



August 11, 2022

Mary Watanabe, Director  
Dan Southard, Chief Deputy Director  
Sarah Ream, General Counsel  
Sonia Fernandes, Deputy Director, Office of Enforcement  
Jennifer E. Marsh, Attorney III—Office of Enforcement  
Department of Managed Health Care  
980 9th Street, Suite 500  
Sacramento, CA 95814-2725

Dear Ms. Watanabe, Mr. Southard, Ms. Ream, Ms. Fernandes and Ms. Marsh:

On behalf of the National Union of Healthcare Workers (NUHW), I am submitting evidence documenting Kaiser Foundation Health Plan's illegal cancellation and suspension of multiple behavioral health services in Northern California in response to the impending strike by licensed non-physician behavioral health clinicians in Northern California, which begins August 15, 2022. Although California law requires health plans to arrange for care from out-of-network providers if timely and geographically accessible care is unavailable from in-network providers, Kaiser is not replacing the canceled services. Yesterday, Kaiser began canceling thousands of enrollees' access to certain behavioral health services, including intensive services for enrollees recently discharged from psychiatric hospitals and those at risk of hospitalization due to their conditions.

## I. Evidence

**A. Exhibit A:** Exhibit A contains TEAMS Chat messages exchanged between Kaiser staff and Dr. Andrew S. Corso, the manager of Kaiser's Intensive Outpatient Program in the San Leandro/Union City area. Dr. Corso's title is "Behavioral Health Manager II of Intensive and Case Management Services." The messages were exchanged on August 9, 2022. Exhibit A has been redacted to protect patient and whistleblower confidentiality.

Some background information is necessary regarding terms and abbreviations contained in Exhibit A.

Kaiser's Intensive Outpatient Program (IOP) "serves patients who have been identified as needing a higher level of care in an outpatient setting," according to Kaiser's website. "Many of the patients served in the Intensive Outpatient Program are referred by hospitals, crisis residential settings or partial hospital programs. Referrals made to the program from the clinic are prioritized by acuity, i.e., if there is a clinical indication for a higher level of care based upon a patient's report of suicidal or homicidal ideation, plan or intent, or concerns that a patient may be declining in their ability to provide for themselves," according to Kaiser's website.<sup>1</sup>

Kaiser provides separate IOP programs for distinct patient populations such as adults, high school-aged patients, and middle school-aged patients. It also provides separate IOPs for patients with specific diagnoses, such as eating disorders.

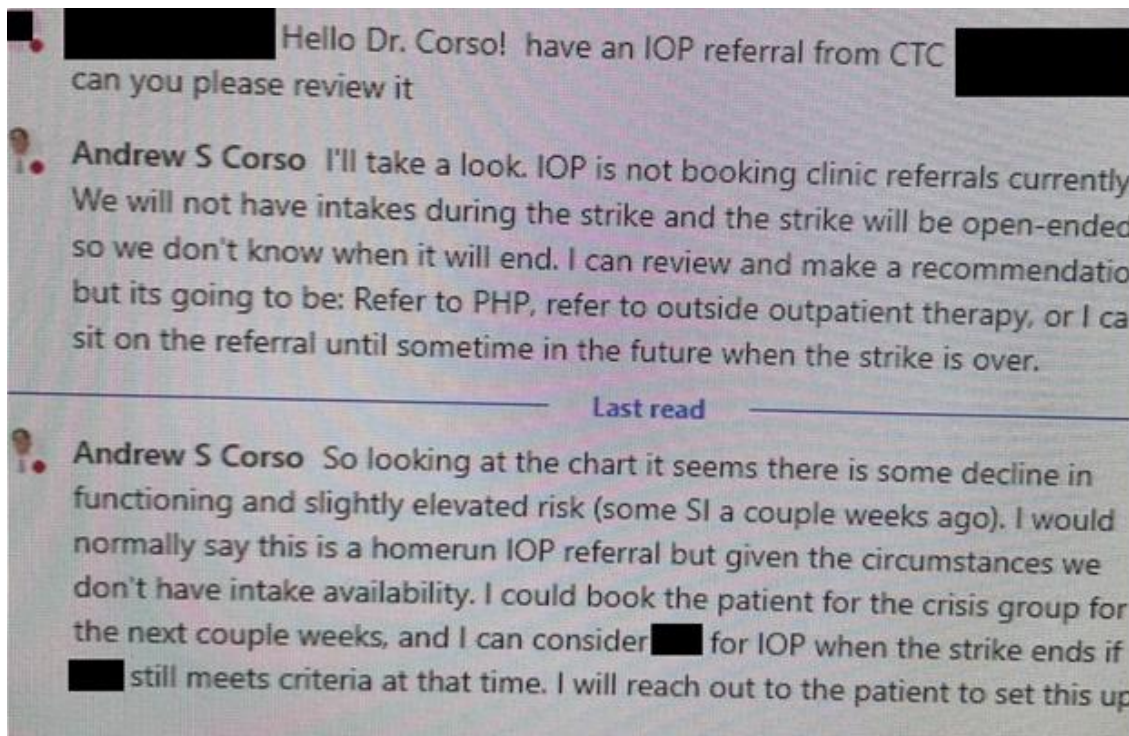
<sup>1</sup> <https://thrive.kaiserpermanente.org/care-near-you/northern-california/eastbay/departments/mental-health/intensive-outpatient-program/> (captured August 10, 2022)

Kaiser's IOP programs are structured to provide clinical services over three or more days a week for several hours per day per patient. During these sessions, patients receive individual psychotherapy, group psychotherapy, and medication management. For some diagnoses, IOP programs are designed to deliver care to a given patient for as many as 16 weeks. For example, Kaiser's Eating Disorder IOP (EDIOP) for enrollees in the Sacramento area typically lasts 12 to 16 weeks, according to Kaiser's website.<sup>2</sup> This program is designed for enrollees with moderate to severe anorexia or bulimia.<sup>3</sup>

As far as other terms and abbreviations used in Exhibit A, the following text offers explanations:

- **CTC:** Kaiser's "Connect to Care" call centers where therapists perform the first half of enrollees' diagnostic assessments at the onset of enrollees' care episodes.
- **PHP:** Partial Hospitalization Program.
- **SI:** Suicidal Ideation.
- **Crisis Group:** A once-a-week psychotherapy group provided virtually, which represents a lower level of care than an IOP. Such groups are provided by licensed non-physician behavioral health therapists; consequently, it is unclear if and how Kaiser will provide such groups during the strike. Crisis Groups do not include individual psychotherapy treatment nor do they include medication management services.

The following is an image of the exchange contained in Exhibit A:



<sup>2</sup> <https://thrive.kaiserpermanente.org/care-near-you/northern-california/northvalley/departments/psychiatry-adult/emotional-health-programs/eating-disorders-intensive-outpatient-program-ediop/> (captured 8-10-22)

<sup>3</sup> <https://sacwellness.com/intensive-outpatient-and-partial-hospitalization-programs-in-the-greater-sacramento-area/> (captured 8-10-22)

In his messages, Dr. Corso (Kaiser's IOP Director) reports that "IOP is not booking clinic referrals currently," indicating that Kaiser ceased booking patients to receive care in the IOP as of August 9 (or possibly earlier). He continues: "We will not have intakes during the strike and the strike will be open-ended so we don't know when it will end." In order for patients to receive treatment in IOP programs, patients must first undergo "intakes" to the program performed by IOP clinicians. In other words, Kaiser will cease admitting enrollees to its IOP during the strike, including enrollees recently discharged from psychiatric hospitals as well as those with suicidal and homicidal ideation.

As far as the instant case of the enrollee referenced in the exchange in Exhibit A, Dr. Corso reports the following after reviewing the enrollee's medical chart and noting the enrollee's recent suicidal ideation: "I would normally say this is a homerun referral but given the circumstances we don't have intake availability."

Per California law, if Kaiser doesn't have sufficient in-network clinicians to provide timely and geographically accessible care to its enrollees, it must arrange for its enrollees to receive such care from out-of-network providers at no additional cost. In this case, however, Dr. Corso indicates that Kaiser has no system in place to comply with the law. Instead, Dr. Corso discusses various options available to him:

- **Delay the patient's access to IOP care:** He states, "I can sit on the referral until sometime in the future when the strike is over" or "I can consider [patient] for IOP when the strike ends if [patient] still meets criteria at that time."
- **Offer the patient lower levels of care that are inconsistent with the patient's clinical needs:** He states he can offer the patient a "crisis group" or "refer [patient] to outside outpatient therapy." Both are lower, less intensive levels of care than IOP programs.
- **Refer the patient to a higher level of care:** In his first message (apparently made before he reviewed the patient's medical chart), Dr. Corso lists an option of referring the patient to a "PHP," a partial hospitalization program. Another manager reportedly advised that patients like the one described in Exhibit A should be admitted to a psychiatric hospital given the unavailability of IOP services at Kaiser. Under SB 855, health plans must cover mental health treatment consistent with generally accepted professional standards, which require services to be delivered at the least restrictive, safe, and most effective level of care. Apart from the obvious fact that hospitals do not admit or retain patients (let alone children/adolescents) beyond the time for crisis stabilization, psychiatric hospitalization can result in stigma, curtail the ability to work or attend school, and lead to substantially higher co-pays and out-of-pocket costs for enrollees.

Dr. Corso's statements are shocking for at least two reasons. First, they underscore the absence of any system or organized plan for Kaiser to deliver IOP services to enrollees during the impending work stoppage by clinicians. If such plans were in place, Dr. Corso would have instructed clinicians to refer the enrollee to out-of-network IOP programs identified by Kaiser. Instead, he toggles through a set of improvised and illegal options.

Second, his statements convey shocking callousness towards the patient. Although he characterizes the enrollee as "a homerun IOP referral" due to suicidal ideation and a decline in functioning, he nonetheless indicates his willingness "to sit on the referral until sometime in the future when the strike is over." He offers this as an option even after noting that the strike will last for an indeterminate period of time. In NUHW's view, this shocking indifference is a

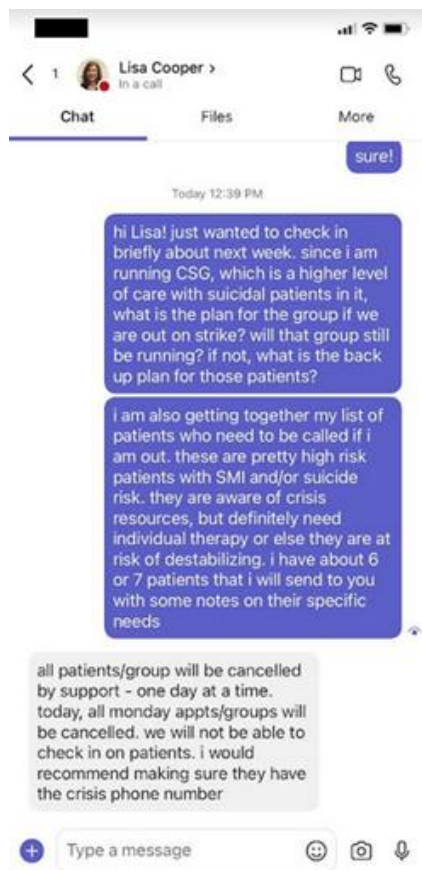
byproduct of Kaiser’s chronic underfunding and understaffing of its behavioral health services. Managers have become accustomed to recommending substandard options— including nothing at all. In fact, Kaiser’s practice of withholding care is so commonplace that managers (like Dr. Corso) show no apparent concern about actually memorializing illegal options in Kaiser’s electronic messaging system.

**B. Exhibit B:** Exhibit B contains TEAMS Chat messages exchanged between a Kaiser clinician and Lisa Cooper, LCSW, a “Mental Health Manager” at Kaiser’s Walnut Creek behavioral health clinic. The messages were exchanged on August 10, 2022.

The following text offers explanations of two abbreviations contained in Exhibit B:

- **CSG:** Community Stabilization Group—a psychotherapy group provided by Kaiser to high-acuity patients with Serious Mental Illness and other serious conditions such as suicidal ideation. The psychotherapy group is designed to complement enrollees’ individual psychotherapy treatment appointments.
- **SMI:** Serious Mental Illness—a diagnosable mental, behavioral, or emotional disorder affecting individuals aged 18 or older that causes serious functional impairment that substantially interferes with or limits one or more major life activities. Examples of diagnoses include schizophrenia, other psychotic disorders, major depression with psychotic symptoms, bipolar disorder, and treatment-resistant depression.

The following is an image of the exchange contained in Exhibit B:



In Exhibit B, the clinician asks Ms. Cooper, “what is the plan for the [Crisis Stabilization Group] if we are out on strike? will that group still be running? If not, what is the back up plan for those patients?”

Ms. Cooper responds: “all patients/group [appointments] will be canceled by support [staff] – one day at a time. today [August 10], all Monday [August 15] appts/groups will be canceled.”

The clinician poses a second question regarding Kaiser’s plans to deliver individual treatment to some of the high-risk patients in the clinician’s caseload during the strike. The clinician writes:

I am also getting together my list of patients who need to be called if I am out. these are pretty high risk patients with SMI and/or suicide risk. they are aware of crisis resources, but definitely need individual therapy or else they are at risk of destabilizing. i have about 6 or 7 patients that i will send to you with some notes on their specific needs.

In response, Ms. Cooper writes: “we will not be able to check in on patients. i would recommend making sure they have the crisis phone number.”

In sum, Ms. Cooper reports that Kaiser will cancel both individual and group treatment appointments for enrollees and that Kaiser will not arrange for timely and geographically accessible replacement services by out-of-network providers for the enrollees.

In fact, Ms. Cooper reports that Kaiser will not provide replacement treatment services even to a handful (6 or 7) of the most high-risk patients in the clinician’s caseload during the strike even after the clinician describes the patients’ risk of decompensation and suicide.

As in the case of Dr. Corso’s messages, Ms. Cooper’s responses betray a shocking callousness towards the life-threatening conditions affecting these patients as well as a cavalier attitude towards her responsibilities and Kaiser’s obligations under California law.

**C. Exhibit C:** Exhibit C is an email message authored by James Kempf, TPMG Area Director for Behavioral Health and Addiction Medicine Services for Kaiser’s Central Valley Service Area. The email, dated August 8, 2022 with a subject line of “Upcoming Work Stoppage,” was sent to several “all-staff” email addresses that automatically deliver the email to approximately 200 therapists and physician leads practicing in this service area.

In his email, Mr. Kempf discusses Kaiser’s plans to “cancel” enrollees’ appointments during the work stoppage. I highlighted in red the relevant text in Exhibit C. Mr. Kempf discusses canceling enrollees’ appointments on a mass basis, which is consistent with Kaiser’s practices during previous work stoppages. I use the term “mass basis” because each of the 200 clinicians in the Central Valley Service Area provides treatment to at least six enrollees per day, meaning Kaiser is canceling approximately 1,200 enrollee appointments per day in this area alone. Notably, Mr. Kempf makes no mention of any plans by Kaiser to arrange for affected enrollees to obtain replacement services by out-of-network providers.

Earlier this week, Kaiser’s managers of behavioral health services in Kaiser’s Napa-Solano Service Area explicitly stated that Kaiser does not have plans to provide timely and geographically accessible replacement treatment/services to the enrollees for whom it is canceling their scheduled appointments and other treatments or services. Specifically, on the

morning of August 9, 2002, the top managers of Kaiser's behavioral health services in the Napa-Solano Service Area conducted group meetings with clinicians practicing at Kaiser's clinics in the service area. These managers included Mitchell Houston, PhD (Director of Mental Health Services for Kaiser's Napa-Solano Service Area), Dr. Christine Lim (Site Chief, Kaiser Vallejo Psychiatry and Addiction Medicine Services), and Evan Marmol, LCSW (Manager II, IOP Program for the Napa-Solano Service Area). They told clinicians that Kaiser will cancel not only enrollees' individual and group therapy appointments, but also will cancel and suspend IOP programs for adults, youth, and adolescents.

When clinicians asked the managers to describe Kaiser's plan for replacing the services as required by California law, the managers stated the following about individual non-urgent treatment appointments: patients will be informed of the canceled appointments and when clinicians return to work at the conclusion of the strike, clinicians will be tasked with contacting the affected patients to schedule future appointments for them. Many of the affected patients have waited 4-8 weeks for their canceled individual treatment appointments and, according to Kaiser's plan, will be placed "at the back of the line" when clinicians return to work and attempt to book them into clinicians' schedules that typically are booked out 1-3 months into the future.

In response to clinicians' questions about Kaiser's plans for replacing enrollees' IOP services, Dr. Houston stated that Kaiser has determined that IOP services for adolescents and youth are unnecessary during the strike and would not be replaced or otherwise provided by Kaiser or out-of-network providers. Likewise, Kaiser does not plan to replace IOP services for adults.

Clinicians reminded Kaiser's managers that many of the child and adolescent patients receiving treatment in the IOP programs are high acuity teens in high school and middle school who are extremely fragile. Nonetheless, Dr. Houston and his colleagues stated that Kaiser has no plans to replace the canceled services with timely and geographically accessible ones delivered by out-of-network providers at no additional cost to enrollees.

It is unclear what plans, if any, Kaiser has to provide urgent behavioral health appointments.

## **II. Request**


NUHW is extremely concerned about Kaiser's plans to illegally withhold care from patients during the strike, including from patients with substantial risk of suicide and decompensation. On August 10, 2022, Kaiser canceled tens of thousands of enrollees' individual, group and IOP treatment appointments scheduled to take place on August 15, 2022. Today, Kaiser reportedly canceled such care scheduled for August 16, 2022.

Individual complaints have been filed with DMHC on behalf of the enrollees affected by the practices detailed in Exhibits A and B.

We request that DMHC take urgent action to enforce California law and to protect the rights of Kaiser enrollees to obtain timely and geographically accessible behavioral health care. We request that DMHC employ all of the enforcement tools at its disposal, including seeking immediate injunctive relief to bar Kaiser from violating state law. Furthermore, we request that DMHC impose immediate penalties on Kaiser for any violations at a scale and intensity that will constitute an effective disincentive to Kaiser so it refrains from committing additional violations and rapidly remedies its existing violations, such as canceling tens of thousands of enrollees'

appointments scheduled for August 15 and 16 without arranging for timely and geographically accessible replacement services by out-of-network providers at no extra cost to enrollees. NUHW stands ready to assist in whatever way may be helpful. Please contact me with any questions or requests.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred Seavey".

Fred Seavey

cc: Rob Bonta, Californian Attorney General  
Toni Atkins, Senate President Pro Tempore  
Anthony Rendon, Speaker of the Assembly  
Sen. Scott Wiener, Chair, Senate Select Committee on Mental Health  
Sen. Richard Pan, Chair, Senate Committee on Health  
Assemblymember Jim Wood, Chair, Assembly Committee on Health  
Don Moulds, CalPERS  
Dr. Julia Logan, CalPERS

## EXHIBIT A

██████████ Hello Dr. Corso! have an IOP referral from CTC ██████████  
can you please review it

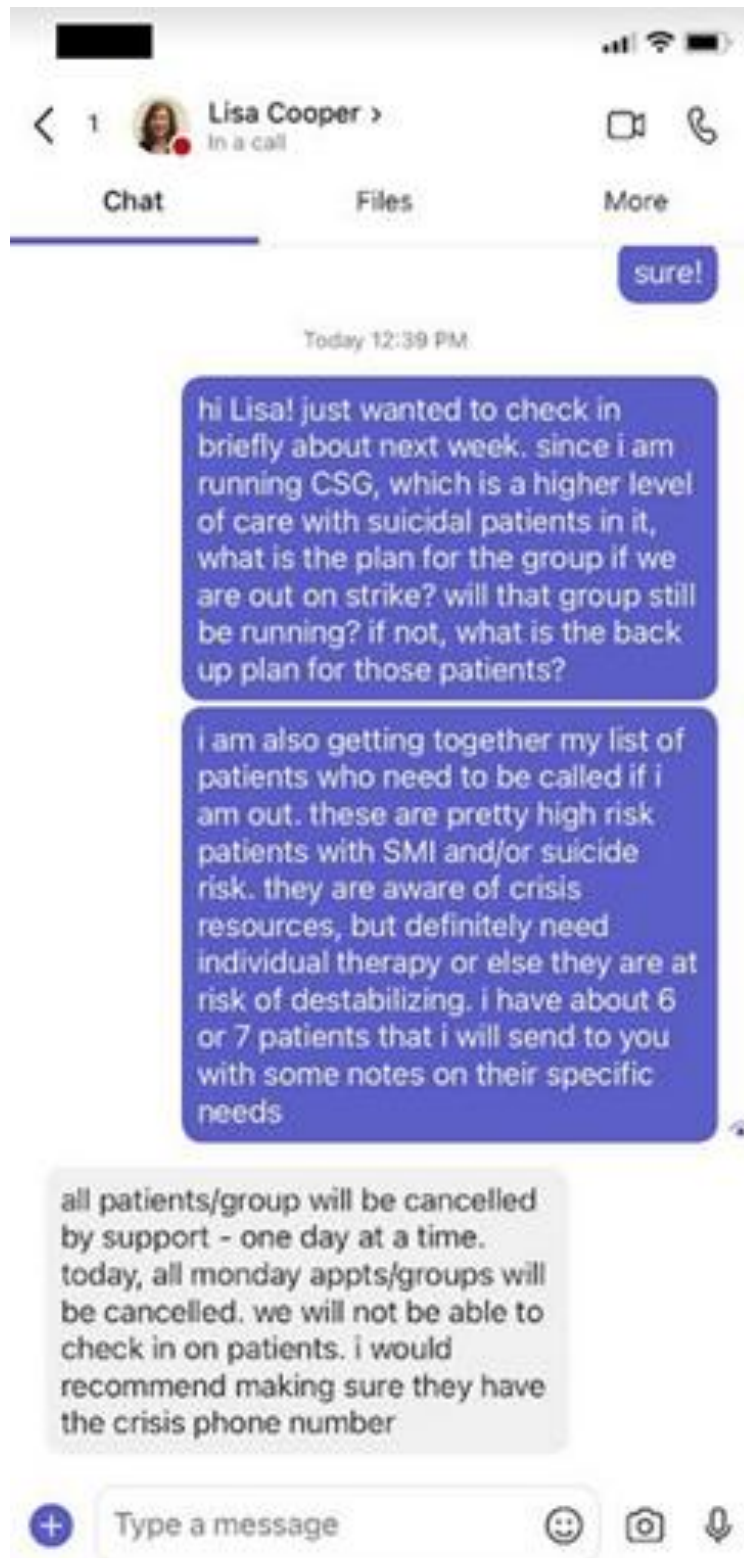
**Andrew S Corso** I'll take a look. IOP is not booking clinic referrals currently. We will not have intakes during the strike and the strike will be open-ended so we don't know when it will end. I can review and make a recommendation but its going to be: Refer to PHP, refer to outside outpatient therapy, or I can sit on the referral until sometime in the future when the strike is over.

————— Last read —————

**Andrew S Corso** So looking at the chart it seems there is some decline in functioning and slightly elevated risk (some SI a couple weeks ago). I would normally say this is a homerun IOP referral but given the circumstances we don't have intake availability. I could book the patient for the crisis group for the next couple weeks, and I can consider ██████████ for IOP when the strike ends if ██████████ still meets criteria at that time. I will reach out to the patient to set this up



# EXHIBIT B



## EXHIBIT C

**From:** James Kempf <[James.Kempf@kp.org](mailto:James.Kempf@kp.org)>  
**Sent:** Monday, August 8, 2022 3:17 PM  
**To:** CVA BH Therapist <[CVABehavioralHealthTherapist@kp.org](mailto:CVABehavioralHealthTherapist@kp.org)>  
**Cc:** CVA PSY BHM's-KPNC-STK <[CVAPSYBHM's@kp.org](mailto:CVAPSYBHM's@kp.org)>; Alain G Flores <[Alain.G.Flores@kp.org](mailto:Alain.G.Flores@kp.org)>; Grace Yee <[Grace.Yee@kp.org](mailto:Grace.Yee@kp.org)>; CVA PSY MD LEADS-KPNC-STK <[CVAPSYMDLEADS@kp.org](mailto:CVAPSYMDLEADS@kp.org)>  
**Subject:** Upcoming Work Stoppage

Hello Everyone,

As you are aware, NUHW has chosen to give notice to Kaiser Permanente of its intention to commence a strike on August 15. While I wish this were not the case, I understand the significance of this decision and wanted to communicate with you about some important matters related to the work stoppage.

First, it is every employee's federal right to strike if they see fit to do so. It is also every employee's federal right NOT to strike if they see fit to do so. As a management team, we have been through a few of these strikes and have a very strong history of respecting the decisions of our employees. Those who have gone out on strike in the past have always been welcomed back with open arms and those who have not gone out have had their rights protected and respected as well. The decision to strike is a serious one that is intended to help bring an end to negotiations, but it has other repercussions for our employees, their families and our patients. None of us can know the personal reasons why our colleagues choose to strike or stay at work. My ask is that you treat one another's decisions with the same dignity and respect you would expect for your own.

In the next few days, the managers will be asking each of you about your intent to work on August 15 and beyond. You have every right to withhold an answer, but I hope that you will not. The intent of the question would never be to pressure you, but **rather to assist us in cancelling appointments (or not) to avoid patients waiting unnecessarily for a session that is not going to happen. We would also not want to cancel appointments unnecessarily.**

The past two years have been transformational in ways both good and difficult. Together we have redesigned care delivery, leveraged our technology, and actualized in the present what used to feel like the future of mental health care. But living and caring for others in a pandemic has been exhausting. I totally

understand. Our patients are experiencing this too and demand for our services indicates this. Thank you all for everything you have done and continue to do for our patients. I am very proud to be the Area Director for the Central Valley.

All the best wishes,

James

**James Kempf, Ed.D.**

Psychologist  
Area Director, Behavioral Health

**Permanente Medicine**

The Permanente Medical Group

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**Kaiser Permanente**

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