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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: CA-055 – September 13, 2005

Trustees: Micheal W. Buckner, A. Frank Dunham, Michael H. Holland, and  
Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Coal Industry Retiree Benefit Act of 1992 (Coal Act) Employer Benefit Plan maintained pursuant to section 9711 of the Internal Revenue Code.

### Background Facts

Following a physician's medical examination, the Complainant has been diagnosed with Peyronie's disease (curvature of the penis during erection). In Peyronie's disease, fibrous tissue develops within the penis and obstructs the vascular pathway that runs its length. The Complainant underwent surgery for the release of Peyronie's disease at the base of his penis, which allowed some straightening of the bent penis. In addition, the Complainant's physician has prescribed Viagra which the physician states helps the Complainant to maintain a straighter erection. Benefits coverage for Viagra has been denied by the Respondent.

### Dispute

Is the Respondent required to provide coverage for the prescription drug Viagra?

### Positions of the Parties

Position of the Complainant: The Respondent is required to provide coverage for Viagra because the Complainant's physician prescribed the drug for the Complainant to maintain a straighter erection.

Position of the Respondent: The Respondent is not required to provide coverage for Viagra because medications to treat sexual dysfunction are considered lifestyle drugs and have traditionally not been covered by the benefit plan. Additionally, the Respondent should not incur any costs for a personal matter such as sexual relations.

Pertinent Provisions

The Introduction to Article III of the Coal Act Employer Benefit Plan states:

Article III - Benefits

Subject to Article IV, the benefits provided under this Plan are set forth in this Article III. Benefit payments shall not exceed reasonable and customary charges for covered services and supplies. Covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care, or are otherwise provided for in the Plan. The fact that a procedure or level of care is prescribed by a physician does not mean that it is medically reasonable or necessary or that it is covered under this Plan. In determining questions of reasonableness and necessity, due consideration will be given to the customary practices of physicians in the community where the service is provided. Services which are not reasonable and necessary shall include, but are not limited to the following: procedures which are of unproven value or of questionable current usefulness; procedures which tend to be redundant when performed in combination with other procedures; diagnostic procedures which are unlikely to provide a physician with additional information when they are used repeatedly; procedures which are not ordered by a physician or which are not documented in timely fashion in the patient's medical records; procedures which can be performed with equal efficiency at a lower level of care. The benefits described in this Article are subject to any requirements implemented pursuant to Article IV. Covered services that are medically necessary will continue to be provided, and accordingly, while benefit payments may be subject to managed care and cost containment rules, this paragraph shall not be construed to detract from plan coverage or eligibility as described in this Article III.

Article III. A. (4) (a) of the Coal Act Employer Benefit Plan states in pertinent part:

(4) Prescription Drugs

(a) Benefits Provided

Benefits are provided for insulin and prescription drugs (only those drugs which by Federal or State law require a prescription) dispensed by a licensed pharmacist and prescribed by a (i) physician for treatment or control of an illness or a nonoccupational accident or (ii) licensed dentist for treatment following the performance of those oral surgical services set forth in (3)(e). . . .

### Discussion

The Introduction to Article III of the Employer Benefit Plan limits covered services to those that are reasonable and necessary for the diagnosis or treatment of an illness or injury and that are given at the appropriate level of care or are otherwise provided for in the Plan. Article III. A. (4) (a) of the Employer Benefit Plan provides benefits for insulin and prescription drugs (which by Federal or State law require a doctor's written prescription) dispensed by a licensed pharmacist, and prescribed by a physician for treatment or control of an illness or a non-occupational accident.

Viagra was approved by the Food and Drug Administration (FDA) on March 27, 1998, to treat impotence. It is Funds' policy to provide coverage for six Viagra tablets per month based on the following guidelines: 1) The patient is of male gender; 2) The patient has documented erectile dysfunction; 3) The patient has chosen this treatment option; 4) The patient is not currently receiving any form of nitrate therapy; 5) If over age 65, the patient is initiating therapy with 25 mg dose; 6) If the patient is taking macrolide antibiotics (erythromycin, Biaxin, Zithromax), ketoconazole (Nizoral), itraconazole (Lamisil) or cimetidine (Tagamet) the starting dose has been reduced to 25 mg.

A Funds' medical consultant has reviewed this file and notes that the documentation submitted indicated that the penis was bent. However, the documentation does not indicate that there was a problem with erection in regard to blood flow or with nerves associated with the erection process. Furthermore, the medical consultant indicated that the documentation submitted does not establish that there is in fact a problem with an erection. Consequently, based on the documentation submitted, the Respondent is not required to provide coverage for Viagra.

### Opinion of the Trustees

The Respondent is not required to provide coverage for the prescription drug Viagra.