INNS OF COURT HYPOTHETICAL

Petitioner, Juan Rodriguez, was born in San Juan, PR January 3, 1975. He is bilingual, but his preferred language is Spanish. He is a high school graduate and is married with two twin girls, both of whom are 12 years of age. His wife works at the ABC Casino as a full-time housekeeper. He has been employed by that same casino for the past 25 years as a full-time "bar porter." He came to the United States in 1998, as his brother had previously relocated in 1995 and was doing well working at the ABC Casino. He felt that Juan would have a better opportunity in the United States. Juan and his brother were very close. It was a very close-knit family, but their parents encouraged both of them to avail themselves of this opportunity. His parents had both worked at smaller hotels in the general San Juan area. While they had a good life, they felt the Atlantic City casinos were a much better opportunity. They were very excited when they had taken a 1983 family trip to Las Vegas. They had never visited Atlantic City, but they felt that there was a similar opportunity. They also felt the varied climate would be better than working in a hot Las Vegas desert most of the year. The boys would be working together and living on the beach of the New Jersey shore. They felt that airfare was not that expensive between Atlantic City and San Juan, and that the family could stay in sufficient personal contact with one another, despite the relocation.

Juan had been obese most of his life. He was also a poor student. Unlike his brother he was not overly monetarily ambitious but he was a hard worker. He had a poor diet and he was relatively inactive. By the time he had started working at the ABC Casino, he was 25 years old, 5 foot 10 inches and weighed 240 pounds. He was not athletic and did not exercise. He was a borderline diabetic and had high blood pressure for which he was on medication. However, he had a very outgoing personality, he was bilingual, and was well liked by both the staff and the management of the ABC casino.

He was involved in a compensable accident on January 2, 2017 [CP 17-0001], when he slipped and fell on the tiled back bar area while briskly walking, carrying a 25-pound box of wine bottles, when his feet went out from under him. He held the box in his right arm and outstretched his left arm to try to brace the fall and struck the floor with force with his palm flexed flat against the tile floor. He felt that this was the first part of his body that "landed" on the floor. He felt his left shoulder joint was "jammed on impact," and then the fall continued where he hit the back of his head and his low back on the hard tiled floor. He felt "stars" momentarily, but did not fully lose consciousness. He was ultimately diagnosed with a contusion of the base of his palm, together with a "strain/sprain" of both his left wrist and his left shoulder. He never had any previous problems with either of these two body parts. He was treated conservatively on an in-house basis. His left wrist and palm symptomatology slowly improved. However his left shoulder did not. He was ultimately referred to an orthopedist [Dr. A. Smith], who felt that his clinical presentation showed some level of left shoulder "impingement." He ultimately was placed on a course of further physical therapy. He had been out of work on a continuous basis from January 2, 2017 until the time he saw the orthopedist on March 1, 2017. He was released to "light duty" employment only. There had been no light duty available. Therefore his temporary disability benefits continued.

At the time of his accident on January 2, he was earning $20.00 per hour. However, approximately 1 year before the accident, the petitioner was trying to take some extra time just to be with his mother because she had suffered a serious heart attack and was not doing well. Normally, petitioner's customary full-time employment was 8 hours per day, 5 days per week at $20.00 per hour. However, his "26-week payroll record" for the 26 weeks immediately prior to his accident "averaged" only 25 hours per week at $20.00 per hour, and therefore, he was paid temporary disability benefits at $350.00 per week.

Ultimately, Dr. Smith had a left shoulder MRI study taken on May 1, 2017. It was positive for a "partial to almost full thickness rotator cuff tear" together with "moderate osteoarthritic changes". The petitioner had also undergone two cortisone injections of the shoulder which did not improve his symptomatology and ultimately, Dr. Smith performed an "arthroscopic left shoulder rotator cuff repair" on June 1, 2017. The

petitioner returned to work September 1, 2017. This was the day after his last date of temporary disability paid. By that time he was fully discharged from authorized treatment. He had retained an attorney immediately after the accident (Tom Barnes, Esquire). The permanency evaluations were done on March 1, 2018 [for petitioner] and April 1, 2018 [for respondent]. His Order Approving settlement was October 1, 2018 in the amount of 25% permanent partial total for the "orthopaedic residuals of left shoulder internal derangement with arthroscopic repair". There was no permanency award for his left hand "strain/sprain". Any alleged formal hand disability was not "formally" dismissed. The award's stipulations were "wage $500/rate $350".

When he had returned to work following his previous June 1, 2017 surgery (even though he was well liked by his employer), the Respondent had an inflexible company policy that all employees must be able to perform "all the essential functions of their job duties to be able to resume employment following a Workers' Compensation injury". The petitioner did so.

His mother had passed away on February 2, 2018. The petitioner was devastated over this development. He was also very emotionally impacted by the seriousness of her cardiac condition. He was very concerned about his own health because at the time of the accident, he was 280 pounds (a 40 pound weight gain since the date of his accident). He had elevated levels of cholesterol, for which he was taking 20 mg of Crestor on a daily basis. He was on hypertensive medication with a "controlled" elevated blood pressure of 140/90. He was a "borderline diabetic." By September 2018, he decided to do everything he could to "get into shape," to become "more healthy", and to "lose weight". His overall physical health became a top priority.

He did not seek any advice from a physician, other than advising his primary care physician (Dr. B. Wells) of his intentions. He was advised by Dr. Wells that "losing weight and exercising" would be a "very good idea." The petitioner started every morning doing 50 sit ups and 50 pushups. At first, he could not even do a sit up or more than two pushups. He also was going to try to do three sets of ten repetitions of bench pressing 50 pounds. Initially, he did better with the bench pressing than with his goals for pushups and sit ups. But within 3 months he was actually reaching his goals. He was also walking/jogging 1 mile per day. In the beginning he had to do mostly walking, but eventually he was making more and more improvement and increasing his distances and pace.

By January 1, 2020 his weight was 190 pounds. His blood pressure was 125/85 (medication discontinued). His cholesterol medication was reduced to 10 mg of Crestor as compared to 20 mg originally. He was religiously waking up every morning doing 50 pushups, 50 situps and bench pressing 3 sets of 10 repetitions of 150 pounds. He was running 2.5 miles per day. He did 50 situps and 50 pushups before bedtime.

However he was beginning to feel some increased "discomfort" in his left shoulder. He also felt that there was a "clicking" sensation that would occur, especially when he reached overhead with his left arm [more so with weight, but also even without weight]. Movements involving pushing and pulling weight became increasingly challenging. He was still performing all his essential job duties at work, but they were becoming increasingly more challenging due to his increasing symptomatology. He was modifying his left shoulder exertion regarding lifting by relying more on his right upper extremity. His last date of permanency benefit paid was through and including July 17, 2020.

By May 15, 2020 the petitioner contacted his previous lawyer by telephone. The Firm's legal assistant advised he needed to make a request for treatment directly with the casino workers' compensation medical department. The Firm legal assistant further advised if treatment was recommended, he should contact the Firm so he could be interviewed by Mr. Barnes and a "reopener petition" could be prepared and filed. He never made any formal appointment to be "formally" represented by the Firm. There was no discussion about Statute of Limitations.

On June 1, 2020, petitioner was referred by the ABC Workers' Compensation Department back to Dr. Smith to determine what, if any, further medical treatment the petitioner required. Dr. Smith performed in-office X-rays of his left shoulder and performed a thorough clinical evaluation. He felt that the petitioner was demonstrating some "mild" enhanced "impingement", which was "not necessarily unexpected", especially in view of the x-ray findings of "enhanced moderate osteoarthritis" in the left shoulder joint. Dr. Smith stated this was not to be unexpected given that the petitioner was now 50 years of age and was status post undergoing a "full thickness" rotator cuff tear revision. He gave the petitioner a prescription for Celebrex, which the petitioner filled, and advised him that he had "nothing to worry about." He told the petitioner to come back for a further workup if there was any major change in his condition. He told the petitioner to "keep up the good work" as the best thing that he could do to make himself healthy was to continue keeping his weight and conditioning at a good level, eating properly, and "staying active." The petitioner had not advised the doctor of any of his fitness regimen. Frankly, Dr. Smith was very surprised at the "great progress" the petitioner had made regarding his weight reduction and his general health and fitness improvement.

Dr. Smith wrote a report to the ABC Casino indicating that the petitioner's X-rays show some moderate "osteoarthritic enhanced changes" in his left shoulder joint. He felt the petitioner's clinical examination did not warrant any need for consideration of surgical intervention at this time. "He appears to be getting plenty of exercise on a daily basis as he has gotten himself onto a physical fitness regimen which supplements any physical therapy which I would normally prescribe". He felt the 30 day Celebrex prescription which he made would not need to be refilled. The petitioner was returned to "unrestricted full duty employment".

The petitioner continued with the above described fitness regimen and with his employment. However, the clicking sensation and the knife-like pain in the left shoulder joint was slowly but surely increasing in severity and persistency. He was noticing that he was experiencing his most increased pain in the left shoulder joint when he was lifting overhead and stacking cases of product of various bottles and cans of beverages on the higher shelving. He became unable to sleep on his left side (just like prior to his previous surgery and post-surgery rehabilitation). A part of his regular job as a porter was to do all of the stocking of beverages and bar equipment and dishware. Most of this was housed in a refrigerated store room of 25 feet by 25 feet. The walls were 12 feet high. The bar that he worked at in the ABC Casino was very popular. He was still working five 8-hour shifts, although his hourly wage had been increased to $25.00 per hour. He still did the same basic job duties as he always had done for all of his years of employment. There was significant lifting, carrying, pushing, pulling, and reaching, utilizing both of his upper extremities in connection with the essential functions of his job duties. There was also a maintenance component to keeping the entire bar area clean, which included maintaining all aspects of the area, including keeping the floors and the bar itself clean, which includes cleaning all surfaces and sweeping and mopping the floors. He also had to make certain that all product was appropriately accessible. This would include not only getting all of the product into the storage area, but also taking it out to the bar itself so it would be available for the bartenders. Not only would he be lifting various alcoholic beverages in boxes weighing 25 to 35 pounds, but he would also replace the various tanks of draft containers for the draft beers, ales, et cetera which were available to customers at the bar.

As time was progressing, he was becoming more and more reliant on his dominant right arm and shoulder for most of the lifting, reaching, carrying and exertional movements at work. Prior to the compensable injury, he was basically ambidextrous (although he wrote his name with his right hand). After the left shoulder injury he was definitely stronger and more functional utilizing his right arm and right shoulder. Therefore, he modified his work duty performance activities to rely more on his right upper extremity for strength maneuvers. He also altered some of his workout regimen. While he would still do the same number of pushups, he would tend to lean into his right shoulder more because sometimes towards the end of each set the left shoulder was beginning to hurt more and he would feel increased pain in the joint. He

never felt any type of pop or major issue while exercising but he definitely felt the left shoulder was getting weaker and more symptomatic during his sets. He would routinely ice his left shoulder after his workouts. He somewhat subscribed to the therapy theory of "no pain, no gain." He approximated that at least 25% of his normal day at work involved lifting items with both arms that were moderately heavy and involved lifting heights to even with or above shoulder level. There was also some degree of ladder climbing as there was two particular areas in the storage that went up to 12 feet high, and this required climbing one of four ladders located on each wall. He was becoming increasingly careful going up and down ladders because he felt less stable due to his increasing left shoulder pain. He remained religiously committed to his work out regimen since its inception in September 2018.

In late December 2021, he made a New Year's resolution that if his issue with his left shoulder was not improving by the summer of 2022, he was going to make an appointment to consult with another workers' compensation attorney. He was not happy with Mr. Barnes' Firm never even following up with him to see how he was doing. One of his friends at work had indicated to him that he had not been adequately compensated in his first case. He knew people at work who complained about Mr. Barnes not being aggressive enough. At this point the petitioner was not really interested in making money. He was far more focused on his long-term health. He felt he had another 15 years before retirement. He felt he really needed his job and he actually loved his work. He was becoming concerned about whether he might need more medical treatment at this point in time.

He was going to wait for the warmer weather to see if there was improvement in his symptoms. There was not. He consulted with a New Jersey Supreme Court certified Workers' Compensation Law Attorney who came recommended by 2 co-workers by the name of Jane Jackson. Jane Jackson consulted with him on July 16, 2022. He came fully prepared with his prior workers' compensation information. Ms. Jackson took a thorough history and asked him was all of his extra weight bearing causing any issues with his right shoulder. She actually put him through a range of motion routine in her office. She had some prior medical background as a volunteer EMT for 10 years. The petitioner conceded that he was slowly developing chronic pain in his right shoulder, but he surmised this was just "old age" acting up. He conceded that his symptoms were similar as compared to his left shoulder except not as severe. Based on this history his attorney, recommended immediately filing both an Application for Review or Modification of CP 2017-0001 and an occupational claim for both of his shoulders (CP 2021-15000). The BCD carrier provided ABC casino coverage 12/01/2016 – 07/01/2022. The CDF carrier provided coverage 07/02/2022 to date. All of this was accomplished on July 16, 2022, at the first office visit. It was when Ms. Jackson was first aware of the specific possible Statute of Limitations issue. Petitioner had called the same day.

Ms. Jackson also spoke with the petitioner about whether he had previously "reopened" his case when he telephoned Mr. Barnes regarding getting treatment. The petitioner advised that since Dr. Smith said he was "ok", there was "no reason to do anything else" as far as he understood. He took the prescribed Celebrex for 30 days and then discontinued its use because it wasn't helping. He advised he never met with anyone from Mr. Barnes' office, and signed no paperwork.

The petitioner had made a request for treatment, which request was made through his new attorney with respect to both of the claims she filed, with notice to each of the workers' compensation insurance carriers. The answer filed by the respondent in connection with the Application for Review or Modification asserted a complete denial of the reopener claim and asserted the statute of limitations. The answer filed by each of the carriers on the occupational exposure claim, asserted "general denials" of the claims and left the petitioner "to his proofs" on "all issues," specifically denying that the petitioner was entitled to "any workers' compensation benefits "based upon their full and complete denial of any compensable occupational exposure claim regarding the petitioner's allegations wth the assertion of all rights and defenses available under the Workers' Compensation statute."

Prior to the petitioner left shoulder reverse replacement surgery, the petitioner was first seen by Dr. Smith on 08/01/2022 and presented the history he gave to Ms. Jackson. Dr. Smith had an x-ray done and an MRI on 08/05/2022 (both shoulders). The left shoulder demonstrated bone on bone osteoarthritis of the glenohumeral joint with posterior subluxation of the humeral head. There was almost complete loss of articular cartilage with reactive cystic change and bone marrow edema with articular surface remodeling. There was further significant tearing of the labrum and tendinosis of the supraspinatus and infraspinatus tendons.

His right shoulder MRI's demonstrated full thickness tear of the rotator cuff with mild to moderate osteoarthritic degenerative changes.

The Respondent answers were filed within 60 days of the date the claim petitions being filed on July 16, 2022. The petitioner was advised by Ms. Jackson with respect to the motion procedure regarding medical and temporary disability benefits. Frankly, the petitioner was very nervous about his newly filed claims because he felt that he could be "terminated" if he wasn't able to do his job duties because even in his fully accepted original case, he was not permitted to resume employment unless he could perform all of his job duties. He was becoming increasingly concerned that he would be unable to perform his job duties, which is the primary reason why he retained new counsel to better "protect his rights."

The petitioner advised counsel that he really wanted to go back to Dr. Smith, that he trusted Dr. Smith, and that Dr. Smith had been "very good to him" the first time around, and he wanted Dr. Smith to treat him again. Ms. Jackson advised him that the carrier would have the right to control medical treatment if the claim was compensable and there'd be no guarantee that Dr. Smith would be used, but that since Dr. Smith was a well-respected orthopedic surgeon and had been the original authorized physician, she saw "no reason" why the carrier would not designate him for treatment, but also felt it was likely that his claim would be "fully contested". Petitioner asked if he could otherwise be seen by Dr. Smith regardless of whether or not his case was compensable.

His attorney advised him that she did not see why there would be any real problem since the carriers were not going to consider any compensable treatment based upon the answers each filed and their failure to respond to her request for treatment. By the way she had simultaneously provided answers to reopener and occupational disease interrogatories with her original request for treatment. If Dr. Smith otherwise accepted the petitioner's union insurance coverage she saw no impediment to using his as his surgeon – she reasoned "after all, this <u>is</u> America". She then advised the petitioner that he could attempt to make an appointment with Dr. Smith and that he should advise her regarding the same. She told him to fully explain his predicament. In the meantime, she made an additional specific request for treatment on behalf of the petitioner to both Respondent counsel and acknowledged in her correspondence that the petitioner was desirous of going back to Dr. Smith to determine what, if any, further medical treatment he required to both his right and left shoulders of the issue of compensability. She described the petitioner's trust and confidence in Dr. Smith and further advised that if there is no response in 7 days, that the petitioner would be attempting to use his collateral source insurance to schedule an appointment with Dr. Smith and to avail himself of any and all treatment he required.

She did not receive any response to her correspondence. Accordingly, the petitioner made an appointment to see Dr. Smith, whose office accepted his insurance and, ultimately, processed his claim through his insurance (which was health insurance provided by the employer). The petitioner's attorney had advised her adversaries that she would be reserving all rights concerning pursuing legal liability for such treatment on one or both of the carriers in connection with both of the claims that were pending and especially in view of the petitioner's desire to have the well-respected Dr. Smith [his former authorized physician] be the

physician who would address whatever medical issues he had. Since there was no further response the petitioner had his two surgeries performed as previously indicated.

Ultimately, the petitioner's bilateral shoulders were medically worked up and it was ultimately determined that his left shoulder required a total reverse replacement surgery, (which was done by Dr. Smith on October 1, 2022), and a right shoulder arthroscopic "rotator cuff repair" on December 1, 2022, (also performed by Dr. A. Smith).

The petitioner was out of work between October 1, 2022 and March 1, 2023. Permanency evaluations were performed on behalf of all parties. Permanency evaluations and treating physician's assessments and causal relationship reports are as follows. Please note these are brief summaries given the limited time to complete this exercise. The petitioner received State TDB and filed a certification of contested Workers' Compensation for there was a lien filed with the Division of Workers' Compensation.

Ultimately, the petitioner was able to resume employment, notwithstanding that Dr. Smith felt that the petitioner would have permanent overhead lifting restrictions and lifting no greater than 20 pounds with each arm below shoulder level. This was consistent with a Functional Capacity Evaluation assessment. Petitioner was also advised to eliminate his pushups and any type of significant recurring exertional activity on both of his shoulders, essentially with either overhead or significant extensions of the upper extremities, especially with any amount of weight, his left arm. This also included pushing and pulling. The petitioner's brother had made significant administrative progress within the casino. He had become assistant manager of all maintenance in the casino, which covered all housekeeping and mechanical operations within the casino. The petitioner's position came under his executive umbrella, and his brother was responsible for the casino authorizing a favorable "accommodation compliance" approach that would allow the petitioner specific duties to be limited to all essential employment duties, except for those specifically excluded by Dr. Smith and lifting restrictions of FCE. This would allow the petitioner to basically perform the more sedentary tasks of what he normally would perform as a "bar porter" but would allow him to be fully employed. He was promoted to a "newly created" position of bar porter "assistant manager" with a pay raise to $30.00 per hour, which allowed him to technically fully comply with the casino job description for which he was now performing on behalf of the respondent which was now supervisory and relatively sedentary in nature.

Petitioner, in terms of altering his basic ongoing daily activities from a non-working perspective, continued with significant alteration of his workout regimen. He fully stopped the pushups on Dr. Smith's strong advice. He increased cardiovascular exercising by way of a stationary bicycle; outdoor bicycling and jogging. He also performed limited TRX stretching/exercising and lighter weight biceps curls. He was more than willing to trade off his previous functional strength required activities with respect to his upper body and overhead activities in return for protecting his future health from any further deterioration, and most importantly, to allow him to hopefully reach his retirement age with the respondent. He had given all of the evaluating doctors all of his complaints which are set forth in the doctors' reports. He felt he could maintain his fitness through cardiovascular, stretching, bicycling and jogging (see into to Doctor's Reports).

PRETRIAL SETTLEMENT CONFERENCE INVOLVES:

Judge Janis Bannon
Petitioner's attorney, Jane Jackson
Respondent's attorney, BCD carrier on both claims is John Overton
Respondent's attorney, CDF carrier occupational only, Michael Gladstone

TDB Lien: $18,200.00
Medical BC/BS liens, total for both surgeries $125,000.00, [apportioned approximately $75,000.00 total regarding left shoulder treatment and $50,000.00 regarding the right shoulder treatment].

Period of contested temporary disability: 9/01/2022 – 05/01/2023 (30 2/7 weeks)

Functional Capacity Evaluation (03/25/2023) demonstrates no overhead lifting with left arm; 10-pound overhead lifting (occasionally) with right arm; maximum carrying with each arm 20 pounds; and maximum weight carrying using both arms, 40 pounds.

Dates of BCD Coverage: 12/01/2016 to 07/01/2022

Dates of CDF Coverage: 07/02/2022 to date

INTRO DOCTOR'S REPORTS

Assume Petitioner's clinical presentation is essentially similar in all the evaluating and treating reports. His left shoulder demonstrated 3/5 rotator cuff strength within available range. There was a 6-inch excisional scar which was at the surgical site which was well healed. There was mild pain with palpitation of the left shoulder. Left shoulder ranges of motion revealed flexion of 90 degrees [normal 180], extension of 25 degrees [normal 40] abduction 60 degrees [normal 180], adduction 20 degrees [normal 30 degrees], internal rotation 40 degrees with normal of 80 degrees and external rotation of 50 degrees with normal of 90 degrees. He generally described left shoulder pain that varied from 0/10 to 8/10, especially with over-exertion. He described limiting all of his lifting which consistently causes him knife-like pain in the shoulder joint. Consequently he has stopped reaching overhead with his left arm. He does no exertional lifting with his left arm. He cannot sleep on either side or on his stomach; even with sleeping on his back there is at times chronic pain at night which awakens him. The left humerus demonstrated muscle atrophy more so than the right humerus. It demonstrated bicep/tricep atrophy compared to the right side.

Petitioner's right shoulder demonstrated arthroscopic portal scarification with very mild pain on palpation of the left shoulder. Rotator cuff strength was 4/5. Flexion was 120 degrees with normal 180 degrees; extension was 30 degrees (normal 40 degrees); abduction 90 degrees (normal 180 degrees); adduction 25 degrees (normal 30 degrees); internal rotation 50 degrees (normal 80 degrees); external rotation 60 degrees (normal 90 degrees). Pain in the shoulder would vary between 0 and 7 on a scale of 0 to 10. Petitioner utilizes his right upper extremity more than his left but limits any overhead lifting and tries to limit as much as possible non-weightbearing overhead reaching.

He no longer participates in any type of sporting activities. His employer has provided significant weight lifting accommodations so he can remain employed in a specially created position as an assistant maintenance supervisor. He states that he otherwise would not be able to be employed in the capacity of a bar porter because of the overall problems he has with his bilateral shoulders, and would likely have to seek Social Security benefits. He felt fortunate to have a job.

DOCTOR REPORT SUMMARIES

1. Dr. B. Goldsmith

   A. Report of 3/1/2018 – 45% permanent partial total regarding left shoulder rotator cuff arthroscopy

   B. Report of 02/01/2024 report, 45% increase for petitioner's left shoulder for, a reverse shoulder replacement representing an overall increase over and above the petitioner's 25% award. He finds a separate and distinct 45% permanent partial total for the petitioner's right shoulder arthroscopic rotator cuff repair.

The doctor finds compensable causal relationship on a natural deterioration of the compensable left shoulder condition in addition to a worsening due to an occupational "aggravation". He opines that the right shoulder disabilities both derivative to the left shoulder original injury and continued occupational exposure.

2. Respondent BCD permanency expert Dr. A. Silver

   A. Report of 04/01/2018 was 7½% permanent partial total for the petitioner's left shoulder rotator cuff arthroscopic repair.

   B. Report of 03/01/2024 found overall worsening of his disability now set at 15% permanent partial total with respect to the left shoulder and 7½% permanent partial total with respect to the right shoulder. He specifically finds a non-compensable worsening of the left shoulder based on two "primary" factors which include the "natural aging process" in addition to the petitioner's performance of "extensive push-ups" which the doctor concludes is the actual primary reason for the need for shoulder replacement surgery. He similarly concludes that the right shoulder surgery is solely based on the petitioner's "natural aging process" and/or his "extensive push-ups history".

3. Respondent CDF permanency expert Dr. R. Robinson

   A. Report of 01/02/2024 concludes that his overall permanency with respect to the petitioner's left shoulder is 12½% permanent partial total [inclusive of both surgeries] and 5% permanent partial total with respect to the right shoulder. He renders his opinion as estimates of disability "regardless of cause" with no further explanations. He does not specifically deny causality nor does he admit it. The respondent never obtained any further amendment to that report.

4. Petitioner's treating physician Dr. A. Smith

   A. Medical causal relationship report dated 07/01/2023 concludes that notwithstanding that he signed a New Jersey State TDB application representing

that the petitioner's left shoulder reverse arthroplasty and his right shoulder rotator cuff arthroscopy were not work-related [since those claims were "not accepted by the workers' compensation insurance carrier"], he concludes that the petitioner's left shoulder replacement surgery is related to a "natural deterioration" of the petitioner's compensable previous left shoulder rotator cuff surgery which was also "exacerbated and aggravated" by the petitioner's continued occupational exposure and secondarily to his daily push-up regimen. He feels that the petitioner's right shoulder arthroscopic decompression was a combination of both the natural aging process regarding degenerative osteoarthritis which was further exacerbated, aggravated and accelerated by "cumulative occupational exposure" and secondarily to his daily pushup regimen.