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Pro se

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

Dorothy Calabrese, M.D.,  
California Medicare physician provider  
Paul Messer,  
California Medicare beneficiary  
Plaintiffs  
vs.  
Michael O. Leavitt, SECRETARY  
US Department of Health and Human Services  
Daniel Schreiner, CMS National Ombudsman  
Bruce Quinn, California Medical Director of  
National Heritage Insurance Company NHIC  
a wholly owned subsidiary of EDS  
Michael Jordan Chairman & CEO  
Electronic Data Systems EDS  
Defendants

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**Case No: SACV06-1217 CJC (RNBx)**

**FIRST SET OF INTERROGATORIES**

**PROPOUNDED ON**

**DEFENDANT: DR. BRUCE QUINN**

April 9, 2007

\_\_\_\_\_  
Dorothy Calabrese, M.D.

1  
2 PLAINTIFF'S FIRST SET OF INTERROGATORIES for DR. BRUCE QUINN, CALIFORNIA MEDICAL  
3 DIRECTOR OF NATIONAL HERITAGE INSURANCE COMPANY NHIC

4  
5 PROPOUNDING PARTY: Plaintiffs: Dorothy Calabrese, M.D.; Paul Messer

6  
7 RESPONDING PARTY: Defendant Bruce Quinn, M.D., Ph.D., M.B.A.

8  
9 SET: One.

10  
11 Plaintiff requests you answer the following "Interrogatories" in conformity with Federal Rule of  
12  
13 Civil Procedure 33 within the 30 days plus two days for the overnight mail service required by  
14  
15 the Rules.

16  
17  
18 **DEFINITIONS AND INSTRUCTIONS**

19  
20 As used in this discovery request, the fully **CAPITALIZED** terms have the following meanings:

21  
22 **ADDRESS** means a mailing address and a street address which includes a room, suite or apt  
23  
24 number, city, state and zip code.

25  
26 **CMS FOIA** means Michael Marquis at CMS Freedom of Information Act office

27  
28 **COMMUNICATION** and **COMMUNICATE** includes any instance in which information is

1  
2 conveyed by or between one or more persons by written and oral contacts of any kind including  
3  
4 telephone calls, transmission of documents by any means, and face-to-face meetings.  
5

6 **COMPLAINT** means the full docket for Case No. SACV06-1217 CJC (RNBx) which includes the  
7  
8 certified DHHS DAB record.  
9

10 **CONSULTANT** means any person, parties, experts, associations, organizations, or other  
11  
12 entities, in a formal or informal manner, with or without reimbursement, who is not on the CMS  
13  
14 or CONTRACTOR staff.  
15

16 **CONTRACT** means contracts of National Heritage Insurance Company NHIC, a wholly owned  
17  
18 subsidiary of Electronic Data Systems EDS, with the U.S. Department of Health and Human  
19  
20 Services and / or any other U.S. government agency, National Heritage Insurance Company  
21  
22 NHIC employees, Electronic Data System EDS employees, and / or other PERSON or entity.  
23

24 **CONTRACTOR** means National Heritage Insurance Company (NHIC) a wholly owned  
25  
26 subsidiary of Electronic Data System (EDS)  
27

28 **DHHS CMS** means the Department of Health and Human Services Center for Medicare &

1  
2 Medicaid Services

3  
4 **DHHS DAB** means the Department of Health and Human Services Departmental Appeals  
5  
6 Board.

7  
8 **DOCUMENT** means all writings, recordings and photographs, as defined in Rule 1001 of the  
9  
10 Federal Rules of Evidence, in your possession, custody or control or known by YOU to exist.  
11

12 **IDENTIFY or IDENTITY, referring to a natural PERSON** includes, and means to state:

- 13  
14 a. Their full name;  
15  
16 b. Their last known address and telephone number;  
17  
18 c. Their last known occupation, title and employer;  
19  
20 e. Their relationship with you.  
21

22 **IDENTIFY or IDENTITY, referring to any other PERSON** includes, and means to state:

- 23  
24 a. Its full name;  
25  
26 b. Its legal form and place of organization;  
27  
28 c. The last known address and telephone number of its principal office;

1  
2 d. Its primary business or activity.  
3

4 **IDENTIFY or IDENTITY, referring to a DOCUMENT or thing** includes, and means to:  
5

6 a. State its title, number or other distinguishing feature;  
7

8 b. Describe its physical form and how many pages it contains;  
9

10 c. State the date it bears;  
11

12 d. State the date it was prepared;  
13

14 e. Describe its subject matter and substance in detail;  
15

16 f. Identify the last known location and custodian of it and of its original;  
17

18 g. Identify any person who prepared it;  
19

20 h. Identify any person who transmitted it;  
21

22 i. Identify any person who received it;  
23

24 j. Identify any person who read it;  
25

26 k. Describe which portions of it you read and relied upon.  
27  
28

1 **IDENTIFY or IDENTITY, referring to a COMMUNICATION** includes and means to:

- 2
- 3 a. State the date, time and location it occurred;
- 4
- 5 b. State its subject matter and substance;
- 6
- 7 c. State whether it was in written, oral, documentary, telephonic, face-to-face, or other form;
- 8
- 9 d. Identify any person who was involved with or witnessed it and describe in detail their
- 10
- 11 participation including the substance of what each said, did or communicated.
- 12
- 13 e. Identify any document or communication relating to it.
- 14

15 **IDENTIFY or IDENTITY, referring to an act, event, occurrence, or fact** includes and

16

17 means to:

18

- 19 a. Provide a detailed description of it;
- 20
- 21 b. Identify any person who was present during, participated in, or witnessed it;
- 22
- 23 c. State the date, time and location of it;
- 24
- 25 d. Identify any document or communication relating to it.
- 26

27 **IDENTIFY or IDENTITY, referring to a POLICY, practice or custom** includes and means

28 to:

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- a. Provide a detailed description of it;
- b. State the dates it was formulated and adopted;
- c. Identify each person who formulated it;
- d. Identify each person responsible for enforcing it;
- e. Identify each person who in the regular course of their duties has knowledge of it;
- f. Identify any document or communication relating to it.

**LAW** means Federal laws, including but not limited to the U.S. Constitution, the Medicare Act of 1965, the Medicare Modernization Act, The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Federal anti-competition laws, Federal code, relevant Federal case law, California Medical Practice Act: Business and Professions Code

**LCD:** Contractor Local Coverage Determination for non-reimbursement of transfer factor immunomodulatory therapy, dial

**LOCATE or LOCATION** means to provide a detailed physical description of exactly where a person, object or event can be found or occurred, including, but not limited to, an address.

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**MEDICARE BENEFICIARIES** means the thirty-two Medicare beneficiaries who participated in the Joint Local Coverage Determination Appeal, which includes Plaintiff Paul Messer

**MEDICARE PHYSICIAN PROVIDER** means Plaintiff Dorothy Calabrese, M.D.

**PERSON** means a natural person as well as all types of business, fictitious, governmental and public entities.

**PLAINTIFF** means Paul Messer, Medicare beneficiary, and Dorothy Calabrese, M.D., Medicare physician provider their agents, and anyone else acting on their behalf.

**POLICY** means a rule, procedure, directive, training, manual, standard, formal or informal, written or unwritten, and includes each common practice, custom and understanding of course of conduct recognized and accepted as such by you or by persons subject to it.

**REFERENCE:** means a reference from the legal, scientific and / or medical literature

**TF** means transfer factor immunomodulatory therapy: dialysable leukocyte extract

**WRONGFUL ACTS** means the improper or illegal actions or conduct such as lying and

1 obstruction of justice, which the complaint alleges harmed Plaintiffs, but this special meaning  
2  
3 applies only to the factually identical actions or conduct alleged in this case, SACV06-1217  
4  
5 CJC(RNBx) and to no others.  
6

7 **YOU and YOUR** means Bruce Quinn, M.D., Ph.D., M.B.A., who in March 2004, replaced Arthur  
8  
9 Lurvey, M.D. the California Medical Director for National Heritage Insurance Company NHIC a  
10  
11 wholly owned subsidiary of Electronic Data System EDS and includes your agents, employees,  
12  
13 attorneys, advisors, and any other person acting on your behalf.  
14  
15

16 When construing any words or terms used herein, unless otherwise indicated:

- 17  
18 a. The singular includes the plural and vice versa;  
19  
20 b. Masculine, feminine or neuter gender include each other;  
21  
22 c. Past, present or future tense include the other tenses;  
23  
24 d. The disjunctive includes the conjunctive and vice versa;  
25  
26 e. "and" includes "or" and vice versa;  
27  
28 f. "any" includes "all," "each" and "every" and vice versa;

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g. "refer" includes "relate" and "concern" and vice versa.

To the extent you assert any privilege and decline to respond to any part of these interrogatories, specify the privilege and state all foundational facts justifying its assertion.

Unless otherwise stated, the period for which these requests seek information is from 2002 to the date of your response.

1 **INTERROGATORIES**

2

3

4 **INTERROGATORY #1** Please IDENTIFY each step you took to properly assume the

5

6 responsibilities from the previous CONTRACTOR medical director for the MEDICARE

7

8 BENEFICIARIES and the MEDICARE PHYSICIAN PROVIDER and include:

9

- 10
- what CONTRACTOR actions prior to March 2004 you disagreed with
  - what actions YOU took to correct any CONTRACTOR actions you
  - disagreed with
  - what new or revised POLICIES you instituted to correct any CONTRACTOR actions you
  - disagreed with
- 11
- 12
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20 **INTERROGATORY #2:** Please IDENTIFY YOUR COMMUNICATION and DOCUMENT with each

21

22 of the following PERSONS with respect to the MEDICARE BENEFICIARIES AND THE MEDICARE

23

24 PHYSICIAN PROVIDER:

- 25
- a. Michael H. Jordan, CEO, Electronic Data Systems, EDS
  - b. Board of Directors of Electronic Data Systems, EDS
- 26
- 27
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- c. Ann Backoff Dalton, Electronic Data Systems, EDS
  
- d. Carlos Rivera, Electronic Data Systems, EDS
  
- e. Daniel Schreiner, CMS Ombudsman
  
- f. Henry Tyson, CMS Region IX
  
- g. Diane Caradeuc, CMS Region IX
  
- h. Christine Plumb, CMS Region IX
  
- i. Barry Straub MD, CMS Region IX
  
- j. Commander Mary Ellen Bruk, CMS Region IX
  
- k. Lilia Kleinman, National Heritage Insurance Company
  
- l. Charity Horton, National Heritage Insurance Company
  
- m. Craig Haug, M.D., National Heritage Insurance Company
  
- n. Arthur Lurvey, M.D., National Heritage Insurance Company
  
- o. Donald Adams, M.D., National Heritage Insurance Company
  
- p. Tom Horowitz, D.O., National Heritage Insurance Company

1 q. Theresa DeBell, R.N., National Heritage Insurance Company

2  
3 r. Regina Soliz, R.N.. National Heritage Insurance Company

4  
5 s. Mary Lou Cartas, National Heritage Insurance Company

6  
7 t. Marguerite Navas, National Heritage Insurance Company

8  
9 u. Steve Brodsky, US. Department of Justice ATR Washington DC

10  
11 v.. Members of the U.S. Senate and House of Representatives

12  
13 w.. Elizabeth McNeil, Frank Navarro, Catherine Hanson, Jack Lewin, M.D.

14  
15 and / or any other representative of the California Medical

16  
17 Association, Andrew Schlafly, Counsel for the Association of

18  
19 American Physicians and Surgeons or any other professional

20  
21 Organization.

22  
23 x. the MEDICARE BENEFICIARIES & the MEDICARE PHYSICIAN PROVIDER

24  
25  
26 **INTERROGATORY #3:** For each answer in interrogatory #2, please IDENTIFY the LAW,

27  
28 CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT that you based YOUR

1  
2 COMMUNICATION &/or DOCUMENT on.

3  
4  
5 **INTERROGATORY #4:** Please define YOUR fiduciary duty to the MEDICARE BENEFICIARIES  
6  
7 and the MEDICARE PHYSICIAN PROVIDER and IDENTIFY the LAW, CONTRACT, POLICY,  
8  
9 DOCUMENT, PERSON, REFERENCE that YOU use to form the definition.  
10

11  
12 **INTERROGATORY #4:** For each CONTRACTOR action listed below please IDENTIFY the  
13  
14 LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT that the  
15  
16 CONTRACTOR relied on when:

17  
18 a. demanding that the MEDICARE PHYSICIAN PROVIDER should have referred the  
19  
20 MEDICARE BENEFICIARIES to an allergist-immunologist in the preliminary determination  
21

22 b. sending the MEDICARE BENEFICIARIES questionnaires about their MEDICARE  
23  
24 PHYSICIAN PROVIDER care that instructs the beneficiaries not to discuss the questionnaire  
25  
26 with the MEDICARE PHYSICIAN PROVIDER

27  
28 c. responding or not responding to communication received from MEDICARE

1  
2 BENEFICIARIES begging for continuation of reimbursement of their care

3  
4 d. responding to communication received from members of the U.S. Congress that

5  
6 represent the MEDICARE BENEFICIARIES by falsely writing that the MEDICARE PHYSICIAN

7  
8 PROVIDER had billed an over-the-counter dietary supplement as medically necessary (a

9  
10 Federal crime) and why YOU never issued a formal retraction to the members of the U.S.

11  
12 Congress, the MEDICARE BENEFICIARIES, or the MEDICARE PHYSICIAN PROVIDER

13  
14 e. allowing Lilia Kleinman, the CONTRACTOR hearing officer, to set the in-person

15  
16 CONTRACTOR hearing in 2005 with YOU, Don Adams, M.D., and Tom Horowitz, D.O.

17  
18 f. allowing Lilia Kleinman, the CONTRACTOR hearing officer, to delay the in-person

19  
20 CONTRACTOR hearing in 2005 with YOU, Don Adams, M.D., and Tom Horowitz, D.O. due to

21  
22 the LCD appeal

23  
24 g. allowing Lilia Kleinman, the CONTRACTOR hearing officer, to delay the in-person

25  
26 CONTRACTOR hearing in 2005 with YOU, Don Adams, M.D., and Tom Horowitz, D.O. until

27  
28 the MEDICARE PHYSICIAN PROVIDER withdrew her CMS FOIA request.

1  
2 h. allowing YOU to inform THE CONTRACTOR collection and hearing office staff that the  
3  
4 LCD was upheld when YOU knew the truth was that the relevant provisions were withdrawn  
5  
6 by YOU so that they could no longer use the LCD to prevent reimbursement.  
7

8 i. allowing YOU to inform the CONTRACTOR hearing office staff that the DHHS DAB upheld  
9  
10 YOUR LCD, when the truth is that the DHHS DAB agreed YOUR policy was an LCD and that  
11  
12 the relevant provisions had been withdrawn so that the CONTRACTOR hearing office could  
13  
14 no longer use the LCD to prevent reimbursement. . . and yet they still did twelve days ago.  
15

16 j. allowing Charity Horton, the CONTRACTOR hearing officer that replaced Lilia Kleinman, to  
17  
18 mail the MEDICARE PHYSICIAN PROVIDER a letter stating that the MEDICARE PHYSICIAN  
19  
20 PROVIDER asked for her decision when that is completely untrue.  
21

22 k. allowing Charity Horton to cancel the in-person hearing with the MEDICARE PHYSICIAN  
23  
24 PROVIDER, YOU, Dr. Adams, and Dr. Horowitz without the consent of the MEDICARE  
25  
26 PHYSICIAN PROVIDER.  
27

28 l. refusing to reverse Charity Horton's hearing office determination because it denied the

1  
2 MEDICARE PHYSICIAN PROVIDER AND MEDICARE BENEFICIARIES their right to a  
3  
4 CONTRACTOR in-person hearing with documents and witnesses and effectively used the  
5  
6 LCD sub rosa to obstruct justice.

7  
8 k. refusing to IDENTIFY the CONSULTANT name, credentials, the information YOU gave  
9  
10 the CONSULTANT, the information the CONSULTANT gave YOU  
11

12 l. allowing the CONTRACTOR to unduly delay the time before a preliminary determination  
13  
14 was made  
15

16 m. allowing the CONTRACTOR to delay the time between October 2003 when the  
17  
18 preliminary determination was made and the final determination in December 2004  
19

20 n. allowing CONTRACTOR employees to describe our TF citations not in the "normative"  
21  
22 literature  
23

24 o. allowing Don Adams, M.D. to introduce Tom Horowitz, D.O. as "here's your  
25  
26 immunologist" when Dr. Horowitz is a family practitioner not an immunologist  
27

28 p. preventing YOU from consulting with our experts: Alan S. Levin M.D., J.D.

1  
2 Professor Emeritus UCSF Medical Center and former Allergy-Immunology panel expert  
3  
4 for the California Medical Board and Vincent Marinkovich, M.D., allergist-Immunologist at  
5  
6 YOUR alma mater, Stanford University Medical Center, since 1964.

7  
8 q. having the CONTRACTOR employees instruct the MEDICARE PHYSICIAN PROVIDER to  
9  
10 keep submitting charges and simply attach the patient records after the LCD was  
11  
12 published on the CONTRACTOR website, when to do so would have been a Federal  
13  
14 crime because then the MEDICARE PHYSICIAN PROVIDER would have known for sure  
15  
16 that these were not covered services.

17  
18  
19 **INTERROGATORY #5:** Since the DHHS DAB wrote that the relevant provisions of the LCD  
20  
21 were withdrawn, please IDENTIFY how YOU have instructed and documented how  
22  
23 CONTRACTOR employees as to what this means and how to change their actions to be in  
24  
25 compliance with the LAW?  
26  
27

28 **INTERROGATORY #6:** Based on LAW, CONTRACT, POLICY, CONSULTANT, PERSON,

1  
2 REFERENCE, &/or DOCUMENT, please IDENTIFY how you define, including ICD-9 code, and  
3  
4 differential diagnosis, where appropriate:

- 5
- 6 • abnormal cell mediated immunity
- 7 • the symptom: multiple chemical sensitivity
- 8 • the symptom: chemical sensitivity
- 9 • multiple chemical sensitivity syndrome
- 10 • allergic hypersensitivity to foods
- 11 • allergic hypersensitivity to molds
- 12 • allergic hypersensitivity to inhalants
- 13 • allergic hypersensitivity to chemicals
- 14 • normative literature
- 15 • refractory illness
- 16 • patient whose clinical diathesis lies outside the usual disease spectrum
- 17 • illness modifiers
- 18
- 19

20  
21 **INTERROGATORY #7:** Please IDENTIFY the exact medical condition(s), the corresponding  
22 ICD-9, the clinical presentation, the severity of illness, and any other relevant variable for  
23  
24 which YOU would approve CONTRACTOR reimbursement for TF and the CPT code and YOUR  
25  
26 coding reimbursement guidelines.  
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**INTERROGATORY #8:** Please IDENTIFY the basis for your answer in interrogatory #7 in  
LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, &/or DOCUMENT.

**INTERROGATORY #9:** Since the LCD relevant provisions were withdrawn please IDENTIFY  
each and every reason why:

- YOU continue to refuse reimbursement for the MEDICARE BENEFICIARIES
- how the MEDICARE BENEFICIARIES differ in every relevant variable from the YOUR  
answer to interrogatory #7

**INTERROGATORY #10:** Please IDENTIFY the basis for your answer in interrogatory #7 in  
LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, &/or DOCUMENT.

**INTERROGATORY #11:** If YOUR answer to INTERROGATORY #7 does not include abnormal  
cell mediated immunity please IDENTIFY YOUR basis for that exclusion in LAW, CONTRACT,  
POLICY, CONSULTANT, PERSON, REFERENCE, &/or DOCUMENT.

1 **INTERROGATORY #12:** If YOUR answer to INTERROGATORY #7 does include abnormal cell  
2  
3 mediated immunity, explain how YOU determine how a second concurrent diagnosis or  
4  
5 symptoms could modify TF reimbursement and YOUR coding guidelines for these modifiers  
6

7  
8 **INTERROGATORY#13** If a Medicare patient has the symptom of multiple chemical sensitivity  
9  
10 and is diagnosed as having allergic hypersensitivity to chemicals please IDENTIFY what rights  
11  
12 that patient has in LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, &/or  
13  
14 DOCUMENT that are different than any other patient including patients with:

- 15
- 16 • immune abnormalities
- 17 • abnormal cell mediated immunity
- 18 • allergic hypersensitivity to foods
- 19 • allergic hypersensitivity to molds
- 20 • allergic hypersensitivity to inhalant allergens
- 21 • T cell immune deficiency
- 22 • hypocomplementemia
- 23
- 24

25  
26 **INTERROGATORY #14:** Please IDENTIFY the DOCUMENTS, COMMUNICATION, LAW,  
27  
28 CONTRACT, POLICY, PERSON, CONSULTANT that YOU used:

1 a. in YOUR COMMUNICATION with CMS FOIA

2  
3 b. on the CONTRACTOR TF website for each date rewritten

4  
5 c. in CONTRACTOR policy on TF

6  
7 d. in determining medically necessity of TF

8  
9 e. in determining that the MEDICARE PHYSICIAN PROVIDER should have

10  
11 known that TF was not a covered service

12  
13 f. in determining the standard of care of the community

14  
15 g. in determining reimbursement for patients with illness of low incidence

16  
17  
18 **INTERROGATORY #15:** Please IDENTIFY how YOU determined the real impact of YOUR LCD

19  
20 on the MEDICARE BENEFICIARIES & the MEDICARE PROVIDER with respect to:

21  
22 a. privacy

23  
24 b. finances

25  
26 c. doctor - patient relationship

27  
28 d. patient's family

1  
2 e. health  
3

4 f. emotional impact using the classic Holmes – Rahe Rating Scale  
5  
6

7 **INTERROGATORY #16:** Please IDENTIFY how your answer to interrogatory #15 differs from  
8  
9 or is the same as the patient responses in the COMPLAINT including all of the following:  
10

- 11 • CONTRACTOR questionnaires to the MEDICARE BENEFICIARIES
- 12 • MEDICARE BENEFICIARY LETTERS to the CONTRACTOR
- 13 • MEDICARE BENEFICIARY LETTERS to Senator Barbara Boxer for the Senate  
14 Subcommittee on Aging
- 15 • Declarations of the MEDICARE PHYSICIAN PROVIDER  
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17  
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21 **INTERROGATORY #17:** The COMPLAINT states that American Health Law  
22 Association (AHLA) attorney, Jonathan Schuman (also a former Baltimore Part B  
23 Medicare attorney) told our Washington, D.C. U.S. Department of Justice ATR  
24 attorney that he would be willing to testify under oath and provide a “road map” of  
25  
26  
27  
28

1 the corruption within the Medicare Part B system, if he is given Florida State Bar  
2  
3 immunity. Furthermore, AHLA attorneys: Timothy Blanchard, Esq. &/or Jonathan  
4  
5 Schuman have published in law reviews, other journals & papers, presented at  
6  
7 professional organizations, taught in law classes, publicly stated &/or told the  
8  
9 MEDICARE PHYSICIAN PROVIDER when they consulted in this COMPLAINT

10  
11 that Medicare contractors:

- 12
- 13
- 14 a. abuse medical necessity as a gatekeeper
- 15
- 16 b. lie
- 17
- 18 c. obstruct justice
- 19
- 20 d. are unduly influenced by majority-opinion specialists
- 21
- 22 e. are unduly influenced by special interests
- 23
- 24 f. "secret" law that CMS and its contractors rely on to make decisions
- 25
- 26 g. use dirty tricks: unethical, duplicitous, slanderous, or illegal tactics
- 27
- 28 to destroy or diminish the effectiveness of the Medicare beneficiary or

1  
2 provider

3  
4  
5 Please IDENTIFY if YOU have any knowledge whatsoever now or in the past

6  
7 that the CONTRACTOR at any time has ever:

8  
9 a. abused of medical necessity as a gatekeeper

10  
11 b. lied

12  
13 c. obstructed justice

14  
15 d. been unduly influenced by majority-opinion specialists

16  
17 e. been unduly influenced by special interests

18  
19 f. "secret" law that CMS and its contractors rely on to make decisions

20  
21 g. used dirty tricks: unethical, duplicitous, slanderous, or illegal tactics employed to destroy

22  
23 or diminish the effectiveness of the Medicare beneficiary or provider

24  
25  
26 **INTERROGATORY #18:** If YOUR answer to any: a, b, c, d, e, or f in interrogatory #15 is

27  
28 affirmative, please IDENTIFY what POLICY YOU now use to correct and prevent any of these

1  
2 abuses against the MEDICARE BENEFICIARIES & the MEDICARE PHYSICIAN PROVIDER.  
3  
4

5 **INTERROGATORY #19:** Please IDENTIFY each and every part of the CONTRACT that  
6  
7 protects the best interests of the MEDICARE BENEFICIARIES & the MEDICARE PHYSICIAN  
8  
9 PROVIDER.  
10

11  
12 **INTERROGATORY #20:** Please IDENTIFY each and every part of the CONTRACT that  
13  
14 rewards the CONTRACTOR for recovering monies under the exclusion of not medically  
15  
16 necessary.  
17

18  
19 **INTERROGATORY #21:** Apart from proprietary information, please IDENTIFY why YOU  
20  
21 believe any other part of the CONTRACT should not be made public.  
22

23  
24 **INTERROGATORY #22:** The identity of the California Medical Board physicians experts is  
25  
26 public and they are sufficiently protected from any adverse consequence that might result from  
27  
28 releasing their identity, including peer harassment, yet YOU told CMS FOIA YOU would not

1  
2 release the IDENTITY of any of YOUR CONSULTANTS in this COMPLAINT. Please IDENTIFY all  
3  
4 your reasons why other public agencies (except the military, CIA, FBI and so forth)  
5  
6 can release the IDENTITY of their CONSULTANTS and the LAW, CONTRACT, POLICY,  
7  
8 CONSULTANT, PERSON, REFERENCE, &/or DOCUMENT that YOU rely on for refusing to do so.  
9  
10

11 **INTERROGATORY #23:** Please provide an organizational chart that shows YOU in relation  
12  
13 to Michael H. Jordan and the Electronic Data Systems, the EDS Board of Directors, Carlos  
14  
15 Rivera, and other EDS employees that interface with National Heritage Insurance Company.  
16  
17

18 **INTERROGATORY #24** Please IDENTIFY the LAW, CONTRACT, POLICY, CONSULTANT,  
19  
20 PERSON, REFERENCE, DOCUMENT that YOU relied to support Anne Backoff Dalton,  
21  
22 Vice-President, NHIC Medicare Administrative Services assertion in February, 2004: that there is  
23  
24 "no evidence to consider this treatment the standard in the community" and therefore the  
25  
26 CONTRACTOR had a right to terminate reimbursement OR if you did not agree IDENTIFY what  
27  
28 actions you took.

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**INTERROGATORY #25:** Please IDENTIFY YOUR understanding of sovereign or contractual

Immunity, including what it does not cover, as it applies to:

- YOU
- YOUR CONSULTANTS
- National Heritage Insurance Company NHIC
- Electronic Data Systems EDS

**INTERROGATORY #26:** Please IDENTIFY what you would have done differently with respect to the MEDICARE BENEFICIARIES & the MEDICARE PHYSICIAN PROVIDER if you did not have sovereign or contractual immunity.

**INTERROGATORY #27:** Please IDENTIFY any WRONGFUL ACTS YOU are negligently and / or intentional responsible for in each and every aspect of this COMPLAINT and the Administrative Law case.

**INTERROGATORY #28:** If the answer to interrogatory # 27 is affirmative, please IDENTIFY

1 DOCUMENTS that show what corrective counseling, disciplinary actions, and / or other  
2  
3 measures were taken.  
4

5  
6 **INTERROGATORY #29:** Please IDENTIFY any of YOUR acts described in all filings in this  
7  
8 COMPLAINT to date that were not WRONGFUL ACTS but for which changes in LAW,  
9  
10 CONTRACT, and /or POLICY are needed.  
11

12  
13 **INTERROGATORY #30:** If the answer to interrogatory #29 is not a denial, please IDENTIFY  
14  
15 DOCUMENTS and things that show what corrective counseling measures, disciplinary actions,  
16  
17 and / or other measures were taken.  
18

19  
20 **INTERROGATORY #31:** With respect to the Local Coverage Determination  
21  
22 appeal, based on your extensive training please IDENTIFY:  
23

- 24 • each and every part of the actual law passed by the U.S. Congress and /  
25  
26 or any aspect of the actual code as written by the U.S. Department of  
27  
28 Health and Human Services that YOU recommend be rewritten and

1 IDENTIFY the reasons why they need to be rewritten

- 2
- 3 • the and / or DOCUMENTS YOU received from DHHS, Electronic Data
- 4 Systems EDS, National Heritage Insurance Company NHIC,
- 5

6

7

8 **INTERROGATORY #32:** The DHHS DAB determined there was a transfer factor

9

10 immunomodulatory therapy non-reimbursement Local Coverage Determination

11

12 and that the relevant provisions were withdrawn. Please IDENTIFY every LAW,

13

14 contract and / or POLICY on which YOU relied that prevented you from:

- 15 • reestablishing reimbursement
  - 16
  - 17 • reversing the retroactive liability and interest for past years
  - 18
  - 19 • notifying Electronic Data Systems EDS and National Heritage Insurance
  - 20 employees of this
- 21

22

23 **INTERROGATORY #33:** The Local Coverage Determination appeal code states

24

25 that in the rare even there is no LCD docket the effect is the same as

26

27 withdrawing the LCD or the relevant provisions. The DHHS DAB determined

28

1 there was a transfer factor immunomodulatory therapy non-reimbursement Local

2  
3 Coverage Determination. Please IDENTIFY every LAW, contract and / or

4  
5 POLICY on which YOU relied that prevented you from:

- 6
- 7 • reestablishing reimbursement
- 8
- 9 • reversing the retroactive liability and interest for past years
- 10 • notifying Electronic Data Systems EDS and National Heritage Insurance
- 11

12 employees of this

- 13
- 14 • notifying all the twenty-six Medicare beneficiaries who participated in the
- 15
- 16 • Local Coverage Determination appeal that the LCD relevant provisions
- 17 were withdrawn and reimbursement was reestablished
- 18

19  
20 **INTERROGATORY #34** With respect to each version of the CONTRACTOR website on TF: a

21  
22 non-coverage notification on TF, please IDENTIFY the LAW, CONTRACT, POLICY,

23  
24 CONSULTANT, PERSON, REFERENCE, DOCUMENT that was the basis for the following:

- 25
- 26 a. the use of parenteral Transfer Factor to treat any illness
- 27
- 28 b. TF is not a recognized treatment modality accepted by the scientific and medical

1  
2 community

3  
4 c. TF may be dangerous

5  
6 d. NHIC solicited commentary from several external clinical consultants in allergy and

7  
8 immunology. None of the additional experts recommended coverage of transfer factor

9  
10 for allergic and immunodeficiency conditions.

11  
12 e. the methodology of how scientific and medical articles were included and excluded

13  
14 f. the selection of the reviewer

15  
16 g. the reviewer's name and credentials

17  
18 h. the reviewer's first-hand experience with TF clinically

19  
20 i. the reviewer's first-hand experience with TF research

21  
22 j. excluding the large body of TF articles in the 788 pages presented in the LCD

23  
24 k. the comments made about the TF expert which may be Dr. Levin

25  
26 l. the methodology of counting the number of books and references in the way that it was

27  
28 done and counting the times TF was mentioned

1  
2 n. the significance of TF being an older therapy

3  
4 o. acceptance by individual health care providers, or even a limited group of health care  
5  
6 providers, normally does not indicate general acceptance by the medical community

7  
8 p. testimonials indicating such limited acceptance

9  
10 q. limited case studies distributed by sponsors with financial interest in the outcome  
11

12  
13 **INTERROGATORY #35:** For the following CONTRACTOR demands and POLICIES, please

14  
15 IDENTIFY the LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT

16  
17 that formed the basis:

18  
19 a. YOUR assertion that we would have to show widespread acceptance like the  
20  
21 chiropractors

22  
23 b. that the MEDICARE BENEFICIARIES still have to go to individual beneficiary  
24  
25 appeals now and in the future despite the fact that the LCD relevant provisions were  
26  
27 withdrawn and there was no LCD docket  
28

1 c. Dr. Adam's witnessed statement that the MEDICARE BENFICIARIES would have to  
2  
3 pay cash and not be reimbursed which excludes many of the MEDICARE BENEFICIARIES  
4  
5 who are legally disabled on Social Security and live at or near the poverty range  
6

7 d. Dr. Adam's witnessed assertion that every doctor thinks their patient is sick  
8

9 e. the U.S. Department of Justice San Francisco assertion in 2003 that the MEDICARE  
10  
11 BENEFICIARIES have no other insurance options other than Medicare so being excluded  
12  
13 in this way is anti-competitive  
14

15 f. Dr. Horowitz's witnessed assertion that the MEDICARE PHYSICIAN PROVIDER  
16  
17 should form a PAC and buy her codes because that is how it's now done  
18  
19

20 **INTERROGATORY #36:** Based on LAW, CONTRACT, POLICY, CONSULTANT, PERSON,  
21  
22 REFERENCE, DOCUMENT, please IDENTIFY why each of the following is not  
23  
24 anticompetitive :  
25

26 a. taking all Medicare beneficiaries to appeal takes many years, significant time and  
27  
28 major resources means that Medicare beneficiaries will be denied care

1  
2 b. demanding a PAC means Medicare providers with PAC's have an anti-competitive  
3  
4 advantage over those who do not  
5

6 c. the MEDICARE PHYSICIAN PROVIDER having to take cases to LCD appeal &/or  
7  
8 individual beneficiary appeals will be forced to practice forensic medicine, which is highly  
9  
10 cost ineffective  
11

12 d. Medicare beneficiaries will to pay for their diagnosis and then wait as long as six  
13  
14 years to access care for that diagnosis which is cruel and inhuman  
15

16 e. Patients on social security disability who wish to get well and return to work are  
17  
18 obstructed from care for up to six years while they receive social security payments  
19  
20 instead of being taxpayers, causing undue economic hardship on the patient, the  
21  
22 patient's family and taxpayer.  
23

24 f. Medicare physician providers will exclude the elderly and disabled and rely on private  
25  
26 insurance to avoid LCD's and individual beneficiary appeals because of their burden  
27

28 g. this CONTRACTOR policy will lead to the social engineering of medicine

1  
2 h. the MEDICARE PHYSICIAN PROVIDER, who is the attending and treating physician,  
3  
4 will be forced to provide less effective or no therapy in violation of the California Medical  
5  
6 Practice Act: Business and Professions Code and our oath as physicians, and will self-  
7  
8 limit the best and the brightest from wanting to treat certain patient subgroups.  
9

10 i. Medicare beneficiaries who lay outside the usual disease spectrum and have an illness  
11  
12 of low incidence unfairly pay into the Medicare system to subsidize Medicare  
13  
14 beneficiaries with common illness, while being denied the care they need.  
15

16 j. the CONTRACTOR selection of CONSULTANT does not meet the same high standard  
17  
18 as the California Medical Board or the LCD appeal statute, creating unfair advantage to  
19  
20 Medicare physician providers who treat more complex, sicker, refractory patients who  
21  
22 lay outside the usual disease spectrum.  
23

24 k. where the MEDICARE BENEFICIARIES that can get well and return to the workplace,  
25  
26 the CONTRACTOR inflicts unwarranted exposure of their entire medical history into the  
27  
28 public record which can then be used by private insurance companies to reject them

1  
2 from life insurance, disability insurance, medical insurance etc.

3  
4 l. No other physician can spend five years (as this MEDICARE PHYSICIAN PROVIDER  
5  
6 has done) running a full time medical practice with the normal and emergency  
7  
8 disruptions that occur regularly when treating sick patients, and survive the additional  
9  
10 CONTRACTOR burden that forces the MEDICARE PHYSICIAN PROVIDER to  
11  
12 disrupt and divert their attentions during their work day away from their primary duty to  
13  
14 patients' medical care, continuing medical education, and staying abreast of the medical  
15  
16 literature.

17  
18 m. the rejection of the CONTRACTOR of the high standards of the California Medical  
19  
20 Board that already did a careful site inspection and has reviewed all the TF referenced  
21  
22 medical literature and found this care to meet the excellence in medical care they  
23  
24 demand

25  
26 n. the CONTRACTOR wordsmiths and inappropriately uses "normative medical literature"  
27  
28 as a political, not scientific barrier to Medicare reimbursement.

1  
2 o. the CONTRACTOR demands that the MEDICARE PHYSICIAN PROVIDER care meet a  
3  
4 proprietary computer algorithm, subject to no objective review, which fails to consider  
5  
6 that the MEDICARE BENEFICIARIES come from all over California and five other states.  
7  
8 that they generally failed to be properly diagnosed and/or failed all other therapies, that  
9  
10 they require more time, that they require more allergy tests  
11

12 p. Medicare physician providers will avoid seeing the sicker patients due to the  
13  
14 CONTRACTOR misguided misguided approach to statistical analysis, where the  
15  
16 proprietary algorithm can interpret the statistics associated with the sickest patients as  
17  
18 overuse of the system by a MEDICARE PHYSICIAN PROVIDER they would prefer to  
19  
20 marginalize.  
21

22  
23 **INTERROGATORY #37:** If any of the DOCUMENTS and THINGS that you refer to  
24  
25 in the above interrogatories, are not included in your response to: Plaintiff's Request for  
26  
27 Production of Documents and Things, filed March 28, 2007, please IDENTIFY which DOCUMENT  
28

1 and THINGS are not included, identify the reason for their exclusion and their last known  
2  
3 LOCATION with the ADDRESS.  
4  
5

6 **INTERROGATORY #38:** Please identify each person who prepared or helped prepare your  
7  
8 responses to these interrogatories.  
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Dated: April 9, 2007: First set of Interrogatories: Dr. Bruce Quinn

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Dorothy Calabrese, M.D.

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Paul Messer

First set of Interrogatories

1 **PROOF OF SERVICE**

2  
3 I am a resident of the County of Orange, State of California. I am over the age of 18 and not a  
4 party to the within action. I may be reached through the medical practice of Dorothy  
Calabrese, M.D. at 24953 Paseo de Valencia, Suite 4A, Laguna Hills, California 92653-4342.

5 On April 10, 2007 I served the foregoing document described as:

6 Case No: SACV06-1217 CJC (RNBx) 1<sup>ST</sup> SET OF INTERROGATORIES PROPOUNDED ON DR.  
7 BRUCE QUINN

8 on all parties in this action by placing true copies thereof enclosed in sealed envelopes sent by  
overnight USPS mail addressed as follows:

9  
10 John A. Conkle  
Conkle, Kremer & Engel  
3130 Wilshire Boulevard, Suite 500  
11 Santa Monica, CA 90403-2351

12  
13 U.S. Attorney Civil Process Clerk  
300 North Los Angeles Street  
Room 7516  
14 Los Angeles, CA 90012

15  
16 I declare under penalty of perjury under the laws of the State of California and the United  
States that the above is true and correct, and that this Proof of Service was executed this 10th  
17 day of April 2007.

18  
19  
20 \_\_\_\_\_  
21 Marguerite Kennedy