addition, call worked on the weekends and holidays is also assigned work which occurs on a regular and ongoing basis. Individuals who are on call during weekends and holidays must come into the hospital to manage their respective inpatient services. This includes rounding on patients, supervising residents and weekend rounders, and providing consults to the emergency department, inpatient wards and clinics. It is mandatory that those on call during the weekend and holidays be present in the hospital to manage the inpatient services.

Whether or not the work is done via phone or at the hospital, it is still work performed during a scheduled period of time. Therefore, medical on call duty and call worked (call back) should be treated equally as being pensionable income. One is the extension of the other and both occur during a scheduled and defined period of time.

Second: Did CCCERA perform due diligence regarding the implementation and monitoring of its policy change?

PHYSICIANS' & DENTISTS' ORGANIZATION OF CONTRA COSTA (PDOCC)

CCCERA states that call back pay was determined to be “not pensionable” in 1997 and reaffirmed this in 1999. The only information we have on this are two CCCERA memos from those time periods discussing the matter with some detail. Are there CCCERA board minutes that reflect a discussion and vote on this policy change?

CCCERA states that it instructed the County in 1998 to no longer report call back pay as pensionable. However, since 1998, the County has continued to report this pay item as pensionable and ongoing pension contributions for that pay item have been made by the employees and the County. CCCERA has not produced documentation of its instructions to the County to stop reporting call back pay as being pensionable. Dr. Steve Tremain, who was the senior medical officer at the time (HSD senior management team), states he received no instructions from CCCERA or the County to notify the physicians of the CCCERA policy change or instruct the physicians on how to document their hours on their timesheets to reflect that change.

In addition, if CCCERA did instruct the County to no longer report call back as pensionable income, what steps did CCCERA take to monitor the situation with the County in order to assure that the County's reporting was in compliance with its new policy?

Regarding communication with its members affected by the policy change, does CCCERA have a fiduciary duty to inform its members of pension policy changes that would affect them individually? What steps did CCCERA take to communicate this change effectively and what evidence does CCCERA have that it did so? Dr. Stephen Daniels, president of PDOCC at the time, was not informed of the new policy. Thus, he did not communicate this issue with the PDOCC membership. Dr. Sharon Hiner (now retired but a very active, informed and key member of the Internal Medicine Department at the time) states she was never informed or aware of the policy change.

In the absence of the policy change information, many of our physician members have made career decisions to stay at the County with their understanding of the pension arrangement at the time. As the County continued to deduct pension contributions for this pay item from their paychecks, our physicians had no reason to think otherwise. By default, there has been an ongoing agreement between the County, CCCERA and the employed physicians that this work type has been compensation earnable. CCCERA's application of their policy change retroactively is a violation of that agreement.

PDOCC members' call worked, as described above, qualifies as being compensation earnable. Regardless, CCCERA did not perform due diligence regarding the implementation or monitoring of its policy change of making call back no longer pensionable. CCCERA has a fiduciary duty to inform and look after its membership. Regarding this matter, CCCERA did not live up to its responsibility. CCCERA's retroactive application of its change in policy is not fair to its legacy members. It is a breach of contract.

David MacDonald, MD
President, PDOCC

October 23, 2013

Statement of Dr. Felicia Tornabene, Hospitalist Medical Director for the Contra Costa Regional Medical Center:

I am the Hospitalist Medical Director for the Contra Costa Regional Medical Center. In that capacity, my responsibilities are to oversee the adult inpatient services at the County Medical Center. I have been in this position for 5 months, and before that I was a member of the inpatient Internal Medicine department at CCRMC for 7 years. I am intimately familiar with the work of physicians at the Medical Center, including the use of on-call duty and call-back work (what we call "call worked").

There are attending providers on call for the Inpatient Divisions of Family Medicine and Internal Medicine as well as Critical Care every night of the year. These on-call responsibilities are shared equally between all department members and are a required part of departmental membership. The call duties include frequent phone consultations from the in-hospital physicians as part of active management of the patients in the hospital and Emergency Department.

In addition, the attending physicians are required to work in the hospital on weekend days (and holidays) as part of the call responsibilities. On-call duties are regularly scheduled and required - including call worked on weekends.

When physicians have been hired into the inpatient divisions, being on call and working on weekends and holidays has always been a required part of the position. It has been this way for as long as I have worked at the County. Saturday and Sunday work is not optional for any member of these departments. Historically, this has been billed as on-call and call-worked—physicians are on call for 24 hours and, as part of their weekend on call duty, they must come in to the hospital to perform rounds. In addition to managing the inpatient services, the physicians conduct weekend cardiac treadmill tests, oversee resident physicians, consult for other inpatient services, including surgical, internal medicine and Emergency Department consultations. This is a mandatory duty that is a requirement of working in the hospital, because no physicians are available to perform these duties on weekends or holidays other than the physicians on call. Once this call work is complete, physicians are then on call for the remainder of their scheduled time. To be clear, though, the weekend call worked is scheduled, because it is scheduled as an inherent part of the weekend on call work.

The inpatient services leaders have reviewed my statement and are in agreement with the content.

Sincerely,
Felicia Tornabene, MD
Medical Director, Hospitalist Services

In agreement:
Courtney Beach, MD
Division Head, Inpatient Family Medicine Surgical Service

Sergio Urcuyo, MD
Division Head, Inpatient Internal Medicine Service

Stuart Forman, MD
Department Chair, Critical Care Medicine Service