

**ATTACHMENT A**

**RESPONDENT'S PETITION FOR RECONSIDERATION**

June 24, 2023

Certified Mail – Return Receipt Requested

BY FAX 916/795-3972

Board Services Unit Coordinator  
California Public Employees' Retirement System  
P.O. Box 942701  
Sacramento, CA 94229-2701

RE: **Petition for Reconsideration** in the Matter of the Reinstatement from Disability of AMY M. EDELEN, Respondent, and the DEPARTMENT OF CONSUMER AFFAIRS, Respondent

Dear CalPERS Board Members:

This Petition for Reconsideration brings forth legal issues still needing Decision and facts in error. It is respectfully requested that the board reconsider and either vote to allow Amy Edelen to continue receiving a disability retirement allowance or remand the decision to the Administrative Law Judge for Decision on the unaddressed issues.

Legal Issues

The jurisdictional issues raised at hearing did not pertain as much to competing medical opinions but were more of a question as to whether or not there is legal authority for the board to:

- 1) require a recipient of a disability allowance to undergo medical examination when the recipient did not submit application for reinstatement from retirement or work in any job, and
- 2) force a recipient of a disability allowance to return to work from retirement when the recipient did not submit application for reinstatement or worked in any job. (A much different situation from "mandatory reinstatement rights").

The Administrative Law Judge did not specifically address these issues of legal authority in the Decision.

Ms. Edelen is a recipient of a disability allowance, not an applicant for disability nor an applicant for reinstatement from retirement. Her original application for state disability retirement was reviewed and approved more than a decade ago in 2010 at the same time she was granted permanent disability by the Social Security Administration (SSA) based on her treating specialty practice physician's reports and records, plus rigorous review of her medical records, plus an independent psychiatric evaluation required by the SSA. Ms. Edelen has not worked in any employment situation nor been able to work since. Her disability retirement status was reviewed and approved at least in 2013, 2017 and most recently on April(?) 10, 2020.



At hearing, Ms. Mendelson argued that Ms. Edelen did not apply for reinstatement from retirement thus the board had no legal authority to “re-evaluate” her under Government Code Section 21192, nor to require her to undergo medical evaluations in the first place, nor to force her to reinstate from retirement.

Ms. Mendelson specifically cited Government Code Section 21196 which states in part “The board may reinstate a person from retirement upon (a) his or her application to the board for reinstatement...” The application for reinstatement is what gives the board authority to reinstate a person from retirement and without an application the board has no legal authority.

Ms. Andrade stated “On December 28, 2020, CalPERS requested that Ms. Edelen be re-evaluated pursuant to Government Code 21192.” As will be explained below, Government Code Section 21192 clearly indicates that the board was not permitted to “re-evaluate” and subject Ms. Edelen to medical examination(s) because she did not apply for reinstatement from retirement.

Government Code Section 21192 states in part as follows:

The board **may require** any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service applicable to members of his or her class **to undergo medical examination...**

The examination shall be made by a physician or surgeon, appointed by the board or the governing body of the employer, **at the place of residence of the recipient or other place mutually agreed upon...**

Upon the basis of the examination, the board or the governing body shall determine whether he or she is still incapacitated, physically or mentally... **and for the duties of the position with regard to which he or she has applied for reinstatement from retirement.**

*(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)*

The Administrative Law Judge’s Decision cited *California Department of Justice v. Bd. of Administration (2015 242 Cal.App. 4th)* and clarified that Government Code Section 21193 requires former employers to reinstate former employees who applied for reinstatement from retirement that were found to no longer be disabled. In the specific case cited, there was an application for reinstatement to her former position by the recipient of an industrial disability retirement allowance (different from the disability retirement allowance Ms. Edelen receives). The recipient’s application is what allowed for medical examination as a basis to determine whether the recipient was still incapacitated for the duties of the position held prior to becoming disabled.

Opinion in that case stated specifically: “Under the provisions of section 21192, when a recipient of disability retirement applies for reinstatement, the board causes a medical examination to be conducted by a physician or surgeon appointed by the board.”



It is acknowledged that there are other scenarios in Government Code Section 21192 in which the board shall cause medical examination to be made, but none of those are applicable to Ms. Edelen's situation.

Government Code Section 21192 also specifies that "the examination shall be made... at the place of residence of the recipient or other place mutually agreed upon." This verbiage implies the exam is for the benefit of the recipient of the disability allowance who has applied for reinstatement. Ms. Edelen was not afforded that cooperative opportunity. She was required to go to two medical examiner offices for examination under threat of discontinuation of her disability retirement allowance.

Therefore, it is reasserted that there was no legal authority requiring Ms. Edelen to undergo medical examination as she did not submit an application for reinstatement from retirement. Further, there is no legal authority for the board to require her to reinstate from retirement to her previous position.

#### Factual Errors

1. It was stated by Ms. Andrade at hearing that the age of retirement for Ms. Edelen is 55. That is incorrect. The minimum retirement age for Associate Governmental Program Analysts is 50 years old, which Ms. Edelen is and has been since September 7, 2022.

The applicable Government Code Section 20160 states "(a) A member shall be retired for service upon his or her written application to the board if he or she has attained 50 years of age and is credited with five years of state service..." (*Amended by Stats. 2013, Ch. 526, Sec. 18. (SB 220) Effective January 1, 2014.*)

2. At hearing it was asserted that Amy Edelen does not meet the requirements for disability retirement. That is incorrect.

Per Government Code 20026, "Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

(*Amended by Stats. 2017, Ch. 241, Sec. 1. (SB 525) Effective January 1, 2018.*)

Ms. Edelen's original application for disability was reviewed and approved over a decade ago after 12 consecutive months of substantial inability to work with multiple reviews and approval occurring periodically, with the most recent approval in Spring 2020.

As such, it was already determined long ago that Ms. Edelen met the Government Code Section 20026 requirements for disability retirement and in fact exceeded the required timeframe by many years.



3. At hearing Ms. Andrade asserted that the original application was for industrial disability. That is incorrect.
4. At hearing Dr. Anderson stated "a doctor of osteopathy goes to osteopathic medical school instead of the medical school that M.D.s go to. The training is the same period of time; it's four years." That is incorrect.

Doctors of Osteopathy are required to complete regular medical school plus additional specialized training and certifications beyond the education medial doctors receive. The American Osteopathic Association informs: "As part of their education, DOs receive special training in the musculoskeletal system, [the] body's interconnected system of nerves, muscles and bones...." and "DOs practice in all medical specialties, including primary care, pediatrics, OBGYN, emergency medicine, psychiatry and surgery..."

Government Code Section 2453.5 states: "Individuals possessing physician's and surgeon's certificates issued by the Osteopathic Medical Board of California shall not hold themselves out to be board certified unless the board certification has been granted by the appropriate certifying board, as authorized by the American Osteopathic Association or the American Board of Medical Specialties, or is the result of a postgraduate training program approved by the Accreditation Council for Graduate Medical Education. (Added by Stats. 1993, Ch. 226, Sec. 2. Effective January 1, 1994.)

#### Conclusion and Requested Action

In conclusion, it is reasserted that since Ms. Edelen did NOT apply for reinstatement, there was no legal authority to require her to undergo medical examination and there is no legal authority to require her to reinstate from retirement to her previous position.

Again, it is respectfully requested that the board reconsider and either vote to allow Amy Edelen to continue receiving a disability retirement allowance or remand the decision to the Administrative Law Judge for Decision on the unaddressed legal issues.

Thank you for your time, attention, and thoughtful consideration.

  
\_\_\_\_\_  
Amy Edelen

Name: Amy Michele Edelen [REDACTED] Legal Name: Amy Michele Edelen

## Letter Details



**Sutter Neurology, San Francisco**  
**Nelli Perkins, MD**  
1100 VAN NESS AVE FL 6  
SAN FRANCISCO CA 94109-6978  
Phone: 415-600-7886  
Fax: 415-369-1386

Patient: Amy Michele Edelen  
Date of Birth: [REDACTED]

To Whom It May Concern:

I serve as the neurologist for Amy Edelen and I am writing this letter on her behalf. I have diagnosed my patient with a disabling neurological condition: chronic migraine. It leaves her unable to function physically and mentally. During her migraine attacks, she is typically bedridden with severe headache, dizziness, and blurred vision. Additionally, she is unable to tolerate bright lights, environmental noises, and smells. She cannot concentrate/think or be active during these attacks, which precludes her from doing her daily life activities or maintaining a job. I expect this disability to continue for greater than 12 months based on the severity of her headaches and their refractory nature as she has failed many migraine preventive drugs.

If you have any questions, please feel free to contact my office at (415) 600-7886.

Sincerely,

Nelli Boykoff Perkins, MD  
Diplomate in Headache Medicine  
1100 Van Ness Avenue, 6th Floor  
San Francisco, CA 94109

*This letter was initially viewed by Amy Michele Edelen at 6/26/2023 9:15 AM.*

# Invitation to the Fibromyalgia Series

Timothy B

All messages have been loaded.

Timothy B 8:28 AM

Thank you for choosing the Sutter Institute for Health & Healing.

Based on your referral from your primary care doctor, we invite you to join Marc Fierro P.A., L.Ac. for the Fibromyalgia Series.

Did you know 4.5 million people suffer from Fibromyalgia? Furthermore, rather than a disease of a single organ, it is a functional disease of multiple physiological systems that cause a Centralized Pain Sensitization Syndrome.

The main symptoms include widespread pain lasting longer than 3 months, chronic fatigue, cognitive dysfunction and sleep disturbances. There are many other secondary associated symptoms such as dizziness, headaches, bladder and bowel dysfunction, neuropathy, anxiety with low motivation and capacity to complete activities of daily living and do what really matters in life.

In this comprehensive series of group medical appointments led by Marc Fierro P.A., L.Ac. who has over 30 years of experience in the field, you will learn about and how to implement:

- The knowledge and capacity to improve the quality of your life now.
- The Tri-Flex Approach to FMS: An empowering new approach to managing Fibromyalgia that that is based on the latest research that Marc has developed and includes:
  - Learning about the factors that contribute to the development of Fibromyalgia and how to manage them.
  - How to rebalance the Neural Hormonal HPA Axis, Gut - Brain, Metabolic and Immune Systems imbalances commonly found to cause the symptoms of Fibromyalgia.
  - Therapeutic Lifestyle Interventions: That support the health of your mind, body and spirit and increase your capacity to do more of what's important to you.
  - How to implement the approved Mitochondrial or Elimination Food Plans with access to ongoing health coaching and support groups.
  - Instruction in Mindfulness Based Cognitive Behavioral Therapy and Heart Math Biofeedback for the management of pain, anxiety, and depression.
  - Modified Tai Chi, Yoga and Qi Gong Therapy exercises will be taught.
  - Discussion of the benefits of the Somatic Arts Including Acupuncture, Neurostimulation, Cranial Sacral, Somatic Psychotherapy, Massage, Chiropractic, and Osteopathy.

Marc Fierro P.A., L.Ac. has 30 years of experience as a PA and Acupuncturist in Integrative Primary Care Medicine, and Functional Neurology who currently practices as a Integrative Medicine Specialist at



the Institute for Health and Healing here at Sutter Roseville. Marc graduated from: UC Davis School of Medicine, Pacific College of Oriental Medicine, additionally participated in Clinical Mentorship Program through Institute for Functional Medicine (IFM) with Dr. Mark Holthouse and Dr. Dale Bredesen's Functional Neurology Program Preventing And Reversing Cognitive Decline through IFM.

*IMPORTANT – The Fibromyalgia Series Consists of three virtual interactive 90-minute group appointments. After completing your three appointments, your ongoing care will be returned to your referring provider.*

Dates:

Session 1 – June 28, 2023; 9:00am to 10:30am

Session 2 – July 26, 2023; 9:00am to 10:30am

Session 3 – August 23, 2023; 9:00am to 10:30am

*Participation in this group includes a 30 minute 1 on 1 Health Coaching session scheduled between your 1<sup>st</sup> and 2<sup>nd</sup> session.*

Please call 916-887-4660 or reply to this message to register. Space is limited.

Please note, to participate in a virtual appointment, you must be physically located in the State of California at the time of your appointment.

Thank you again for choosing the Sutter Institute for Health & Healing to be a part of your journey to better health!

Website: [Sutter Institute for Health & Healing](#)

YouTube: [Visit Sutter IHH on YouTube](#)

### **FAQs for patients attending Marco's Group Visits at Sutter Institute for Health and Healing**

Please read the remainder of this document in its entirety to better understand the details of the Group Visits at Sutter Institute for Health and Healing in Sacramento.

#### **What is required before the first session?**

Before the first session, please complete your Group Intake Forms. It is a requirement to complete and submit your answers to our clinic before the first group.

#### **What is the format of these groups?**

The group begins with a welcome and you will have an opportunity to check in and describe how you are doing. Then Marco will do a PowerPoint presentation and share his integrative medicine approach. It will conclude with a Q&A session where you can ask questions directly to the Marco.

#### **If I miss a group, am I allowed a makeup visit?**

Unfortunately, not. If you are not able to attend a group, for any reason, we are unable to offer additional visits beyond the three scheduled groups to make up for that. You will have access to the slides from the group that you missed.

#### **Will the doctor be ordering any labs or prescribing medications?**

No, Marco will not be ordering any labs or prescribing any medications.

#### **Will any other providers be speaking during the three groups?**

Marco will be your main presenter, but he will also be joined by Frank Russell, MFT and one of our certified Health Coaches at certain points.

#### **Will he be recommending any supplements?**

The focus of the group is on diet, lifestyle, and mind-body, but he will be speaking about some supplements and can certainly answer questions about supplements.

#### **MHO (My Health Online) policy**

**Due to the increasing number of electronic communications, please limit your MHO messages to:**



- **Questions about a medication, supplement, or diagnostic test recommended by a clinician;**
- **Possible side effects of a treatment; or,**
- **Notes concerning scheduling, canceling, or changing an appointment.**

**Your question should be brief, concise, and answerable with a “yes” or “no.”**

**Are the groups free?**

No, the groups are not free. They will be billed to your insurance as office visits.

**What are the CPT codes that will be used?**

For the initial visit if you are a new patient, the codes are either 99203 or 99204. For subsequent visits the codes are either 99213 or 99214. Billing and coding follow the guidelines established nationally by the American Medical Association.

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