Sincerely,

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* Admitted to practice law in Connecticut, New York and the District of Columbia. Advocacy for Patients is a 501(c)(3) tax-exempt organization and does not charge patients for its services. Advocacy for Patients is funded by, among other sources, grants from foundations and companies that engage in health care-related advocacy, manufacturing, delivery and financing. A list of grantors will be furnished upon request.

Appendix D: Sample Disability Letters

A. Disability Insurance Appeal

Note: This is a disability insurance appeal I prepared for a client who suffers from a number of disabilities. There are a number of things to be learned from this sample. First, I am including it here, with my client's permission, to show the detail that is required. Second, in this instance, the insurer obtained Independent Medical Exams ("IME"). This is so the insurer will have a defense to a charge that the payments were terminated wrongfully. It is critical to get copies of any IMEs, and critique them using the treating physician's records and, hopefully, correspondence responding to the IME. Finally, it is critical to know the standard that must be met under your policy. As you can see, in this case, my client's policy said that a patient is disabled if she can no longer perform the occupation she was in at the time of the disability. The insurance company's expert, and even the insurance company itself, was holding the patient to a higher standard, implying that she had to prove that she could no longer function in *any* job. This standard made all the difference.

This letter has been edited to eliminate some of the over 10 pages of analysis, but you should be able to get the idea. This client had saved every piece of paper relating to her disability from day one. It was invaluable to have that documentation.

Dear Sir or Madam:

I am writing on behalf of Patient L to appeal the decision set forth in a December 12, 2001 letter from Customer Care Specialist at ABC Insurance Company terminating disability insurance benefits. Because the analysis resulting in the termination entirely and utterly failed to consider the disability to Patient L's hands, wrists, and forearms that has been documented over the entire period of her disability, and because it misunderstands the nature of Patient A's policy and coverage, the termination must be reversed and benefits reinstated immediately.

Patient L is covered under the Premier Disability policy, which provides coverage when the insured is unable to perform his or her "regular job," meaning "the occupation in which you are engaged when a Disability starts [ ], even if you are working at another job." In other words, Patient L need not prove that she is unable to work at any profession; she need only prove that she is unable to perform the "substantial and material duties" of her occupation as insurance salesperson.

The termination decision fails to honor the terms of the policy, or to recognize the history of this claim, in a number of respects.

A. Disability to Hands, Wrists, Forearms Is Ignored

First, ABC Insurance Company's termination fails to so much as mention the disability to Patient L's hands, wrists, and forearms. In addition to the definition of "total disability" mentioned above, the policy also provides that "total disability" also may be shown by a loss of "the use of both hands . . .," "without regard to the Insured's ability to work. . . ." Patient L's physical disability to her hands, wrists, and arms qualifies under both definitions of "total disability."

Patient L's initial claim form indicates that her occupational duties included driving a vehicle. (*See* June 13, 1996 Claim). The "claimant's statement" form filled out during the investigation of her claim indicates that her job required daily use of an automobile to travel to see clients within a 50 mile radius,[102] as she saw clients and potential clients throughout State O and in other states. In addition, she was required to write in the course of soliciting new business, taking notes during meetings with clients and their professional advisors, directing her staff, and generating written proposals to potential clients.[103] (*See* August 13, 1996 Claimant's statement). A June 9, 2000 Supplemental Application for Disability Benefits reported two disabilities: stress and "severe nerve damage both hands, arms." The attached physician's statement reports a diagnosis of carpal tunnel syndrome, and the attached narrative reports Patient L's restrictions as a result of the disability to her hands, wrists, and arms. This condition also was reported on [list all documentation on this point]. It is difficult to imagine how ABC Insurance Company could have entirely ignored the existence of this disability.

The report of Patient L's treating physician dated August 25, 1997, requested by Employer in assessing her initial disability claim, indicates that she has "limitations because of her severe bilateral neuropathy and is unable to drive her automobile for over a few minutes at one sitting." (*See* Letter from Dr. X, August 25, 1997). In addition, you have in your file a Nerve Stimulation Study Report from Dr. Y dated April 15, 1997; a November 14, 1997 letter from consultant N indicating establishing that Patient L suffers from "difficulties in doing sustained or any kind of repetitive work with the right and left upper extremities," including difficulty driving, holding a telephone, completing dictation, and continuous writing; and a March 22, 1999 letter from Dr. Z, in which he reports carpal tunnel syndrome "combined with chronic cervical strain and forearm myofascial syndromes," evidenced by "severe bilateral median nerve slowing." Despite these and many other documents in the file establishing the disabling nature of the injury to Patient L's hands, wrists, and arms, ABC Insurance Company's termination letter fails to assess the impact of this disability on Patient L's ability to perform her previous job as an insurance salesperson.

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[102] In fact, Patient L's vehicle odometer readings indicate that she drove approximately 100 miles per day while an active agent.

[103] Patient L estimates that she spent an average of approximately 4 hours per day writing while an active agent.

Finally, the failure to so much as mention this physical disability is particularly curious in that both of Insurance Company ABC's independent medical examiners note the existence of this disability. (IME doctor 1 report at p. 3; IME doctor 2 report at pp. 2, 21). IME doctor 2 reports that Patient L informed him that "she could no longer handwrite or type reports because of her presumed carpal tunnel syndrome." (Report at p. 12). He goes on to recite in detail the restrictions reported by Patient L as a result of the disability to her hands and arms. (Report at pp. 13-14). Indeed, IME doctor 2 noted Patient L's concern that, ultimately, she may be forced to give up her painting hobby due to the disability to her hands and arms. (Report at p. 15). IME doctor 1 devotes a paragraph of his report to detailing Patient A's physical disability and attempts at treatment. (Report at p. 2).

Thus, ABC Insurance Company has many years worth of documentation of the disability to Patient L's hands, wrists and arms, including medical documentation indicating that surgery had failed and that this disability makes it impossible for Patient L to perform the "substantial and material" functions of her job – which certainly include writing, driving, and holding a telephone. Yet, ABC Insurance Company's termination letter does not even mention this disability, or explain why it does not, in ABC Insurance Company's opinion, qualify Patient A for total disability. Indeed, it appears clear from the letter that this disability was not even considered. There can be no question that, as a result, the termination decision must be reversed, at the very least pending a determination regarding this second disability.

B. Consideration of Painting Hobby

The termination letter places significant importance on the finding that Patient L "appear[s to] have chosen a new career as an artist." This statement is both factually inaccurate and irrelevant. The fact that Patient L paints and always has painted never was hidden from Employer or ABC Insurance Company. Indeed, it was considered in detail during the initial evaluation of her disability claim, and was mentioned on nearly every monthly progress report. Yet, all of a sudden, the fact that Patient L paints has become a basis for denying her claim of total disability – a position that was resoundingly rejected by Employer when it made the initial determination of eligibility.

If this represents a difference in interpretation of the policy between Employer and ABC Insurance Company, Employer's interpretation must control. Employer expressly took the position in writing in training its agents to sell this disability policy that it did not matter whether the Insured was able to perform some other job so long as she no longer was able to perform the "substantial and material" functions of the position she was in at the time of her disability – here, selling [the product]. Thus, whether Patient L ever grows into a successful painter is irrelevant under the policy.

Patient L has always, since before the onset of her disability, painted and attempted to sell her work. After much consideration and evaluation of documents, by letter, Employer acknowledged that, although it could not completely disregard all of Patient L's activities, it considered her occupation to be that of [sales person and advisor],

and evaluated her disability claim based on that consideration. From that point on, this issue of whether Patient L's painting constitutes a second or new occupation became irrelevant since the only "regular" job that matters under her policy is the job in which she was engaged at the time of the disability. Even if you were correct that Patient L had chosen to pursue a "career" as a painter, that fact would be irrelevant.

Patient L has provided copies of her income tax returns for all years in which those documents were requested. Thus, you have all available information regarding Patient L's art sales. Patient L repeatedly, for many years, has expressed her hope that her painting would produce income to supplement her disability retirement and insurance payments. (list dates of correspondence). Nothing at all has changed in that regard that would cause ABC Insurance Company to attach special importance to this fact at this time.

Patient L did not leave Employer to become a painter; she left her extremely lucrative career because she was totally disabled, as Employer finally acknowledged. For many years, she has expressed hope that she would have increasing opportunities to sell her art work, but it never was her occupation or an alternative career. Because Patient L's painting was fully evaluated at the time of the initial disability determination, and because no new circumstances affecting the disability determination have arisen, the fact that Patient L paints and hopes to sell her work occasionally is irrelevant, and cannot be considered as a basis for terminating disability insurance benefits.

C. Depression and Anxiety Disability

Finally, ABC Insurance Company has determined that Patient L's depression and anxiety do not rise to the level of a disabling condition. It bases its decision on its view that Patient A "ha[s] not been prescribed any psychotropic medications, nor ha[s she] had treatment now or in the past that would be adequate to address a condition of disabling proportions." As Patient L clearly informed the independent medical examiners, no treating physician ever has prescribed or recommended psychotropic medication, although her treating physicians have considered her disability to be disabling. ABC Insurance Company's own examiner, IME doctor 1, focuses substantially on his disagreement with the course of Patient L's treatment to date. (IME doctor 1 report). However, there is absolutely no indication that Patient L has been anything but compliant as a patient. She never has refused any treatment that was recommended. ABC Insurance Company's conclusion is tantamount to saying that, if its independent medical examiners disagree with the treatment plan fashioned by the treating physicians, the Insured automatically is not disabled. Neither the policy language nor the law supports such fallacious reasoning.

ABC Insurance Company's independent medical examiners' reports are neither credible nor reliable. IME doctor 1 saw Patient L for approximately two and a half hours before turning her over to an assistant who administered psychological tests. Approximately an hour into the initial interview, IME doctor 1 began cutting Patient L off from giving explanations to her responses, indicating that there was a lot of testing to

be done so they needed to move along. IME doctor 2's website is nothing short of an advertisement for a "hired gun." His career as a professional expert for insurance companies easily supports a conclusion that he is demonstrably biased.

Further, it is clear that IME doctor 2 did not base his opinion on the proper definition of "total disability" under this policy. Again, the disability policy that Patient L owns provides coverage when the insured is unable to perform his or her "regular job," meaning "the occupation in which you are engaged when a Disability starts [ ], even if you are working at another job." IME doctor 2's report discloses that he considered whether Patient L could work "in another field . . . ." (Report at p. 12). In contrast, IME doctor 1 ultimately *supports* Patient L's claim under the Disability policy, stating that Patient L "is anxious and probably mildly depressed, *and these factors may prevent her from effectively dealing with the stresses of her former work . . . .*" Based on this conclusion, ABC Insurance Company's termination of benefits contradicts its own examiner's opinion, and the two examiners differ substantially, as well.

Patient L reports that, during both examinations, she felt and exhibited tremendous stress and anxiety, which appears to have been ignored by the examiners, as well as ABC Insurance Company's internal medical staff (none of whom has met Patient L, of course). Patient L was in tears whenever talking about her former position. She explained that she cannot drive long distances or travel by plane, not only because of the disability to her hands, wrists, and arms, but also because of debilitating anxiety. Patient L communicated that she is deeply ashamed of the financial burden that her disability has imposed on her family. For the examiners and ABC Insurance Company to suggest that Patient L can return to a profession that she cannot even discuss without crying is nothing short of ludicrous. As recently as July 2, 2001, Patient L's treating physician has reported outward symptoms of stress and depression such as insomnia, fatigue, loss of libido, intestinal upset, hair loss, and feelings of betrayal and poor judgment.

ABC Insurance Company's position represents nothing more than a *disagreement* with Employer's initial finding of total disability rather than an indication of any change in circumstances. Indeed, there is not a single reference in ABC Insurance Company's letter to anything that has changed, or to any new information presented to ABC Insurance Company of which Employer was not aware when the finding of total disability was made. ABC Insurance Company is not permitted, under the policy, to reconsider the initial determination of disability; if it wishes to revisit that determination, it must do so based on new or previously undisclosed information or change in circumstances. The independent examiners' reports do not indicate that they reviewed *anything* that has not been in Patient L's file all along. Since ABC Insurance Company has not reviewed or referred to any new or previously undisclosed information, or any change in circumstances, it may not reverse Employer's initial determination of total disability.

D. Conclusion and Recommendations

ABC Insurance Company must reinstate benefits pending a reconsideration of Patient L's claim due to its failure to so much as consider the impact of the disability to Patient L's hands, wrists, and arms. The failure to consider this disability at all, along with the fact that it is permanent in that it results in the loss of use of her hands to perform the substantial and material functions of her occupation mandates immediate reinstatement.

Further, ABC Insurance Company may not terminate benefits simply because it disagrees with the initial determination of total disability. ABC Insurance Company has cited nothing new at all. It knew, for example, that Patient L was painting as a hobby, and making occasional sales with greater aspirations, throughout the disability period. Without a finding that something has changed or it has obtained new information, ABC Insurance Company may not reverse the initial finding of total disability.

On September 15, 1999, through counsel, Patient A proposed that Employer buy out her disability policy. She continues to be willing to consider this alternative to incessant paperwork and disputes. If that is an alternative you wish to pursue at this time, please let me know. In the alternative, we demand that benefits be reinstated immediately.

Sincerely,

Lawyer (or Patient)

B. Disability Insurance Appeal

January 3, 2007

ABC Insurance Benefit Administrators
PO Box 5031
White Plains, NY 10502-5031

RE: Patient Z
Claim no. 00392516

Dear ABC Insurance:

I am writing to appeal the denial of long-term disability benefits for your insured, Patient Z. My HIPAA release is enclosed.

In short, we write to contest your unfounded assertion that Ms. Z is not disabled because, in your opinion, her problem is more psychological than physical. First, this is unsupported by the evidence. Second, even if it were true, if the combination of her physical and mental impairments render her unable to work – as

the statement from her physician confirms – then there is no basis for denying coverage beyond July 6, 2006.

I. THE INSURED REMAINS DISABLED BY CHRONIC FATIGUE SYNDROME AND ASSOCIATED PHYSICAL DISABILITIES

The records you have establish that Ms. Z has been complaining of fatigue since July 2005, and tested positive for Epstein Barr Virus (EBV) on August 31, 2005, March 31, 2006, and June 21, 2006. In addition, I enclose records obtained from Dr. Susan L, an expert in infectious diseases, that establish that Ms. Z tested positive for Epstein Barr on September 28, 2006, as well. Thus, you have evidence of a steady, protracted case of EBV spanning more than one year. There is absolutely nothing in the records that suggest that Ms. Z's condition ever improved. Therefore, there is nothing to support your claim that Ms. Z no longer was disabled on July 6, 2006. Her EBV is unremitting.

In addition, although you mention that the patient has had herpes simplex virus, you do not consider the possibility that the herpes virus also contributes to Ms. Z's fatigue.

Indeed, Ms. Z had an elevated white blood count and sedimentation rate on most of the dates on which her blood was drawn and tested. Although Dr. R believed in August 2005 that this was due to the herpes virus, Ms. Z's sed rate and white blood count have not normalized, so either Dr. R was wrong or the herpes virus remains in Ms. Z's system and should be considered as part of the diagnosis.

Furthermore, there are quite a few notes indicating that Ms. Z suffers from fibromyalgia. See, e.g., Dec. 12, 2005, Nov. 28, 2005. Similarly, Ms. Z consistently complained of headaches. See, e.g., Feb. 10, 2006, April 20, 2006. These conditions, too, were not considered by ABC Insurance.

Thus, we are looking at several conditions which, in combination, produce disability.

With respect to your letter, there are several factual inaccuracies. You assume that Lexapro and Cymbalta were prescribed for depression when, in fact, they were prescribed in connection with EBV and fibromyalgia, not depression. For example, Dr. K's July 8, 2006 note indicated that, although Ms. Z was depressed, there were "no Rx's needed" for this condition. Although there is a note that Dr. K was switching Ms. Z to Zoloft, she never actually took any Zoloft at all. The change to Cymbalta was made because Cymbalta's unique properties purport to help with body aches and pain – again, fibromyalgia, not depression. In fact, these medications did not alleviate symptoms and were discontinued.

Most importantly, though, you have drastically misconstrued Dr. K's opinion. You spoke with Dr. K and then sent him a letter that you represented reflected the substance of that conversation. You asked him to read it and sign it if you had correctly recounted the conversation. Dr. K did not sign the letter as you wrote it; he added his own note, which shows that he did not believe that you properly construed his conversation with you. In that note, Dr. K is clear that Ms. Z cannot work full-time due to her physical condition, and may not be able to work even part-time due to psychological reasons. He says "she requires frequent rest periods and

naps" as part of the same sentence in which he speculates that Ms. Z's psychological condition might not allow her to work full-time.

I enclose a letter from Dr. K clarifying his position. As you can see, Dr. K believes that Ms. Z cannot work at all, and that the sole cause of her disability is her chronic fatigue syndrome. Dr. K clearly states that he never said or meant to say otherwise. Although Ms. Z may well be depressed. Dr. K clearly states that the depression is due to the chronic fatigue syndrome, and that it is the chronic fatigue syndrome, not her depression, that disables her.

Even without this clarification, Dr. K's opinion supports a finding that Ms. Z remains disabled. First, Dr. K did not sign your letter as it was written. He signed it only after he had added his note. Thus, for you to assert that he approved the language of your letter about a "break down at work" is simply wrong.

More importantly, though, ABC Insurance's definition of disability supports a finding of disability based on Ms. Z's inability to work full-time. Taking Dr. K's words literally, he unambiguously states that Ms. Z's physical condition would only allow her to work part-time – maybe. ABC Insurance's definition states that a person is disabled if she is (1) unable to perform the material duties of her own occupation; AND (2) unable to earn at least 80% of her indexed predisability earnings when working in her own occupation. If the ability to work part-time negates a claim of disability, then part two of this test is read out of existence. In other words, according to ABC Insurance, a person is disabled even if she can work at her own occupation part-time, i.e., she is unable to earn at least 80% of her predisability income. Thus, the fact that Dr. K implies that he thinks that perhaps Ms. Z is physically able to work part-time does not mean that she is not disabled. On the contrary, if all she can work is part-time, then she remains disabled according to ABC Insurance's definition.

You have discounted Dr. K's statement that Ms. Z *may* be able to work *at best* part-time as a "change of position" that Dr. K has not explained. This ignores the more likely conclusion that what you wrote in your letter was not what Dr. K said or meant to say, and that his handwritten note in which he says Ms. Z *may* be able to work *at best* part-time is a more accurate statement of his medical judgment. Dr. K's recent note states that he never said or meant to say what you have attributed to him. Accordingly, the one piece of evidence upon which you based your noncoverage decision was used in a way that Dr. K never intended.

Although you note that Ms. Z attempted to return to work but was unable to do so, you have attached no significance to this fact. You are correct in noting that Ms. Z has "tried" to remain active. She has failed at this, however – a fact that you choose to ignore. Ms. Z has demonstrated a desire to come off disability by trying to remain active and trying to return to work. This does not mean she is not disabled. In fact, it shows the opposite – she is motivated and wants to work, but is unable to do so due to disability. Indeed, on several occasions, there are notes that, when Ms. Z overdoes it or pushes herself, she then has a setback. See, e.g., June 21, 2006, May 24, 2006.

Dr. Susan L, an expert in infectious diseases, is Ms. Z's new treating physician. Dr. L confirms the diagnosis of chronic fatigue syndrome and states that it is physical, not psychiatric. (12/27/06 letter from Dr. L). She ordered several blood tests that had not been performed before, and the results show several

abnormalities including EBV and the presence of antibodies to Mycoplasma. She reports that Ms. Z's fatigue and muscle pain impairs her ability to walk, stand, lift and carry. Dr. L indidates that Ms. Z does not have any mental illness. She documents the fact that several exhaustion, chronic sinus problems, cognitive disturbances, sore throats and lymph node swelling all are consistent with chronic fatigue syndrome and that "I deem her prognosis to be poor and recommend that she be deemed completely disabled for an indefinite period of time." This letter is dated December 27, 2006, demonstrating that Ms. Z's disability remains.

Dr. L's opinion is founded on an office visit as recent as December 6, 2006. At that time, Dr. L noted weakness, sleep disturbances, lightheadedness, and trouble standing and walking, and noted cervical spine stiffness as well as diminished grip strength. In addition, Ms. Z found it difficult to count "backwards by serial 7's." Dr. L notes that Ms. Z also is considering physical therapy for her fibromyalgia (notes saying "FM" refer to fibromyalgia).

When you consider chronic fatigue syndrome, headaches, herpes, and fibromyalgia in combination, Ms. Z is disabled. When you consider Dr. K's opinion, which states that Ms. Z is not physically able to work full-time, Ms. Z is disabled. When you consider Ms. Z's failed effort to return to work, Ms. Z is disabled. There is nothing whatsoever that indicates that Ms. Z's condition changed from January 2006, when you admit she was disabled, and July 2006, when you say she is not. There simply is no medical evidence at all of an improvement in Ms. Z's physical condition. Therefore, there is no rational basis for finding that Ms. Z's condition was disabling in January but not in July. Your decision should be reversed.

II. EVEN IF SHE SUFFERS FROM DEPRESSION, THE INSURED IS DISABLED

I understand from your letter that you are not considering the possibility that Ms. Z is disabled due to mental disorder because the file was opened as a physical claim. However, this reasoning exalts form over substance. If Ms. Z is disabled due to mental disorder, or a combination of physical and mental disorders, then she is disabled, regardless of how you opened your file.

In fact, on the Attending Physician's Statement submitted with this claim, Dr. K wrote that, in addition to physical illness, Ms. Z "appears depressed due to her physical symptoms and chronicity of disease." Thus, you were on notice from the time this claim was initiated that there was a psychological component to it. The fact that you chose to open this claim as one of solely physical disability is not a basis for denying benefits.

III. CONCLUSION

Thus, whether this claim is viewed as one for disability due to chronic fatigue syndrome alone, or whether it is viewed as one for disability due to chronic fatigue syndrome and depression taken together, the end result is the same. The insured remains disabled and, thus, is entitled to restoration of her benefits from July 7, 2006 forward.

Of course, if you would like any additional information, please do not hesitate to contact me. Thank you.

Sincerely,

Jennifer C. Jaff

C. Disability Retirement Appeal (Employment)

Dear Employer:

I am writing to seek reconsideration of the denial of disability retirement benefits to Patient A, formerly employed in the State school system.

The Employment Benefit Handbook states that, to qualify for disability retirement benefits, a retiree must be: (a) mentally or physically disabled from the further performance of her duty; and (b) the disability is probably permanent. The denial letter states that the Medical Review Board has reviewed Patient A's record, although it is unclear to me what information was reviewed. Accordingly, enclosed with this letter are some of Patient A's medical records relevant to her claim of disability. I am assuming that you have access to her personnel files, and, thus, am not providing copies of those materials here, but will do so upon request if you do not have everything to which I cite below.

After a careful and thorough review, the Medical Review Board will find that Patient A is, in fact, disabled from the further performance of her duty as a teacher in the State school system, and that her disability is probably permanent. As you will see, the School District already has implicitly acknowledged that Patient A is disabled under the Americans with Disabilities Act ("ADA"), but was unable to provide sufficient accommodation to allow Patient A to continue to work. In that her condition has worsened since her employment terminated, she remains disabled and her claim for disability retirement benefits should be granted.

A. Nature of Disability

Patient A is diagnosed with inflammatory bowel disease (IBD). IBD involves inflammation of the lining of the intestine. See www.ccfa.org for detailed information. IBD manifests itself in a number of ways, including diarrhea, malnutrition, overwhelming fatigue, intestinal obstruction, abscesses and fistulas, joint pain, and other symptoms.

The Employer's Handbook sets forth the following criteria for IBD:

5.06 Inflammatory bowel disease (IBD)documented by endoscopy, biopsy, appropriate medically acceptable imaging, or operative findings with:

A. Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation, confirmed by appropriate medically acceptable imaging or in

surgery, requiring hospitalization for intestinal decompression or for surgery, and occurring on at least two occasions at least 60 days apart within a consecutive 6-month period.

OR

B. Two of the following despite continuing treatment as prescribed and occurring within the same consecutive 6-month period:

1. Anemia with hemoglobin of less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; or

2. Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; or

3. Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or

4. Perineal disease with a draining abscess or fistula, with pain that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or

5. Involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart; or

6. Need for supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter.

Ptient A also suffers from fibromyalgia, a chronic rheumatological impairment of the joints, which is extremely painful, and also causes headaches. Again, for your assistance to use as a non-binding guideline, the Social Security Administration has promulgated the following criteria for joint-related impairments:

> **1.02** ***Major dysfunction of a joint(s) (due to any cause)***: Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
>
> A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;
>
> OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

Patients with either of these illnesses can be expected to be on any number of medications; those with both of these diagnoses are on numerous prescription medications, and suffer from fatigue and pain. Often, these chronic illnesses are accompanied by depression, as well. The combined effects of all of these impairments should be considered when evaluating a claim of disability.

B. Patient A's Condition

Patient A's IBD began in 1984 although, as is common, she was not definitively diagnosed until 1990. As of November 2000, she had active disease, with crampy abdominal pain and diarrhea. She also has been diagnosed with mild chronic hepatitis or liver dysfunction. (See [date] biopsy). She has a history of gastroesophageal reflux disease, depression, and asthma. She has osteopenia, confirmed by bone density scan dated [date].

In [date], just before she terminated her employment and applied for disability retirement benefits, rheumatologist Dr. M states that Patient A has enteropathic arthritis, fibromyalgia and osteopenia. Dr. M said that "[s]he described her life as miserable with diffuse aches and pain, increasing fatigability [sic], increased peripheral swelling, and problem sleeping." According to her physician, "[s]he has a hard time performing her job." Although she was not having acute symptoms of IBD at that time, that was most likely because she was taking Asacol, Hyoscamine, Prevacid, Celexa, Zanaflex, Demadex, Potassium chloride, Adderall and Effexor XR in an effort to maintain remission. Dr. M noted "multiple diffuse tender points" upon examination. (See [date] chart entry). Similar symptoms have been observed over a long time period, from at least 2000 to present. (See chart entries [dates]).

As documented in [date], Patient A's IBD is only controlled for short periods of time. When active, Patient A suffers from left-sided abdominal pain and loose stools. (See [date] chart entry). The medications she takes to maintain remission, set forth above, have significant side-effects. Dr. S writes in [date] that Patient A suffers from IBD and related arthritis, as well as abnormal liver function, contributing to her fatigue. She has been medicated for severe depression for quite some time. (See [date] chart note). Both her IBD and arthritis are objectively confirmed by a consistently elevated sedimentation rate over the years.

All of this taken together severely limits Patient A's daily activities. As documented by numerous physicians, mornings are worst for Patient A, both due to joint pain and due to the early morning diarrhea common with IBD. The pain, especially when combined with the fatigue that stems from a number of Patient A's impairments, makes it difficult to stand all day, and maintain a high energy level. There are times when Patient A is entirely immobilized by the pain she must bear. Her hands curl, especially when she sleeps, so they are stiff when she wakes, and she suffers from daily bouts of nausea

associated with IBD and various medications she takes. The depression accompanying all of these impairments is itself debilitating.

Although Patient A's IBD has proven controllable in the past, the stress that accompanied her termination from employment has exacerbated her symptoms. The inflammatory arthritis that is documented quite clearly in her medical records is a systemic symptom of her IBD, as recognized in the Social Security Administration's criteria for ulcerative colitis, as set forth above. When added to liver dysfunction, fibromyalgia, and severe depression, these impairments in combination result in a total disability.

A typical day for Patient A begins with extreme fatigue. Her sleep is intermittent, due to interruptions from the need to defecate or due to pain. She is in pain all the time. Her pain is in her left side (probably IBD-related), her feet, neck, and shoulders, and a sharp pain under her left scapula. On good days, she can load and unload the dishwasher, but there are days when she begins to do so and must stop, due either to pain or fatigue or both. She cannot grocery shop or walk around stores; she occasionally shops at STORE because it makes scooters available. She cannot walk considerable distances, and she cannot stand for any period of time. She can drive short distances, but if she needs to drive for an hour or more, she has to surround herself with heating pads and pillows. It is difficult to get in or out of a car. She does not socialize. She cannot play with her granddaughter. She has been to one movie in the past year. Her only relief from pain is when she is lying down. The pain medication she is on helps, but does not completely eliminate the pain ever. As one would expect, she is horribly depressed.

In fact, most recently, Patient A has relocated to live with her daughter because she is unable to live independently at this time as a result of the constant pain she is in. She requires assistance with the activities of daily life. Not only is she disabled from teaching; she is disabled from light or sedentary work, as well.

C. Work History

In fact, the circumstances of Patient A's resignation from her employment bear out that she is disabled. Due to her physical impairments, Patient A had trouble making it to school for first period; she had difficulty carrying her teaching materials from one classroom to another; she needed to have a break in the middle of the day, often to lie down; she needed to be located near a bathroom; and she found it unbearably stressful when the school Principal refused to accommodate her in a timely manner. In the end, it was the combination of her physical and mental impairments that resulted in her resignation.

Patient A was a teacher at the School for nineteen years, until her resignation (or, more appropriately, constructive discharge). Documentation in the school and School District's file of Patient A's disability dates back as far as 1995, and Patient A's file is replete with numerous reprimands due to the allegation that she repetitively was late to school due to her illness. She tried numerous times to educate the School Principal about

the nature of the illness and the need for accommodation. (See material about IBD marked received on [date]; letter dated [date] from Patient to School Principal). School Principal periodically indicated that he would be more flexible, but not for sustained periods of time. (See [date] letter from School Principal to Patient A). Indeed, although School Principal promised accommodations, only ten days later, he wrote Patient A claiming that there was nothing in her file confirming her diagnosis. (See [date] letter from School Principal to Patient A).

By letter dated [date], Patient A's rheumatologist, Dr. M, wrote that the arthritis secondary to Crohn's disease (IBD), as well as fibromyalgia, was causing Patient A joint aches and stiffness, requiring multiple medications. A conversation with the previous school Principal confirmed that, in the past, Patient A was not scheduled for first period in recognition of her difficulty getting to work early. (See School Principal note to file dated [date]). However, in the absence of a past written commitment to accommodate Patient A's disability, School Principal refused to make any adjustments in Patient A's schedule. (See [date] letter from School Principal to Patient A).

On [date], Director of Human Resources, wrote Patient A acknowledging receipt of documentation of IBD, and indicating an intent to review Patient A's condition to determine whether it is disabling and whether accommodation would help. Accommodations were proposed on [date], implicitly acknowledging that Patient A is disabled under the Americans with Disabilities Act. Although a number of accommodations were proposed, agreement was not reached relating to the use of a single classroom for all of her classes, so that Patient A would be near a bathroom and would not have to carry her class materials around. Thus, although a final agreement was not reached, the school district acknowledged that Patient A was disabled and entitled to accommodation

D. Analysis and Conclusion

Although the Employer's medical criteria are not published, the Social Security Administration criteria may be used as guidelines. Pursuant to those criteria, Patient A's IBD meets the Social Security Administration criteria. However, Patient A's condition is not that simple. In addition to IBD and inflammatory arthritis, Patient A's physicians have well documented fibromyalgia, liver dysfunction, and severe depression, all of which have been active at various times over the past few years. In combination, these impairments made it impossible for Patient A to remain actively employed without accommodation. The Employer implicitly acknowledged that Patient A is disabled within the meaning of the Americans with Disabilities Act when it offered some accommodations. Ultimately, the failure of the school to provide sufficient accommodation forced Patient to resign.

The U.S. Court of Appeals for the Fifth Circuit repeatedly has held that pain itself can be disabling, even when its existence is unsupported by objective medical evidence if linked to a medically determinable impairment. *Scharlow v. Schweiker*, 655 F.2d 645, 648 (5th Cir. 1981) (reversing denial of SSI disability claim). Here, all of Patient A's

subjective symptoms – pain, frequent bowel movements, difficulty carrying materials from one classroom to another, and fatigue – stem from medically determinable impairments, as well-documented in her medical records. Although her records do contain objective evidence confirming her symptoms, those symptoms in and of themselves must be considered in evaluating her claim of disability. If Patient A's subjective reports of her symptoms are properly considered, Patient A must be found to be disabled.

Patient A is in an untenable position, having been told that she is too disabled to perform her job in an acceptable way, but not disabled enough to receive disability retirement benefits. A thorough review of her medical records substantiates her claim of disability.

Of course, if you have any questions, or would like any additional information, please feel free to contact me.

Sincerely,

Employee or his/her Attorney

Appendix E: High Risk Insurance Pools

State	Website	Telephone number
Alabama	www.alseib.org/healthinsurance/ahip/	1-800-513-1384
Alaska	www.achia.com	1-800-467-8725
Arkansas	www.chiparkansas.org	1-800-285-6477
California	www.mrmib.ca.gov	1-800-289-6754
Colorado	www.covercolorado.org	1-303-863-1960
Connecticut	www.hract.org/hra/	1-800-842-0004
Florida (closed)	Not available	850-309-1200
Idaho	www.doi.idaho.gov/health/healthinfo.aspx	1-800-721-3272
Illinois	www.chip.state.il.us/	1-800-367-6410
Indiana	www.onlinehealthplan.com	1-800-552-7921
Iowa	www.hipiowa.com	1-877-793-6880
Kansas	www.khiastatepool.com	1-800-362-9290
Kentucky	www.kentuckyaccess.com	1-502-573-1026
Louisiana	www.lahealthplan.org	1-800-736-0947
Maryland	www.marylandhealthinsuranceplan. state.md.us/	1-888-444-9016
Minnesota	www.mchamn.com	1-866-894-8053
Mississippi	www.mississippihealthpool.org/index.php	1-888-820-9400
Missouri	www.mhip.org	1-800-843-6447 or 1-800-645-8346
Montana	www.mthealth.org	1-406-444-8200
Nebraska	www.nechip.com	1-877-348-4304
New Hampshire	www.nhhealthplan.org	1-877-888-6447
New Mexico	www.nmmip.com	1-866-622-4711
North Carolina	www.nchirp.org/	1-866-655-2117
North Dakota	www.chand.org	1-800-737-0016
Oklahoma	Not available	1-800-255-6065
Oregon	www.oregon.gov/OHA/OPHP/OMIP/index.shtml	1-800-848-7280
South Carolina	Not available	1-800-868-2500 ext. 42757
South Dakota	riskpool.sd.gov/	1-605-773-3148
Tennessee	www.covertn.gov/web/access_tn.html	1-866-636-0080
Texas	www.txhealthpool.org/	1-888-398-3927
Utah	selecthealth.org/plans/government/Pages/ HIPUtah.aspx	1-800-538-5038
Washington	www.wship.org/	1-800-877-5187
West Virginia	www.wvinsurance.gov/accesswv/	1-866-445-8491
Wisconsin	www.hirsp.org	1-800-828-4777
Wyoming	insurance.state.wy.us/whip.html	1-800-438-5768

Appendix F: Social Security Listing of Impairments

The "Blue Book" contains all of the listings of impairments as determined by the SSA. It is impossible to reprint the entire text of all of the impairments, both adult and pediatric, here. So what I have done is to create a "table of contents" so that you can see all of the impairments and will know where to find the one(s) you are looking for. The Blue Book itself does not contain a table of contents, so what is below took some doing.

Once you find the number of the impairment(s) you think apply to you, go to the following website to retrieve the text of the impairment(s). Just paste the website address into your browser and you should get to the right place.

For **adults**, go to:
http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm

For **children**, go to: http://www.ssa.gov/disability/professionals/bluebook/ChildhoodListings.htm

Part A: ADULT LISTINGS

1.00 Musculoskeletal System

1.01: Category of Impairments, Musculoskeletal
1.02: Major dysfunction of a joint(s) (due to any cause)
1.03: Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint
1.04: Disorders of the spine
1.05: Amputation (due to any cause)
1.06: Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones
1.07: Fracture of an upper extremity
1.08: Soft tissue injury (e.g., burns)

2.00 Special Senses and Speech

2.01: Category of impairments, Special Senses and Speech
2.02: Loss of visual acuity
2.03: Contraction of the visual fields in the better eye
2.04: Loss of visual efficiency
[2.05 Reserved]
[2.06 Reserved]
2.07: Disturbance of labyrinthine-vestibular function
[2.08 Reserved]
2.09: Loss of speech
2.10: Hearing loss not treated with cochlear implantation
2.11: Hearing loss treated with cochlear implantation

3.00 Respiratory System

3.01: Category of impairments, Respiratory System
3.02: Chronic pulmonary insufficiency
3.03: Asthma
3.04: Cystic Fibrosis
[3.05 Reserved]
3.06: Pneumoconiosis
3.07: Bronchiectasis
3.08: Mycobaterial, mycotic, and other chronic persistent infections of the lung
3.09: Cor pulmonale secondary to chronic pulmonary vascular hypertension
3.10: Sleep-related breathing disorders
3.11: Lung transplant

4.00 Cardiovascular System

4.01: Category of impairments, Cardiovascular System
4.02: Chronic heart failure
[4.03: Reserved]
4.04: Ischemic heart disease
4.05: Recurrent arrhythmias
4.06: Symptomatic congenital heart disease
[4.07, 4.08: Reserved]
4.09: Heart transplant
4.10: Aneurysm of aorta or major branches
4.11: Chronic venous insufficiency
4.12: Peripheral arterial disease

5.00 Digestive System

5.01: Category of impairments, Digestive System
5.02: Gastro-intestinal hemorrhaging from any cause
[5.03, 5.04: Reserved]
5.05: Chronic liver disease
5.06: Inflammatory bowel disease
5.07: Short bowel syndrome
5.08: Weight loss due to any digestive disorder
5.09 Liver transplantation

6.00 Genitourinary System

6.01 Category of impairments, Genitourinary
6.02: Impairment of Renal function
[6.03 through 6.05 Reserved]

6.06: Nephrotic syndrome, with significant anasarca, persistent for at least 3 months despite prescribed therapy

7.00 Hematological Disorders

7.01: Category of impairments, Hematological Disorders
7.02: Chronic anemia
[7.03, 7.04 Reserved]
7.05: Sickle cell disease, or one of its variants
7.06: Chronic thrombocytopenia (due to any cause)
7.07: Hereditary telangiectasia
7.08: Coagulation defects (hemophilia or a similar disorder)
7.09: Polycythemia vera (with erythrocytosis, splenomegaly, and leukocytosis or thrombocytosis)
7.10: Myelofibrosis (myelo-proliferative syndrome)
[7.11 through 7.14 Reserved]
7.15: Chronic gramdocytopenia (due to any cause)
[7.16 Reserved]
7.17: Aplastic anemias with bone marrow or stem cell transplantation

8.00 Skin Disorders

8.01: Category of impairments, Skin Disorders
8.02: Ichthyosis
8.03: Bullous disease
8.04: Chronic infections of the skin or mucous membranes
8.05: Dermatitis
8.06: Hidradenitis Suppurativa
8.07: Genetic photosensitivity disorders
8.08: Burns

9.00 Endocrine System

Not broken into sections, but covers pituitary gland disorders, thyroid gland disorders, parathyroid glad disorders, adrenal gland disorders, diabetes mellitus and other pancreatic gland disorders.

10.00 Multiple Body Systems

10.01: Category of impairments, Multiple Body Systems
[10.01-10.05 Reserved]
10.06: non-mosaic Down syndrome established as described in 10.00B

11.00 Neurological

11.01: Category of impairments, Neurological

11.02: Epilepsy – convulsive epilepsy (grant mal or psychomotor)
11.03: Epilepsy – nonconvulsive epilepsy (petit mal, psychomotor or focal)
11.04: Center nervous system vascular accident
11.05: Brain tumors
11.06: Parkinsonian Syndrome
11.07: Cerebral Palsy
11.08: Spinal cord or nerve root lesions, due to any cause
11.09: Multiple Sclerosis
11.10: Amyotrophic Lateral Sclerosis
11.11: Anterior Poliomyelitis
11.12: Myasthenia Gravis
11.13: Muscular Dystrophy
11.14: Peripheral neuropathies
[11.15 Reserved]
11.16: Subacute combined cord degeneration (pernicious anemia) with disorganization of motor function as described in 11.04B or 11.15B not significantly improved by prescribed treatment
11.17: Degenerative disease not listed elsewhere, such as Huntington's Chorea, Friedreich's ataxia, and spino-cerebellar degeneration
11.18: Cerebral trauma
11.19: Syringomyelia

12.00 Mental Disorders

12.01: Category of impairments, Mental
12.02: Organic Mental Disorders
12.03: Schizophrenic, paranoid and other psychotic disorders
12.04: Affective disorders
12.05: Mental retardation
12.06: Anxiety-related disorders
12.07: Somatoform disorders
12.08: Personality disorders
12.09: Substance addiction disorders
12.10: Autistic disorder and other pervasive developmental disorders

13.00 Malignant Neoplastic Diseases

13.01: Category of impairments, Malignant Neoplastic Diseases
13.02: Soft tissue tumors of the head and neck
13.03: Skin
13.04: Soft tissue sarcoma
13.05: Lymphoma
13.06: Leukemia
13.07: Multiple Myeloma
13.08: Salivary glands
13.09: Thyroid gland

13.10: Breast
13.11: Skeletal system – sarcoma
13.12: Maxilla, orbit or temporal fossa
13.13: Nervous system
13.14: Lungs
13.15: Pleura or mediastinum
13.16: Esophagus or stomach
13.17: Small intestine
13.18: Large intestine
13.19: Liver or gallbladder
13.20: Pancreas
13.21: Kidney, adrenal glands, or ureters-carcinoma
13.22: urinary bladder- carcinoma
13.23: Cancers of the female genital tract – carcinoma or sarcoma
13.24: Prostate gland – carcinoma
13.25: Testicles
13.26: Penis
13.27: Primary site unknown
13.28: Malignant neoplastic diseases treated by bone marrow or stem cell transplantation

14.00 Immune System

14.01: Category of impairments, Immune System
14.02: Systemic lupus erythematosus
14.03: Systemic vasculitis
14.04: Systemic sclerosis and scleroderma
14.05: Polymyositis or dermatomyositis
14.06: Undifferentiated connective tissue disorder
14.07: Immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity, excepting HIV infection
14.08: Human Immunodeficiency Virus (HIV) infection
14.09: Inflammatory arthritis
14.10: Sjogren's syndrome

Part B: Childhood Listings

100.00 Growth Impairment

100.01: Category of impairments, Growth
100.02: Growth impairment, considered to be related to an additional specific medically determinable impairment
100.03: Growth impairment, not identified as being related to an additional, specific medically determinable impairment

101.00 Musculoskeletal System

101.01: Category of impairments, Musculoskeletal
101.02: Major dysfunction of a joint(s) (due to any cause)
101.03: Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint
101.04: Disorders of the spine
101.05: Amputation (due to any cause)
101.06: Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones
101.07: Fracture of an upper extremity
101.08: Soft tissue injury (e.g., burns)

102.00 Special Senses and Speech

102.01: Category of impairments, Special Sense Organs
102.02: Loss of Visual Acuity
102.03: Contraction of the visual field in the better eye
102.04: Loss of visual efficiency
[102.05 – 102.08 Reserved]
102.10: Hearing loss not treated with cochlear implantation
102.11: Hearing loss treated with cochlear implantation

103.00 Respiratory System

103.01: Category of impairments, Respiratory System
103.02: Chronic pulmonary insufficiency
103.03: Asthma
103.04: Cystic Fibrosis
103.05: Lung Transplant

104.00 Cardiovascular System

104.01: Category of impairments, Cardiovascular System
104.02: Chronic heart failure
[104.03 - 104.04 Reserved]
104.05: Recurrent arrhythmias
104.06: Congenital heart disease
[104.07 - 104.08 Reserved]
104.09: Heart transplant
[104.10 through 104.12 Reserved]
104.13: Rheumatic heart disease

105.00 Digestive System

105.01: Category of impairments, Digestive
105.02: Gastrointestinal hemorrhaging from any cause
[105.03, 105.04 Reserved]
105.05: Chronic Liver Disease
105.06: Inflammatory bowel disease

105.07: Short bowel syndrome
105.08: Malnutrition, due to any digestive disorder
105.09: Liver transplantation
105.10: Need for supplemental daily enteral feeding

106.00 Genitourinary System

106.01: Category of impairments, Genitourinary
106.02: Impairment of renal function
[106.03 through 106.05 Reserved]
106.06: Nephrotic Syndrome
106.07: Congenital Genitourinary Impairments

107.00 Hematological Disorders

107.01: Category of impairments, Hematological Disorders
[107.02 Reserved]
107.03: Hemolytic Anemia (due to any cause)
[107.04 Reserved]
107.05: Sickle cell disease
107.06: Chronic idiopathic thrombocytopenic purpura of childhood
[107.07 Reserved]
107.08: Inherited coagulation disorder

108.00 Skin Disorders

108.01: Category of impairments, Skin Disorders
108.02: Ichthyosis
108.03: Bullous disease
108.04: Chronic infections of the skin or mucous membranes
108.05 Dermatitis
108.06 Hidradenitis suppurativa
108.07: Genetic photosensitivity disorders
108.08: Burns

109.00 Endocrine System

Not broken into sections, but covers pituitary gland disorders, thyroid gland disorders, parathyroid glad disorders, adrenal gland disorders, diabetes mellitus and other pancreatic gland disorders.

110.00 Impairments that Effect Multiple Body Systems

110.01: Category of impairments, Multiple Body Systems
[110.02 through 110.05 Reserved]
110.06: Non-mosaic Down syndrome

[110.07 Reserved]
110.08: A catastrophic congenital abnormality or disease

111.00 Neurological

111.01: Category of impairments, Neurological
111.02: Major motor seizure disorder
111.03: Nonconvulsive Epilepsy
[111.04 Reserved]
111.05: Brain tumors
111.06: Motor dysfunction (Due to any neurological disorder)
111.07: Cerebral Palsy
111.08: Meningomyelocele (and related disorders)
111.09: Communication impairment associated with documented neurological disorder

112.00 Mental Disorders

112.01: Category of impairments, Mental
112.02: Organic Mental Disorders
112.03: Schizophrenic, Delusional (Paranoid), Schizoaffective, and Other Psychotic Disorders
112.04: Mood Disorders
112.05: Mental Retardation
112.06: Anxiety Disorders
112.07: Somatoform, Eating, and Tic Disorders
112.08: Personality Disorders
112.09: Psychoactive Substance Dependence Disorders
112.10: Autistic Disorder and Other Pervasive Developmental Disorders
112.11: Attention Deficit Hyperactivity Disorder
112.12: Developmental and Emotional Disorders of Newborn and Younger Infants (Birth to attainment of age 1)

113.00 Malignant Neoplastic Diseases

113.01: Category of impairments, Malignant Neoplastic Diseases
[113.02 Reserved]
113.03: Malignant solid tumors
[113.04 Reserved]
113.05: Lymphoma
113.06: Leukemia
[113.07 through 113.08 Reserved]
113.09: Thyroid gland
[113.10 through 113.11 Reserved]
113.12: Retinoblastoma
113.13: Brain tumors
[113.14 through 113.20 Reserved]

113.21 Neuroblastoma

114.00 Immune System

114.01: Category of impairments, Immune System
114.02: Systemic lupus erythematosus
114.03: Systemic vasculitis
114.04: Systemic sclerosis and scleroderma
114.05: Polymyositis or dermatomyositis
114.06: Undifferentiated connective tissue disorder
114.07: Congenital immune deficiency disease
114.08: Human Immunodeficiency Virus (HIV) infection
114.09: Inflammatory arthritis
114.10: Sjogren's syndrome