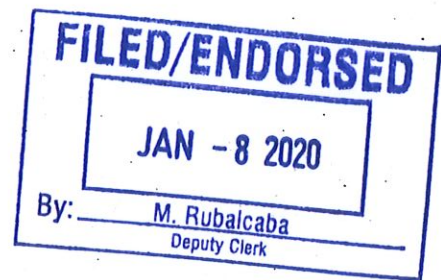


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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE CITY AND COUNTY OF SACRAMENTO

15 AUDREY SCHWARTZ,

16 Petitioner,

17 vs.

18 NEVADA COUNTY BOARD OF
19 SUPERVISORS; COUNTY OF
20 NEVADA; NEVADA COUNTY
21 HEALTH AND HUMAN SERVICES
22 AGENCY; RYAN GRUVER, Director,
Nevada County Health and Human
Services Agency; DEPARTMENT OF
HEALTH CARE SERVICES; RICHARD
FIGUEROA, Acting Director, Department
of Health Care Services,

23 Respondents.
24

Case No. **34-2020-80003294**
PETITION FOR WRIT OF
ADMINISTRATIVE MANDATE AND
MANDATE (CODE CIV. PROC. §§ 1094.5,
1085)

25 **INTRODUCTION**

26 1. In March 2017, Audrey Schwartz experienced a severe mental health crisis. Ms.
27 Schwartz is a Medi-Cal beneficiary. She knew she needed help, so she contacted Nevada County
28 Behavioral Health to get specialty mental health services to treat her mental health conditions.

1 But rather than assess her condition and provide Ms. Schwartz with the treatment she needed, as
2 it is required to do under state law, Nevada County Behavioral Health repeatedly turned her away.
3 The state Medi-Cal agency, the Department of Health Care Services, which is responsible for the
4 Medi-Cal program, and for supervising Nevada County Behavioral Health, also failed to ensure
5 that Ms. Schwartz got the services she needed.

6 2. This petition challenges Nevada County Behavioral Health's denial of medically
7 necessary specialty mental health services to Ms. Schwartz. Ms. Schwartz seeks a Writ of
8 Administrative Mandate pursuant to Code of Civil Procedure section 1094.5 to overturn the
9 denial. Additionally, this petition seeks Writs of Mandate to correct Nevada County Behavioral
10 Health's failure to coordinate with Ms. Schwartz's Medi-Cal managed care plan and failure to
11 provide accurate information regarding the Medi-Cal services they are required by law to provide
12 and to require the Department of Health Care Services to properly monitor and correct Nevada
13 County Behavioral Health's failings.

14 PARTIES

15 3. Petitioner Audrey Schwartz, an individual, at all times mentioned in this petition
16 was, a low-income Medi-Cal beneficiary and a resident of Nevada County, California.

17 4. Respondent County of Nevada (hereinafter Nevada County) is a political body of
18 the State of California. Nevada County operates a mental health plan as defined in Title 9
19 California Code of Regulations section 1810.266. The contract between Nevada County and the
20 California Department of Health Care Services (hereinafter DHCS) requires Nevada County to
21 provide specialty mental health to Nevada County Medi-Cal beneficiaries.

22 5. Respondent Nevada County Board of Supervisors (hereinafter Nevada BOS) is the
23 legislative body of Nevada County responsible for the planning and provision of services related
24 to public needs. The Nevada BOS sets and adopts policies for all County departments, including
25 the Health and Human Services Agency (hereinafter Nevada HHSA).

26 6. Respondent Nevada HHSA is directly responsible for the administration of
27 Nevada County's mental health plan known as Nevada County Behavioral Health
28 (hereinafter NCBH).

7. Respondent Ryan Gruver is the Director of HHSA. He is sued in his official capacity. Respondent Gruver's duties include oversight of the operation and administration of NCBH.

8. Collectively, Respondents Nevada County, Nevada County BOS, Nevada HHSA, and Director Gruver will be referred to as the "County Respondents."

9. Respondent DHCS is the Single State Agency responsible for the administration of the Medi-Cal program. (Welf. & Inst. Code, § 14087.8; Cal. Code Regs. tit. 22, § 50004.) DHCS contracts with NCBH to provide specialty mental health services to Nevada County Medi-Cal beneficiaries who meet medical necessity criteria. (Welf. & Inst. Code, §§ 14684(a)(6), 14684(a)(7); Cal. Code Regs., tit. 9, §§ 1810.100, 1830.205.) DHCS is responsible for monitoring (1) the level and quality of services provided by Nevada County Behavioral Health, (2) expenditures pursuant to their contract, and (3) Nevada County's compliance with federal and state law. (Welf. & Inst. Code, § 14714(g); Cal. Code Regs., tit. 22, § 50004.)

10. Respondent Richard Figueroa is the Acting Director of DHCS and, as such, is the State Medicaid Director. Mr. Figueroa is sued in his official capacity pursuant to Welfare and Institutions Code sections 10962 and 14100.1 as the officer responsible for ensuring DHCS and its agents act to implement the Medi-Cal program in conformance with state and federal law.

11. Collectively, Respondents DHCS, and Director Figueroa will be referred to as the State Respondents.

STATEMENT OF FACTS

12. Petitioner Audrey Schwartz is a United States citizen and resides in Nevada County.

13. At all times relevant in this petition, Ms. Schwartz was a low-income Medi-Cal beneficiary enrolled Anthem Blue Cross's Medi-Cal managed care plan and a beneficiary of NCBH.

14. Ms. Schwartz is diagnosed with obsessive-compulsive disorder (hereinafter OCD), major depressive disorder, and generalized anxiety disorder.

1 *The Facts at Issue for Ms. Schwartz*

2 15. In March 2017, Ms. Schwartz was experiencing a mental health crisis. She was
3 having obsessive thoughts about contamination, chemicals, blood, and toxins and these obsessive
4 thoughts were leading to distressing intrusive thoughts about hurting others. Ms. Schwartz was
5 constantly checking her car door locks and carbon monoxide alarms as well as repeatedly
6 washing her hands and taking showers several times a day. She was spending hours in her
7 bathroom and had great difficulty leaving her home due to her mental health conditions. She had
8 been working full-time as a manager at a coffee shop, but was only able to go in a few times that
9 month because of her condition. Her symptoms made it challenging for her to parent her children
10 and her family stepped in to assist her.

11 16. In early 2017, Ms. Schwartz was visited by a family member who became so
12 concerned about the symptoms she was displaying she reached out to Ms. Schwartz's father. Her
13 father then coordinated with her brother who immediately flew out from the East Coast to assist
14 Ms. Schwartz with getting into treatment.

15 17. Ms. Schwartz previously received individual therapy for her OCD from The
16 Anxiety Treatment Center, a mental health provider in the Sacramento Area specializing in
17 anxiety disorders. The Anxiety Treatment Center provides individual therapy, group therapy,
18 intensive outpatient services, and a partial hospitalization program.

19 18. On March 24, 2017, Ms. Schwartz contacted NCBH for assistance in receiving
20 treatment for her OCD through the Medi-Cal program. She explained she was looking for an
21 intensive outpatient program for OCD or exposure and response prevention therapy. She was not
22 sure how to navigate getting these services through Medi-Cal. Melanie Fikse, a NCBH employee,
23 told her that NCBH did not provide these services. Ms. Fikse referred her to Anthem, Ms.
24 Schwartz's Medi-Cal managed care plan, and emailed Ms. Schwartz a list of therapists contracted
25 with Anthem's Medi-Cal line of business. Ms. Fikse recommended Ms. Schwartz ask Anthem to
26 do a "single case agreement" to get intensive outpatient services with the Anxiety Treatment
27 Center through Anthem. NCBH not set up an assessment for Ms. Schwartz or advise her that they
28 were responsible for specialty mental health services, including intensive outpatient treatment.

1 19. At no time after the March 24, 2017 call, did NCBH provide Ms. Schwartz with a
2 written notice of their decision to deny her services and did not explain her appeal rights to her.

3 20. On March 30, 2017, Ms. Schwartz had an initial evaluation by Dr. Porter, a
4 psychiatrist contracted with Anthem, Ms. Schwartz's Medi-Cal Managed Care Plan.

5 21. After an initial assessment, Dr. Porter determined Ms. Schwartz's functional
6 limitations were severe and that medication alone would not be enough to treat her symptoms. Dr.
7 Porter recommended that Ms. Schwartz undergo intensive outpatient treatment, a specialty mental
8 health service.

9 22. Upon information and belief, Dr. Porter was unaware of any way to coordinate
10 Ms. Schwartz's needs with NCBH.

11 23. On April 18, 2017, Ms. Schwartz again contacted NCBH to seek assistance in
12 receiving intensive outpatient services for OCD. She explained she had followed up with Anthem,
13 as NCBH had previously directed. However, Anthem stated they did not cover intensive
14 outpatient services. NCBH told Ms. Schwartz it was pointless to complete an assessment with
15 them because they had no services available for her. NCBH referred Ms. Schwartz back to
16 Anthem and offered again to send her a list of Anthem contracted therapists. NCBH did not
17 explain to her that it is responsible for the provision of specialty mental health services for Medi-
18 Cal beneficiaries, including intensive outpatient services.

19 24. At no time after the April 18, 2017 call, did NCBH provide Ms. Schwartz with a
20 written notice of their decision to deny her services and did not explain her appeal rights to her.

21 25. In April 2017, Ms. Schwartz began intensive outpatient services for OCD through
22 The Anxiety Treatment Center in Sacramento, CA. Upon admission to the intensive outpatient
23 program at The Anxiety Treatment Center, Dr. Zasio, a psychologist specializing in the treatment
24 of OCD, described Ms. Schwartz as being "in crisis" and that her "OCD was at such an extreme
25 level that prevented her from being able to work."

26 26. On May 8, 2017, a representative from Anthem reached out to NCBH to follow up
27 on Ms. Schwartz's request for intensive outpatient services through Anthem. The Anthem
28

1 representative asked if NCBH covered inpatient OCD treatment. A NCBH supervisor advised the
2 representative to tell the Anthem representative that NCBH does not cover treatment for OCD.

3 27. Ms. Schwartz's family was forced to pay out-of-pocket for her treatment for OCD
4 at The Anxiety Treatment Center because NCBH had refused to provide her with treatment for
5 her mental health condition. Ms. Schwartz had very few resources and was low-income and
6 unable to pay for the treatment on her own.

7 28. Ms. Schwartz completed the intensive outpatient program in August 2017. After
8 completing treatment her functioning dramatically improved and she was able to return to work
9 full-time.

10 *Background on the delivery of mental health services in Medi-Cal and its oversight*

11 29. Anthem Blue Cross (hereinafter "Anthem") is a Medi-Cal Managed Care Plan that
12 contracts with DHCS to provide Medi-Cal benefits, other than specialty mental health services, to
13 residents of Nevada County on Medi-Cal. Under the terms of the contract, Anthem provides
14 outpatient mental health benefits to adult Medi-Cal enrollees experiencing mild-to-moderate
15 functional limitations and does not provide specialty mental health services. (Welf. & Inst. Code,
16 §§ 14204(a), 14189.)

17 30. DHCS requires the two plans - Anthem and NCBH - to have a Memorandum of
18 Understanding ("MOU") to coordinate mental health Medi-Cal benefits for Nevada County
19 residents enrolled in Anthem and also eligible or potentially eligible for services through NCBH.
20 (Cal. Code Regs., tit. 9, § 1810.370.)

21 31. Upon information and belief, the most recent MOU between Anthem and NCBH
22 was executed on March 18, 2015. It requires that Anthem provide an assessment to determine
23 whether Anthem or NCBH will provide mental health services. Under the MOU, NCBH is
24 required to accept referrals directly from Anthem contracted providers and/or Medi-Cal enrollees.

25 32. The MOU between Anthem and NCBH does not address how Anthem will
26 provide a referral to NCBH when Anthem determines specialty mental health services covered by
27 NCBH may be required.
28

1 33. Upon information and belief, DHCS reviewed and approved the MOU between
2 Anthem Blue Cross and NCBH.

3 34. DHCS only conducts audits as authorized by Welfare and Institutions Code section
4 5614 of the mental health plans on a triennial basis – once every three years.

5 35. In June 2017, DHCS released its triennial audit of NCBH – called a Triennial
6 System Review. As part of the review, DHCS performed a series of test calls during April and
7 May 2017. DHCS found NCBH complied with informing beneficiaries about how to access
8 specialty mental health services only 40% of the time.

9 36. DHCS required NCBH to take corrective action to address this deficiency and to
10 submit a corrective action plan to DHCS.

11 37. NCBH submitted a Plan of Correction to DHCS on November 21, 2017 for
12 review.

13 38. Upon information and belief, DHCS did not issue any civil penalties related to its
14 Triennial System Review of NCBH.

15 39. In its Plan of Correction, NCBH agreed to rewrite its script to screen callers by
16 December 2017 to address the identified problem of not informing beneficiaries about how to
17 access specialty mental health services and to train its staff by June 2018, a year after DHCS
18 identified the problem.

19 40. Upon information and belief, DHCS approved NCBH's proposed timeline, which
20 allowed for an entire year to pass before the identified problem would be corrected.

21 41. NCBH did not submit a triage script to DHCS for review until March 21, 2018 and
22 did not complete training of staff until November 1, 2018.

23 42. Upon information and belief, DHCS did not address NCBH's failure to timely
24 comply with its Plan of Correction or issue any civil penalties.

25 43. On its website, Nevada County publishes a "Guide to Behavioral Health Services"
26 that describes Mental Health Services, Medi-Cal Mental Health Plan, and Drug Medi-Cal
27 Organized Delivery System services provided by NCBH. The guide does not list all the services
28 NCBH is required to provide to Medi-Cal beneficiaries under its contract with DHCS.

1 44. Upon information and belief, DHCS does not perform any review of NCBH's
2 materials aimed at individuals potentially eligible for services, which describe how to access
3 NCBH services or which services are available through NCBH, including its "Guide to
4 Behavioral Health Services."

5 *The Administrative Appeals*

6 45. On January 11, 2018, Ms. Schwartz filed an appeal with NCBH to challenge its
7 denial of intensive outpatient treatment. The appeal explained that NCBH had improperly denied
8 Ms. Schwartz services by telling her that services for her condition were not covered nor
9 available and as a result Ms. Schwartz had to pay out of pocket for services. In her appeal, she
10 explained how she met the medical necessity criteria for this treatment and was denied even an
11 assessment for her condition. Her appeal included letters from treating providers that explained
12 how in their professional opinion she met medical necessity criteria and included their contact
13 information for any necessary follow up. The appeal requested NCBH to retroactively authorize
14 intensive outpatient treatment for Ms. Schwartz's anxiety and OCD and to reimburse Ms.
15 Schwartz for the out-of-pocket expenses she had to undertake in order to access medically
16 necessary services that should have been provided by NCBH.

17 46. On February 7, 2018, NCBH quality assurance manager Yvonne Foley Trumbo
18 contacted Ms. Schwartz's representative in response to the appeal. She admitted that NCBH was
19 not contracted with any day programs for anxiety for adults. She additionally admitted if NCBH
20 does not offer a service, they refer to the individual's Medi-Cal Managed Care Plan or other
21 resources in the community.

22 47. On February 15, 2018, NCBH responded to Ms. Schwartz's appeal stating that
23 they were classifying the filed appeal as a grievance. They contended that there had not been a
24 denial of services and thus there was no right to an appeal, despite Ms. Schwartz's having
25 repeatedly requested services and NCBH's having repeatedly told her that she was not eligible for
26 such services through them.

27 48. On April 13, 2018, NCBH issued a grievance resolution letter to Ms. Schwartz.
28 NCBH stated (1) they were unable to determine medical necessity for Ms. Schwartz's treatment

1 because she had not undergone an assessment with them, (2) they would not pay for services that
2 they could not establish medical necessity for, (3) that she was not a beneficiary of NCBH, and
3 (4) her prior calls to NCBH were not requests for services with NCBH.

4 49. On May 9, 2018, Ms. Schwartz filed an appeal of the grievance resolution letter
5 with NCBH. Ms. Schwartz explained that she qualified for specialty mental health services in
6 April 2017, met the medical necessity criteria, and that NCBH should not have denied her any
7 specialty mental health services, including an assessment. NCBH had refused to provide an
8 assessment of Ms. Schwartz it was obligated to conduct and did not review any of her mental
9 health records or evaluations or opinions of her treating providers to determine medical necessity.

10 50. On June 11, 2018, NCBH issued a notice of appeal resolution. The resolution
11 upheld the denial of intensive outpatient services and stated that NCBH had never refused Ms.
12 Schwartz specialty mental health services because she had never formally become a beneficiary
13 of NCBH, they could not establish medical necessity, and they did not have to pay for services
14 performed by a provider that was not contracted with Medi-Cal.

15 51. On September 5, 2018, Ms. Schwartz requested a Medi-Cal State Fair Hearing to
16 challenge NCBH's decision.

17 52. The State Fair Hearing was held by telephone on November 15, 2018 before an
18 Administrative Law Judge (ALJ). Both NCBH and Ms. Schwartz submitted statements of
19 position. Prior to the completion of the hearing, the ALJ stopped the hearing and requested
20 additional briefing regarding why Ms. Schwartz's provider had not submitted a Treatment
21 Authorization Request (TAR). The ALJ stated that upon receiving the additional briefing he
22 would either hold a follow up hearing or issue a decision.

23 53. On December 7, 2019, Ms. Schwartz submitted additional briefing explaining that
24 Ms. Schwartz's calls to NCBH met the definition of a "service authorization request" and
25 NCBH's repeatedly represented it did not provide the service she was requesting which
26 constituted a denial, subject to State Fair Hearing review.

1 54. DHCS adopted ALJ Lee's decision and released it on January 9, 2019. ALJ Lee
2 concluded that a TAR was required under Welfare and Institutions Code section 14133.3(a) and
3 that because no TAR was submitted NCBH's denial would be sustained.

4 **STATUTORY AND REGULATORY FRAMEWORK**

5 55. Under the authority of a federal Medicaid waiver, DHCS is the Single State
6 Agency to administer the Medicaid program in California, which includes the obligation to ensure
7 specialty mental health services to Medi-Cal beneficiaries are provided through county mental
8 health plans.

9 56. Under state law, DHCS is required to develop and implement managed specialty
10 mental health care for Medi-Cal beneficiaries through contracts with mental health plans. Mental
11 health plans can be individual counties, counties acting jointly, or an organization or
12 nongovernmental entity determined by the department to meet mental health plan standards.
13 (Welf. & Inst. Code, §§ 14682.1(a), 14712(a); Cal. Code Regs., tit. 9, § 1810.226.)

14 57. DHCS and the mental health plans are required to comply with all applicable
15 federal laws, regulations, and the guidelines, standards, and requirements specified in the state
16 plan, waiver, and mental health plan contract as well as all applicable state law. (Welf. & Inst.
17 Code § 14713(a).)

18 58. A mental health plan is responsible for serving Medi-Cal beneficiaries residing in
19 the county it serves unless another mental health plan is responsible pursuant to California Code
20 of Regulations, title 9, sections 1850.405 and 1810.228.

21 59. Specialty mental health services are the responsibility of the mental health plan.
22 (Welf. & Inst. Code, §§ 14684(a)(6), 14684(a)(7); Cal. Code Regs., tit. 9, §§ 1830.205,
23 1810.345(a).)

24 60. The mental health plan is responsible for assuring that their beneficiaries have
25 access to specialty mental health services. (Cal. Code Regs., tit. 9, § 1810.405(a).)

26 61. Intensive outpatient treatment is Medi-Cal covered specialty mental health service.
27 The mental health plan is responsible for this specialty mental health service when the beneficiary
28 meets the medical necessity criteria outlined in California Code of Regulations, title 9, section

1 1830.205. (Cal. Code Regs., tit. 9, § 1810.213; Cal. Code Regs., tit. 22, §§ 51341(a), 51341
2 (b)(5).)

3 62. DHCS has issued guidance to the mental health plans informing them of their
4 requirement to follow the federal managed care regulations found at 42 Code of Federal
5 Regulations part 438 (2010.) These regulations require the mental health plan to treat a Medi-Cal
6 beneficiary's request for services as a "service authorization request." (California Department of
7 Health Care Services, Mental Health and Substance Use Disorder Services Information Notice
8 No.: 18-010E, (March 27, 2018) at p. 5.)

9 63. Upon receiving a "service authorization request" the mental health plan is required
10 to determine whether to approve or deny the service. If the service is denied, the mental health
11 plan must issue a written notice, which must include the reasons for the denial and the right to
12 request an appeal. (Cal. Code Regs., tit. 9, § 1850.210(g), California Department of Health Care
13 Services, Mental Health and Substance Use Disorder Services Information Notice No.: 18-010E,
14 (March 27, 2018) at p. 5.)

15 64. A request for specialty mental health services does not require a Treatment
16 Authorization Requests as defined in Welfare and Institutions Code section 14133.3(a). (Welf. &
17 Inst. Code, § 14133.3(e).)

18 65. Medi-Cal managed care plans are not responsible for covering Medi-Cal services
19 that are excluded from their contract with the Department of Health Care Services. (Cal. Code
20 Regs., tit. 22, §§ 53210(b), 56210(a).)

21 66. Mental health plans are required to enter into memorandums of understanding with
22 the Medi-Cal managed care plan that enrolls beneficiaries residing in the county they serve. The
23 memorandum of understanding is required to address referral protocols between the plans. The
24 protocol must explain how the Medi-Cal managed care plan will provide a referral when the
25 Medi-Cal managed care plan determines specialty mental health services covered by the mental
26 health plan may be required. (Cal. Code Regs., tit. 9, § 1810.370.)

27 67. DHCS is required to provide oversight to the mental health plans to ensure quality,
28 access, cost efficiency, and compliance with data and reporting requirements. At a minimum, the

1 department shall, through a method independent of any agency of the mental health plan
2 contractor, monitor the level and quality of services provided, expenditures pursuant to the
3 contract, and conformity with federal and state law. (Welf. & Inst. Code, § 14714(g); Cal. Code
4 Regs., tit. 9, § 1810.380.)

5 68. DHCS is required to develop, and update as appropriate, a comprehensive
6 oversight program of the mental health plans in consultation with representatives from
7 beneficiaries, their family members, mental health plans, and selected other stakeholders. (Cal.
8 Code Regs., tit. 9, § 1810.380(e).)

9 69. DHCS may impose one or more of the civil penalties upon a mental health plan
10 that fails to comply with the provisions of California Code of Regulations, title 9, sections
11 1810.100 through 1850.535 and sections 5775 through 5780 and Welfare and Institutions Code
12 sections 14680 through 14685, or the terms of the mental health plan's contract with the
13 Department. (Cal. Code Regs., tit. 9, § 1810.385.)

14 70. After DHCS issues a notice of noncompliance to a mental health plan, failure to
15 comply with the corrective actions within the time limits shall be deemed subsequent violations.
16 (Cal. Code Regs., tit. 9, § 1810.385(c).)

17 **FIRST CAUSE OF ACTION**
18 **(Against Respondent Director Figueroa)**
(Code of Civ. Proc. § 1094.5)

19 71. Petitioner realleges and incorporates by reference each and every allegation made
20 in paragraphs 1 through 62, as though fully set forth.

21 72. Mental health plans are required to treat a Medi-Cal beneficiary's request for
22 services as a service authorization request. (California Department of Health Care Services,
23 Mental Health and Substance Use Disorder Services Information Notice No.: 18-010E, (March
24 27, 2018) at p. 5.) Ms. Schwartz contacted NCBH and explained she was diagnosed with OCD
25 and requested intensive outpatient treatment, a specialty mental health service.

26 73. Instead of treating Ms. Schwartz's call as a service authorization request, NCBH
27 verbally refused Ms. Schwartz services for OCD and improperly directed her to her Medi-Cal
28 managed care plan for services. Upon contact by Anthem, NCBH again confirmed that they

1 would not provide services for OCD. NCBH's actions constitute a denial of service, an improper
2 failure to provide a written notice of a service request denial, and a violation of their obligation to
3 provide specialty mental health services. (Welf. & Inst. Code, §§ 14684(a)(6), 14684(a)(7); Cal.
4 Code Regs., tit. 9, §§ 1830.205, 1810.345(a), California Department of Health Care Services,
5 Mental Health and Substance Use Disorder Services Information Notice No.: 18-010E, (March
6 27, 2018) at p. 5.)

7 74. On January 8, 2019, the DHCS Director adopted the ALJ's decision and on
8 January 9, 2019 DHCS released the decision. The ALJ determined Ms. Schwartz had sought
9 coverage of intensive outpatient treatment for OCD through NCBH, but upheld NCBH's denial
10 because he concluded a treatment authorization request was required under Welfare and
11 Institutions Code section 14133.3(a) and Ms. Schwartz had not submitted such a request.

12 75. Respondent's adherence to the ALJ's decision constitutes a prejudicial abuse of
13 discretion because it is contrary to law. The decision relies solely on Welfare and Institutions
14 Code section 14133.3(a) as authority that a treatment authorization request is a necessary
15 requirement before Ms. Schwartz's request could be approved. However, the ALJ ignores section
16 14133.3(e), (*id.*) which states "This section shall not be applied to mental health services as
17 defined under Division 5 (commencing with Section 5000) or Section 14021, or any other mental
18 health services funded by the Medi-Cal program." As a result, the ALJ's decision lacks any
19 authority. It was an abuse of discretion for Respondent to adopt the decision. Ms. Schwartz
20 properly requested services through NCBH. The denial cannot be upheld based on an improper
21 request.

22 76. Respondent's reliance on the ALJ's decision is a prejudicial abuse of discretion
23 because the findings are insufficient. As discussed above, Ms. Schwartz made a proper service
24 request from NCBH. The ALJ should have determined whether NCBH is required to provide
25 intensive outpatient treatment and if so, whether Ms. Schwartz met medical necessity criteria to
26 be entitled to such services. The ALJ did not make any findings related to NCBH's obligation to
27 provide intensive outpatient services. Ms. Schwartz provided legal authority showing that NCBH
28 was responsible for the service she sought, which the ALJ ignored. The ALJ also did not make

1 any findings related to whether Ms. Schwartz met the required criteria for intensive outpatient
2 services. Ms. Schwartz entered into the record letters of support from her treating psychiatrist and
3 treating psychologist showing that at the time she sought intensive outpatient services she met
4 medical necessity criteria. The ALJ did not acknowledge this evidence at any point in his
5 decision. The ALJ should have properly found that NCBH was responsible for the requested
6 service and that Ms. Schwartz met medical necessity criteria. Finally, the ALJ did not make any
7 findings as to NCBH's obligation to provide Ms. Schwartz with written notice when it denied her
8 request for services. The ALJ should have properly found that NCBH was obligated to provide
9 written notice and failed to do so. If the ALJ had made such findings, the ALJ would have
10 overturned NCBH's denial. It was an abuse of discretion for State Respondents to adopt the
11 decision.

12 77. Ms. Schwartz has exhausted all administrative remedies that she is required to
13 pursue.

14 78. Ms. Schwartz has no other plain, speedy and adequate remedy in the ordinary
15 course of law other than the relief sought by this petition. Unless this writ is granted, Ms.
16 Schwartz will continue to be denied the medically necessary specialty mental health services that
17 respondents have a mandatory duty to authorize for her.

18
19 **SECOND CAUSE OF ACTION**
20 **(Against County Respondents)**
(Code of Civ. Proc. § 1085)

21 79. Petitioner realleges and incorporates by reference each and every allegation made
22 in paragraphs 1 through 78 as though fully set forth.

23 80. The County Respondents have a clear and present ministerial duty to provide
24 specialty mental health services through NCBH to Nevada County Medi-Cal beneficiaries and to
25 ensure access to such services. (Welf. & Inst. Code, §§ 14684(a)(6), 14684(a)(7); Cal. Code
26 Regs., tit. 9, § 1810.405(a).)

27 81. Ms. Schwartz self-referred to NCBH to seek specialty mental health services.
28 NCBH improperly denied her treatment, an assessment, or other services. NCBH refused to

1 provide Ms. Schwartz the specialty mental health services she requested and that are required to
2 be covered by NCBH.

3 82. Ms. Schwartz's Medi-Cal managed care plan reached out to NCBH on Ms.
4 Schwartz's behalf to coordinate her access to specialty mental health services. NCBH stated they
5 did not provide the requested specialty mental health service, even though they are required to do
6 so by law.

7 83. Upon information and belief, the County Respondents do not provide all specialty
8 mental health services it is required to provide by law.

9 84. Upon information and belief, the County Respondents deny access to specialty
10 mental health services by not informing Medi-Cal beneficiaries and the Medi-Cal managed care
11 plans serving Nevada County about the actual scope of services they are required by law to
12 provide and instead only informing them regarding the services it can easily arrange.

13 85. The County Respondents have admitted when they do not offer a service, it refers
14 the requesting beneficiary to their Medi-Cal managed care plan or to the greater community. The
15 County Respondents should instead direct NCBH to perform an assessment and then arrange the
16 medically necessary service through a new contract or other means.

17 86. Upon information and belief, the County Respondents' failure to provide accurate
18 information regarding the scope of services NCBH is legally required to provide prevents Nevada
19 County Medi-Cal beneficiaries from seeking services that they are entitled to under law and
20 denies beneficiaries access to medically necessary services.

21 87. Upon information and belief, the County Respondents' failure to provide all
22 specialty mental health services as required by law denies Nevada County Medi-Cal beneficiaries
23 services that they are entitled to under law.

24 88. Despite demand, the County Respondents have failed and refused, and in the
25 future will fail and refuse, to perform its duty to comply with state and federal law, specifically to
26 provide specialty mental health services for Nevada County Medi-Cal beneficiaries and to ensure
27 access to such services.

28

1 89. Petitioner has a beneficial interest in the County Respondents' compliance with the
2 law because she is a Nevada County resident with a diagnosed mental health condition who may
3 need to seek medically necessary services through NCBH in the future.

4 90. Petitioner has no administrative remedy whereby she may compel the County
5 Respondents to comply with the requirements of state and federal law.

6 91. Petitioner has no plain, speedy or adequate remedy at law to compel the County
7 Respondents to comply with the legal requirements described herein, other than the relief sought
8 by this complaint.

9
10 **THIRD CAUSE OF ACTION**
11 **(Against State Respondents)**
12 **(Code of Civ. Proc. § 1085)**

13 92. Petitioner realleges and incorporates by reference each and every allegation made
14 in paragraphs 1 through 91 as though fully set forth.

15 93. The State Respondents have a clear, present and ministerial duty to monitor and address
16 Medi-Cal violations by NCBH. (Welf. & Inst. Code, § 14714(g); Cal. Code Regs., tit. 9, §
17 1810.380.). The State Respondents' ministerial duty includes ensuring NCBH provides Medi-Cal
covered specialty mental health services as required by state and federal law.

18 94. In June 2017, DHCS identified that in April and May 2017 NCBH was only complying
19 with its obligation to provide information on how to access Medi-Cal covered specialty mental
20 health services 40% of the time to individuals calling in to inquire about services. Upon
21 identifying this clear access violation, the State Respondents required NCBH to propose a
22 corrective action plan. Upon information and belief, the State Respondents approved NCBH's
23 proposed corrective action plan that gave NCBH a year before finalizing a new script to screen
24 callers and training staff to correct the problem. Upon information and belief, the State
25 Respondents did not provide any corrective action when NCBH did not meet the generous
26 timeline of its corrective action plan.

27 95. Upon information and belief, the State Respondents fail to ensure NCBH provides
28 correct informing materials regarding the Medi-Cal covered services they provide.

1 96. Upon information and belief, the State Respondents have failed to perform their duty to
2 address NCBH's failure to provide Medi-Cal covered specialty mental health services as required
3 by law.

4 97. Despite demand, the State Respondents have failed and refused, and in the future will
5 continue to fail and refuse, to perform their duty to ensure NCBH provides Medi-Cal specialty
6 mental health services and complies with state and federal laws concerning Medi-Cal.

7 98. Despite demand, the State Respondents have failed and refused, and in the future
8 will continue to fail and refuse, to perform their duty to ensure NCBH provides access to Medi-
9 Cal covered services and complies with state and federal law.

10 99. Petitioner has a beneficial interest in the State Respondents' compliance with the
11 law because she is a Medi-Cal beneficiary with a diagnosed mental health condition who needs or
12 may need to seek medically necessary services through NCBH in the future.

13 100. Petitioner has no administrative remedy whereby she may compel the State
14 Respondents to comply with the requirements of state and federal law.

15 101. Petitioner has no plain, speedy or adequate remedy at law to compel the State
16 Respondents to comply with the legal requirements described herein, other than the relief sought
17 by this petition.

18 **RELIEF REQUESTED**

19 **WHEREFORE**, Petitioner Audrey Schwartz requests the following relief:

20 1. A writ of administrative mandate pursuant to Code of Civil Procedure section
21 1094.5 ordering Respondent Figueroa to authorize intensive outpatient services for Ms. Schwartz
22 from April – August 2017 and to reimburse Ms. Schwartz for the out-of-pocket expenses
23 incurred, or in the alternative setting aside the Decision in Hearing No. 104523242 and
24 remanding for a new hearing.

25 2. A writ of mandate pursuant to Code of Civil Procedure section 1085 ordering the
26 County Respondents to provide all Medi-Cal covered specialty mental health services they are
27 required to cover under the law, including informing all beneficiaries of the services they are
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1 entitled to and issuing written notices that comply with the law to beneficiaries who County
2 Respondents deny by telephone or through other screening services.

3 3. A writ of mandate pursuant to Code of Civil Procedure Section 1085 ordering the
4 State Respondents to take action to ensure County Respondents, including NCBH, provide to all
5 Medi-Cal covered specialty mental health services they are required to cover under the law,
6 including informing all beneficiaries of the services they are entitled to and issuing notices to
7 beneficiaries who County Respondents deny by telephone or through other screening services.

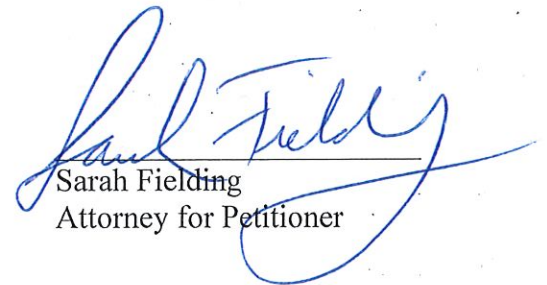
8 4. Costs of the suit;

9 5. Attorneys' fees; and

10 6. Such other relief that the Court may deem just and proper.

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12 Dated: January 7, 2020

Respectfully Submitted,

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16 Sarah Fielding
17 Attorney for Petitioner
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2 **VERIFICATION**

3 I am the Petitioner in this action. I have read the foregoing Petition for Writ of
4 Administrative Mandate and Mandate and know the contents thereof. I declare under penalty of
5 perjury under the laws of the State of California that the same is true to my knowledge.

6 Executed in Auburn, California on January 7, 2020.

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10 _____
11 Audrey Schwartz
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