

1
2 PLAINTIFF'S FIRST SET OF INTERROGATORIES for CHARITY HORTON, NATIONAL HERITAGE
3 INSURANCE COMPANY NHIC HEARING OFFICER
4

5 PROPOUNDING PARTY: Plaintiffs: Dorothy Calabrese, M.D.; Paul Messer
6

7 RESPONDING PARTY: Witness: Charity Horton
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
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Medicaid Services

DHHS DAB means the Department of Health and Human Services Departmental Appeals Board.

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

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

- a. Their full name;
- b. Their last known address and telephone number;
- c. Their last known occupation, title and employer;
- e. Their relationship with you.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

d. Its primary business or activity.

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

- a. State its title, number or other distinguishing feature;
- b. Describe its physical form and how many pages it contains;
- c. State the date it bears;
- d. State the date it was prepared;
- e. Describe its subject matter and substance in detail;
- f. Identify the last known location and custodian of it and of its original;
- g. Identify any person who prepared it;
- h. Identify any person who transmitted it;
- i. Identify any person who received it;
- j. Identify any person who read it;
- k. Describe which portions of it you read and relied upon.

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:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

7 **YOU and YOUR** means Charity Horton, Hearing Officer for National Heritage Insurance
8
9 Company NHIC a wholly owned subsidiary of Electronic Data System EDS and includes your
10
11 agents, employees, attorneys, advisors, and any other person acting on your behalf.

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

- 16 a. The singular includes the plural and vice versa;
- 18 b. Masculine, feminine or neuter gender include each other;
- 20 c. Past, present or future tense include the other tenses;
- 22 d. The disjunctive includes the conjunctive and vice versa;
- 24 e. "and" includes "or" and vice versa;
- 26 f. "any" includes "all," "each" and "every" and vice versa;
- 28 g. "refer" includes "relate" and "concern" and vice versa.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 yourself, your academic credentials, your work
5
6 history, your dates of employment with NHIC, and your job description
7

8
9 **INTERROGATORY #2** Please IDENTIFY each and every step you took to properly assume
10
11 the responsibilities of taking the case of the MEDICARE BENEFICIARIES cared for by the
12
13 MEDICARE PHYSICIAN PROVIDER from the previous Hearing Officer, Lilia Kleinman
14

15
16 **INTERROGATORY #3:** Please IDENTIFY YOUR COMMUNICATION and DOCUMENT with each
17
18 of the following PERSONS with respect to the MEDICARE BENEFICIARIES AND THE MEDICARE
19
20 PHYSICIAN PROVIDER:
21

- 22 a. Lilia Kleinman, National Heritage Insurance Company
- 23
- 24 b. Bruce Quinn, M.D., National Heritage Insurance Company
- 25
- 26 c. Donald Adams, M.D., National Heritage Insurance Company
- 27
- 28 d. Tom Horowitz, D.O., National Heritage Insurance Company

1
2 e. Regina Soliz, R.N.. National Heritage Insurance Company

3
4 f. Mary Lou Cartas, National Heritage Insurance Company

5
6 g. Marguerite Navas, National Heritage Insurance Company

7
8 h. the MEDICARE PHYSICIAN PROVIDER

9
10
11 **INTERROGATORY #4:** For each answer in interrogatory #3, please IDENTIFY the LAW,
12
13 CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT that you based YOUR
14
15 COMMUNICATION &/or DOCUMENT on.

16
17
18 **INTERROGATORY #5:** Please IDENTIFY any DOCUMENT &/or COMMUNICATION that
19
20 proves THE MEDICARE PHYSICIAN PROVIDER should have known that TF was not a covered
21
22 service and the dates of those DOCUMENT &/or COMMUNICATION.

23
24
25 **INTERROGATORY #6:** Based on your answer to interrogatory #5, please IDENTIFY the
26
27
28 LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT which

1
2 makes the MEDICARE PHYSICIAN PROVIDER retroactive liable.
3
4

5 **INTERROGATORY #7:** Please IDENTIFY which of the following DOCUMENTS you had in the
6
7 complete hearing office docket and if YOU read them:
8

9 a. the written request from the MEDICARE PHYSICIAN PROVIDER for an in-person hearing
10
11 with Bruce Quinn, M.D., Don Adams, M.D. AND Tom Horowitz, D.O. as witnesses
12

13 b. DOCUMENTS from Lilia Kleiman and the hearing office staff confirming that there would
14
15 an in-person hearing with Bruce Quinn, M.D., Don Adams, M.D. AND Tom Horowitz, D.O.
16
17 as witnesses
18

19 c. DOCUMENTS from Lilia Kleiman and the hearing office staff confirming that the
20
21 CONTRACTOR delayed the in-person hearing until after the LCD appeal.
22

23 d. DOCUMENTS from Lilia Kleiman and the hearing office staff confirming that the
24
25 CONTRACTOR further delayed the in-person hearing demanding that the MEDICARE
26
27 PHYSICIAN PROVIDER would have to withdraw her CMS FOIA request first
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTERROGATORY #8: With respect to YOUR hearing office decision, please IDENTIFY:

- a. the date(s) and time you held the hearing
- b. the names of all PERSON in attendance
- c. a list of all witnesses
- d. a list of all LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT that you based YOUR final decision on
- e. the date you wrote the decision on this joint individual appeals
- f. the reason you chose at hearing at exactly this time
- g. all PERSON who instructed YOU to conduct the hearing or make a decision
- h. exactly what YOU were told by the PERSON who so instructed YOU

INTERROGATORY #9: With respect to scheduling YOUR hearing office decision, please IDENTIFY:

- a. whether YOU made any effort to contact the MEDICARE PHYSICIAN PROVIDER

1 b. what LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT

2
3 that you based YOUR decision on whether or not to contact the MEDICARE PHYSICIAN
4
5 PROVIDER

6
7 c. what LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT

8
9 would allow YOU to deny the MEDICARE PHYSICIAN PROVIDER the requested in-person

10
11 hearing with the CONTRACTOR physician witnesses that had been previously approved

12
13 by Lilia Kleinman

14
15 d. what LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT

16
17 would allow YOU to deny the MEDICARE PHYSICIAN PROVIDER an opportunity to schedule

18
19 the in-person hearing after she informed the CONTRACTOR that she was illegally denied her

20
21 in-person hearing and right to due process

22
23
24 **INTERROGATORY #10:** Please IDENTIFY the LAW, CONTRACT, POLICY, CONSULTANT,

25
26 PERSON, REFERENCE, DOCUMENT that proves YOUR decision to exclude the MEDICARE

27
28 PHYSICIAN PROVIDER from the in-person hearing with the CONTRACTOR

1
2 physician witnesses was not obstruction of justice.
3
4

5 **INTERROGATORY #11:** Please IDENTIFY if YOU wrote the following as part of YOUR letter
6
7 to the MEDICARE PHYSICIAN PROVIDER:
8

9 "Transfer factor is a non-specific term that refers to an
10 extract derived from dialyzable human leukocytes. There
11 are no FDA approved preparations of this substance. The
12 use of parenteral transfer factor to treat any illness is not a
13 recognized treatment modality accepted by the scientific
14 and medical community, and may be dangerous. The use
15 of parenteral transfer factor is not a covered benefit under
16 Medicare. CFR, Reg. 42, Section 411.15(k), specifically
17 excludes any services that are not reasonable and
18 necessary for the following purposes: (1) for the diagnosis
19 or treatment of an illness or injury, or to improve the
20 functioning of a malformed body member. "
21

22
23 **INTERROGATORY #12:** Please IDENTIFY if YOUR statement in interrogatory #11 was ever a
24
25 relevant part of the CONTRACTOR LCD and if so, on what dates this LCD was in effect.
26
27
28

1 **INTERROGATORY #13:** Please affirm or deny whether YOU knew that the DHHS

2
3 DAB determined that the CONTRACTOR did have a non-reimbursement of TF LCD

4
5
6 **INTERROGATORY #14:** If YOUR answer to interrogatory #13 is in the affirmative, please

7
8 IDENTIFY any and all DOCUMENT, COMMUNICATION &/or PERSON by which you obtained that

9
10 Information

11
12
13 **INTERROGATORY #15:** Please affirm or deny whether YOU knew that the DHHS

14
15 DAB determined that the CONTRACTOR withdrew the relevant provisions of the TF LCD.

16
17
18 **INTERROGATORY #16** If YOUR answer to interrogatory #15 is in the affirmative, please

19
20 IDENTIFY any and all DOCUMENT, COMMUNICATION &/or PERSON by which you obtained that

21
22 Information

23
24
25 **INTERROGATORY #17:** Please IDENTIFY the LAW that explains what happens if the

26
27 CONTRACTOR withdraws the relevant provisions of the TF LCD.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTERROGATORY #18: Please IDENTIFY what the LAW mandates if the relevant provisions of the CONTRACTOR LCD are revised.

INTERROGATORY #19: Please IDENTIFY any and all CONTRACTOR DOCUMENT &/or COMMUNICATION that shows whether or not there ever was an LCD docket.

INTERROGATORY #20: Please IDENTIFY the LAW that explains what happens in the rare event that the CONTRACTOR has no LCD docket.

INTERROGATORY #21: Please IDENTIFY what the LAW mandates in the rare event that the CONTRACTOR has no LCD docket.

INTERROGATORY #22: Please IDENTIFY whether or not, at the time YOU decided to make the hearing officer determination in this matter without the in-person hearing with the MEDICARE PHYSICIAN PROVIDER and Drs. Quinn, Adams and Horowitz, whether or not you believe that to the best of your knowledge and abilities that YOU were acting according to the

1
2 LAW.

3
4
5 **INTERROGATORY #23:** After completing interrogatories 1-20 and reviewing the LAW,
6
7 CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT and knowing what you
8
9 now know, please state whether YOU would now reverse your decision and schedule the in-
10
11 person hearing with the MEDICARE PHYSICIAN PROVIDER and Drs. Quinn, Adams and
12
13 Horowitz as was originally requested.

14
15
16 **INTERROGATORY #24:** If YOUR answer to interrogatory #23 is negative please IDENTIFY
17
18 the LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT upon which
19
20 that answer is based.

21
22
23 **INTERROGATORY #25:** If YOUR answer to interrogatory #23 is in the affirmative please
24
25 State whether you will reverse your decision and schedule the in-person hearing with the
26
27 MEDICARE PHYSICIAN PROVIDER and Drs. Quinn, Adams and Horowitz as was originally
28

1 requested.

2
3
4 **INTERROGATORY #26:** If YOUR answer to interrogatory #25 is to negative please

5
6 IDENTIFY the LAW, CONTRACT, POLICY, CONSULTANT, PERSON, REFERENCE, DOCUMENT

7
8 upon which that answer is based.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: April 9, 2007

Dorothy Calabrese, M.D.

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) 1ST SET OF INTERROGATORIES PROPOUNDED ON
7 WITNESS: CHARITY HORTON

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