

**LABOR MANAGEMENT WORKERS' COMPENSATION
ALTERNATIVE DISPUTE RESOLUTION AGREEMENT
BETWEEN THE ORANGE COUNTY FIRE AUTHORITY AND THE
ORANGE COUNTY PROFESSIONAL FIREFIGHTERS ASSOCIATION**

THIS LABOR MANAGEMENT WORKERS' COMPENSATION ALTERNATIVE DISPUTE RESOLUTION AGREEMENT ("Agreement") is entered into by and between the Orange County Fire Authority ("OCFA") and the Orange County Professional Firefighters Local 3631 ("OCPFA"). This Agreement is created pursuant to California Labor Code §3201.7(a) (3) (c).

Nothing in this agreement diminishes the entitlement of a covered employee to compensation payments for total or partial permanent disability, total or partial temporary disability, Labor Code §4850 benefits, or medical treatment fully paid by the employer and otherwise provided for in Division 4 of the Labor Code. Nothing in this agreement denies to any covered employee the right to representation by counsel at all stages during this alternative and expedited resolution process.

The OCFA Executive Management and Orange County Professional Firefighters Association (OCPFA) negotiated this agreement by forming a partnership known as the Joint Labor Management team (JLM); this team is comprised of three (3) Executive Management staff members, the Deputy Chief, the HR Director and one (1) Program Manager; The Labor Team is comprised of the OCPFA Board President, or designee, one Vice President and one (1) Director. The Labor Representatives will be appointed by the Union President or designee and may be subject to reappointment at the President's or designee discretion.

The purpose of the Joint Labor Management team (JLM) is to develop policy and procedures of the Alternative Dispute Resolution program; to review implementation and the progress of the program and address any issues at time frames agreed to by the committee and to ensure that the program terms and conditions are administered in harmony with this agreement.

Article I: Purpose

The purposes of this Agreement are:

1. To provide active employees and retirees claiming compensable injuries under Division 4 of the California Labor Code (“Workers’ Compensation Law”) with an expedited procedure to resolve disputes in accordance with the provision of this Agreement and to facilitate those employees’ prompt recovery and return to work;
2. To reduce the number and severity of disputes between the OCFA and covered employee, when those disputes relate to workers’ compensation;
3. To provide workers’ compensation coverage in a way that improves labor management relations, improves organizational effectiveness, and reduces costs for the OCFA;
4. To provide the OCFA and covered employees with access to nurse case managers to assist with disputes and conflict arising from medical disputes relating to workers’ compensation; and
5. To provide the OCFA and covered employees with access to mediators so that legal disputes can be resolved informally and more expeditiously.

These purposes will be achieved by:

a) Utilizing an exclusive list of medical providers to be the sole and exclusive source of medical-legal evaluations for disputed issues surrounding covered employees in accordance with Labor Code §3201.7(c); and

(b) Maintaining a list of nurse case managers and mediators to assist in carrying out the purposes and goals of this Agreement.

Now, therefore, in consideration of the mutual terms, covenants and conditions herein, the parties agree as follows:

Article II: Term of Agreement

The OCFA and OCPFA enter into this Agreement with the understanding that the law authorizing this Agreement is new and evolving. The parties further understand that this Agreement governs a pilot program and that it shall become effective after it is executed by the parties, submitted to the Administrative Director of the State of California, Department of Industrial Relations, Division of Workers' Compensation in accordance with Title 8, California Code of Regulations §10202(d), and accepted by the Administrative Director as evidenced by the Director's letter to the parties indicating approval of the Agreement. This Agreement shall be in effect for one year from the date of the Administrative Director's letter of acceptance to the parties. Thereafter, it shall continue and remain in force from year to year unless terminated by either party as provided for below. Any claim arising from an industrial injury sustained before the termination of this Agreement shall continue to be covered by the terms of this Agreement, until all medical issues related to the pending claim are resolved.

The parties reserve the right to terminate this Agreement at any time for good cause, by mutual agreement or by act of the Legislature. The terminating party must give thirty (30) calendar days written notice to the other party of the intent to terminate. Upon termination of this Agreement, the parties shall become

fully subject to the provisions of the applicable Labor Code provisions to the same extent as they were prior to the implementation of this Agreement, except as otherwise specified herein.

Article III: Scope of Agreement

A. This Agreement applies only to injuries, as defined by Workers' Compensation Law, claimed by the following referred to herein as "Covered Individuals" 1) active employees; 2) retirees 3) active employees and retirees where a petition to reopen a pre-existing claim to seek new and further disability or to reduce a prior award is filed after the effective date of this agreement. The scope of this agreement does not apply to retirees that have a future medical dispute that is outside the five year statute of limitations or Labor Code Section §5804.

B. Injuries occurring and claims filed after termination of this Agreement are not covered by this Agreement.

C. This Agreement is restricted to 1) establishing an exclusive list of medical providers to be used for medical and medical-legal dispute resolution of Covered Individuals, 2) establishing an exclusive list of mediators to be used for legal dispute resolution of Covered Individuals, and 3) establishing a process for informal legal discovery in accordance with Article VII, and 4) establishing an exclusive list of nurse case managers to be used to assist with medical treatment dispute resolution of covered employees in accordance with Labor Code §3201.7(c).

D. For purposes of this Agreement a "claimed injury" is one for which either a (1) DWC-1 workers' compensation claim form or (2) an Application for Adjudication of Claim has been filed with the Workers' Compensation Appeals Board ("WCAB").

Article IV. Expedited Medical-Legal Process

A. Physicians who serve in the capacity as Independent Medical Examiner ("IME") pursuant to this Agreement will receive enhanced compensation for services performed as outlined in the physician contract in exchange for expedited examinations and report preparation.

B. This Agreement does not constitute a Medical Provider Network ("MPN"). However, all employees must utilize the OCFA's current MPN for treatment purposes during the time the OCFA maintains and utilizes the MPN. The MPN is governed by Labor Code §4616 et seq. Physicians who act as a Covered Individual's treating physician, or have provided treatment to the Covered Individual shall not act as the Independent Medical Examiner (IME) in the Covered Individual's claim. Pre-designation of a physician must comply with the requirements set forth in Labor Code section 4600(d) (1).

C. All employees with a disputed medical issue as described in Article IV, Paragraph E must be evaluated by an approved physician from the exclusive list of IME's. Should the employee claim injuries requiring more than one medical specialist, the employee shall be provided an IME appointment in each area of specialty. Attached hereto as Exhibit A is an exclusive list of IMES agreed upon by the parties. If the IME requires the opinion of an additional sub-specialist, the IME shall refer the employee to a physician of the IME's choice, who need not be on the IME list or in the MPN. The consulting specialist charges are subject to the Official Medical Fee Schedule (OMFS). The IME may not refer the employee to his treating physician for this purpose.

D. The exclusive list of IME's shall include the specialties as agreed upon by the parties.

E. An IME shall be used for all medical disputes that arise in connection with a workers' compensation claim including but not limited to determination of causation, the nature and extent of an injury, the nature and extent of permanent disability and apportionment, work restrictions, ability to return to work, (including transitional duty), current and future medical care, and resolution of all disputes arising from utilization review, pursuant to Labor Code section 4062(b). The parties agree that the Covered Individual shall use the originally chosen IME for all subsequent disputes and injuries claimed arising under this agreement. In the event that said IME is no longer available, the parties shall utilize the next specialist on the list pursuant to Article IV, paragraph (I)(5), as set forth herein.

F. The IME process described above will be triggered when either party provides the other written notice of an objection in connection with any issues set forth in Article IV paragraph E above. Objections from the OCFA shall be sent to the employee with a copy to the employee's legal representative if represented. Objections from the employee or employee's legal representative shall be sent to the employee's assigned claims examiner with a copy to the OCFA and OCFA's legal representative, if applicable.

G. Objections shall be sent within thirty (30) calendar days of receipt of a medical report or a utilization review decision addressing any of the issues set forth above. A letter delaying acceptance of the claim automatically creates a dispute; further, all denials and or delays of benefits including a denial of the claim automatically creates a dispute. Delayed decisions based on legal issues shall not trigger the IME process. A subsequent acceptance of the claim and/or resolution of the disputed issue may eliminate the need for completion of the dispute resolution process set forth in this Agreement.

H. The exclusive list of IME's shall serve as the exclusive source of medical-legal evaluations for all disputed medical issues arising from a claimed injury, unless otherwise agreed to by the parties in writing.

I. The parties hereby agree that from time to time the exclusive list of IME's may be amended. For either party to propose adding an IME to the exclusive list of medical providers, the party must provide notice, in writing, to the other party of its request to add a physician to the list. The parties must mutually agree in writing to the addition of physicians to the IME list. A physician may only be deleted from the exclusive list of medical providers if s/he breaches the terms and conditions of the contract with the OCFA or by written mutual agreement of the parties. The list shall be reviewed quarterly by the JLM from the execution date of the Agreement and quarterly thereafter for additions and deletions of newly selected or deleted IME'S. Any IME proposed for consideration of addition or deletion after the review period will be reviewed at the next interval review period of the JLM unless there is a breach of the terms and conditions of the Agreement or by mutual written agreement of the parties.

J. Appointments.

1. OCFA Risk Management/TPA shall schedule appointment(s) with the IME and provide notice of the appointment within ten (10) calendar days of the date of receipt of the objection issued by any party subject to the terms and provisions of this Agreement. The notice of the appointment location, date and time shall be sent to the employee and to his legal representative, if there is one.

2. The employee shall be responsible for providing OCFA Risk Management/TPA with his/her work schedule prior to an appointment being made so that appointments can be made, if possible, during an employee's non-working hours.

3. Compensation for attending medical appointments under this Agreement shall be consistent with OCFA policy.

4. Mileage reimbursement to covered employees shall be in accordance with Labor Code § 4600(e) (2), unless transportation is provided by the OCFA.

5. For purposes of appointments, OCFA Risk Management/TPA shall select the IME(s) by starting with the first name from the exclusive list of approved medical providers within the pertinent specialty, and continuing down the list, in order, until the list is exhausted, at which time OCFA Risk Management/TPA will resume using the first name on the list.

6. The IME shall submit the medical reports thirty (30) days following examination of the employee, pursuant to the contract terms, unless a longer period of time is agreed to by the parties.

K. The OCFA is not liable for the cost of any medical examination used to resolve the parties' disputes governed by this Agreement where said examination is furnished by a medical provider that is not authorized by this Agreement. Medical evaluations shall not be obtained outside of this Agreement for disputes covered by this agreement, notwithstanding Labor Code Section §4605.

L. Both parties shall be bound by the opinions and recommendations of the IME selected in accordance with the terms of this Agreement, subject to legal challenges brought by the parties.

M. Either party who receives records prepared or maintained by the treating physician(s) or records, either medical or nonmedical, that are relevant to the determination of the medical issue shall serve those records on the other party immediately upon receipt. If one party objects to the provision of any nonmedical records to the IME, the party shall object within twenty (20) calendar

days of the service of records. Objection to the provision of nonmedical records may result in the denial of the claim on the basis that the IME did not have complete and accurate information. There shall be no objection to the provision of medical records to the IME, subject to the provisions of the Labor Code.

N. The OCFA's TPA shall provide to the IME records prepared or maintained by the employee's treating physician(s) and medical and nonmedical records relevant to the determination of the medical issue(s). The OCFA's TPA shall prepare a list of all documents provided to the IME, and shall serve a copy of the list on the employee and/or on his/her representative.

O. All communications with the IME shall be in writing and shall be served on the opposing party. This provision does not apply to oral or written communications by the employee or, if the employee is deceased, the employee's dependent, in the course of the examination or at the request of the evaluator in connection with the examination, or to administrative communications with the IME's staff.

P. Ex parte communication with the IME is prohibited. If a party communicates with the IME in violation of paragraph O and P of Article IV, the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from the next IME chosen from the list pursuant to paragraph J,(5). If a new examination is required, the party making the communication prohibited herein may be liable for the cost, pursuant to Labor Code §5811, or as ordered by the WCAB.

Q. If either party disputes a medical or medical-legal finding of the IME, they shall notify the other party of this dispute by way of written objection within thirty (30) calendar days of actual receipt of the IME's report. All disputes of this nature shall be resolved either by way of supplemental interrogatory and report or by way of deposition.

Article V. Mediation

A. Any party subject to the provisions of this Agreement may request mediation in accordance with the provisions set forth herein. Mediation is an informal, confidential process in which a neutral party assists the other parties in understanding their own interests, the interests of the other party, and the practical and legal realities each party faces. The mediator helps the parties explore options and arrive at a mutually acceptable resolution of the dispute. The parties agree that WCAB retains jurisdiction to approve all settlements, awards, and orders achieved through mediation.

B. Mediation is voluntary and both parties must agree to mediate a particular issue or matter in order for mediation to proceed.

C. The mediation process shall only be triggered when both parties are represented; the mediation process shall be triggered when one party gives the other written notice of their desire to engage in mediation in connection with any issue including, but not limited to, any purely factual or legal defense involving a determination of causation, applicability of a presumption, whether a medical report constitutes substantial evidence, disputes involving average weekly wage or the rate of pay for Labor Code §4850 benefits, temporary disability benefits, whether an apportionment opinion is valid, disputes over a permanent disability rating, disputes over occupational group numbers, credits for claimed overpayment of benefits, determination of dependency status in death claims, penalties, issues involving alleged serious and willful misconduct,

issues involving potential violations of Labor Code § 132a, discovery disputes, and questions involving jurisdiction.

D. It is the specific intent and desire of the parties that the mediation process set forth herein be flexible and is designed as a means to resolve factual and/or legal disputes that are not amenable to resolution through the expedited medical-legal process. The potential issues listed in paragraph C of Article V is not meant to be all inclusive but is merely a listing of issues likely to be the most common particularly suited for mediation. Upon mutual agreement of the parties, any issue typically encountered in the California workers' compensation system can be deemed appropriate for mediation in accordance with the provisions of this Agreement.

E. Upon receipt of an official request to mediate, the non-requesting party shall have a period not to exceed fifteen (15) calendar days within which to either accept or reject the request to mediate. If no response is provided within the fifteen (15) calendar day period, the request shall be deemed to have been rejected. Any response to a request to mediate from the OCFA shall be sent to the employee with a copy to the employee's legal representative. Any response to a request to mediate from the employee or employee's legal representative shall be sent to the employee's assigned claims examiner with a copy to the OCFA and OCFA legal representative.

F. If both parties agree to mediate an issue or issues, within fifteen (15) calendar days of such agreement being reached, mediation of said issues will be assigned to a mediator from the approved Mediator Panel. Attached

hereto as Exhibit B is the Mediator Panel that was agreed upon by the Joint Labor Management team (JLM).

G. For purposes of selecting a mediator, OCFA Risk Management/TPA shall select the mediator by starting with the first name from the Mediator Panel and continuing down the list, in order, until the list is exhausted, at which time OCFA Risk Management/TPA shall resume using the first name on the list. OCFA Risk Management/TPA shall notify all parties of the selection and assignment of a mediator within ten (10) calendar days of such assignment having been made.

H. Mediators will be paid at the rate of \$300.00 per hour. All costs associated with the mediation shall be paid by the OCFA.

I. Within five (5) calendar days of the selection of a mediator, the selected mediator shall be notified by the OCFA's TPA of his/her selection. The selected mediator shall then schedule the date, time, and location of the mediation with the parties.

J. The mediation must take place within forty-five (45) calendar days of notification having been sent to the mediator of his/her selection, unless this time limited is waived by both parties. If the selected mediator is either unable or unwilling to schedule the mediation within this forty-five (45) calendar day period, a new mediator shall be selected from the Mediator Panel from the next mediator available on the list, pursuant to the provisions of paragraph G.

K. The procedure, process, format, general nature of the mediation, the issues to be mediated, and the manner in which the mediation shall be conducted will be within the sole discretion of the mediator.

L. Mediation briefs shall not be mandatory but are strongly recommended and shall be a useful tool to assure that the mediator fully understands the issues involved and each party's respective positions in regards to each issue. Mediation briefs should be submitted to the mediator no later than ten (10) calendar days prior to the mediation. No specific format for a mediation brief is required. Mediation briefs may be formatted and submitted as either a formal pleading or in an informal letter brief format.

M. If the mediation is successful at resolving the dispute, a summary of the mediation shall be prepared by the Mediator, setting forth the specific issues presented for the mediation, a general description of how the mediation was conducted, the length of time of the mediation, and the resolution or settlement reached. A copy of this Mediation Summary shall be served upon the employee, the employee's legal representative, to the employee's assigned claims examiner, and to the OCFA Risk Management, and OCFA's legal representative.

N. If the mediation is unsuccessful at resolving the dispute, either party may seek to have the issue or issues adjudicated by the WCAB by filing a Declaration of Readiness to Proceed, in accordance with the Rules and Regulations governing WCAB hearings, as set forth in the Labor Code and the California Code of Regulations.

O. Although the mediation process is completely voluntary, it is expected that if the parties mutually agree to mediate an issue or issues, both parties shall abstain from filing a Declaration of Readiness to Proceed, with respect to said issue or issues, with the Workers' Compensation Appeals Board until completion of the mediation process, as set forth above.

Article VI: Nurse Case Management

A. Any party subject to the provisions of this Agreement may request the involvement of a nurse case manager in accordance with the provisions set forth herein.

B. The use of a nurse case manager should be mutually agreed to by both parties. Either side may request the assignment of a nurse case manager to a particular covered claim. For purposes of this Agreement a "covered claim" is a claim that is subject to the terms of this Agreement, as set forth herein.

C. The purpose of nurse case management includes, but is not limited to, coordinating and facilitating medical care for Covered Individuals, to be proactive with respect to intervention and facilitation of recovery of the Covered Individual, to assist and guide the covered employee through the medical treatment process and, if practical, assist with resolution of treatment disputes between the primary treating physician, secondary treating physicians and utilization review. The nurse case manager shall not attend the actual medical examination of the Covered Individual without consent of the employee.

D. A nurse case manager shall be assigned from the approved Nurse Case Management Panel. Attached hereto as Exhibit C is the Nurse Case Management Panel that was agreed upon by the OCFA, and the OCPFA.

E. For purposes of selecting a nurse case manager, OCFA/TPA shall select the nurse case manager by starting with the first company from the nurse case management panel and continuing down the list, in order, until the list is exhausted, at which time OCFA Risk Management/TPA shall resume using the first name on the list. Orange County Fire Authority Risk Management/TPA shall notify all parties, including the selected nurse case manager, of the selection and assignment of the nurse case manager within ten (10) calendar days of such assignment having been made.

F. If the selected nurse case manager is either unable or unwilling to serve as the designated nurse case manager, a new nurse case manager shall be selected from the nurse case management panel from the next nurse case management company available on the list, pursuant to paragraph E.

G. Nurse case management reports shall be prepared as per the usual custom and practice of the designated nurse case management company. A copy of these reports shall be served upon the employee, the employee's legal representative if represented, to the employee's assigned claims examiner, and to the OCFA and OCFA's legal representative.

H. If, at any time, the non-requesting party wishes to object to the continuation of nurse case management to a particular Covered Individual, they shall notify the other party, in writing, of their intent to terminate nurse case

management on a particular covered claim. Within ten (10) calendar days of such notice being served, nurse case management shall terminate. Notification of the termination of nurse case management on a covered claim shall be served upon the employee, the employee's legal representative if represented, to the employee's assigned claims examiner, and to the OCFA and OCFA's legal representative, if represented.

I. All costs involved in nurse case management for a Covered Individual or covered claim shall be borne by the OCFA.

Article VII: Discovery

A. Covered Individual shall provide OCFA Risk Management/TPA with fully executed medical, employment and concurrent employment releases, disclosure statement and any other documents and information reasonably necessary for the OCFA to resolve the employee's claim, when requested. If the employee fails to return the release and it is determined that the medical information is not sufficient for the IME to provide a comprehensive evaluation, the parties shall meet to resolve the issue(s) prior to setting an evaluation. This Article does not supplant or diminish the parties' rights to pursue or contest discovery issues pursuant to the remedies provided in the Labor Code, through mediation or the WCAB.

B. This Agreement does not preclude a formal deposition of a covered employee or an IME when necessary. Attorney's fees for depositions of covered employees shall be paid at the rate of \$325 per hour, consistent with Labor Code §5710. This rate of reimbursement for attorney's fees for depositions of covered

employees is subject to an annual review to determine if adjustments to said rate of reimbursement should be made. There shall be no attorney's fees for depositions of physicians or IMEs.

Article VIII: General Provisions

A. This Agreement constitutes the entire understanding of the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

B. This Agreement shall be governed and construed pursuant to the laws of the State of California.

C. This Agreement, including all attachments and exhibits, shall not be amended, nor any provisions waived, except in writing signed by the parties which expressly refers to this Agreement.

D. If any portion of this Agreement is found to be unenforceable or illegal the remaining portions shall remain in full force and effect.

E. This Agreement may be executed in counterparts.

F. Notice required under this Agreement shall be provided to the parties as follows:

(See attached signature page)

ORANGE COUNTY FIRE AUTHORITY:

By: Keith Richter
Date: 7/28/14

APPROVED AS TO FORM:

By: David Kendig
David Kendig,
General Counsel, OCFA

Date: 7/24/14

ORANGE COUNTY PROFESSIONAL
FIREFIGHTERS ASSOCIATION:

By: Dave Rose
Dave Rose, President

Date: 7/24/14

By: Ray Geagan
Ray Geagan, Vice President

Date: 7/24/14

By: Jonathan Biegler
Jonathan Biegler, Director

Date: 7/24/14

By: Bob James
Bob James, Director

Date: 7/24/14