

## **AGENDA**

### **THE MEETING OF THE DISABILITY PROCEDURES AND SERVICES COMMITTEE and BOARD OF RETIREMENT\***

#### **LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION**

**300 NORTH LAKE AVENUE, SUITE 810  
PASADENA, CA 91101**

**9:00 A.M., WEDNESDAY, DECEMBER 2, 2015 \*\***

#### **COMMITTEE MEMBERS:**

Vivian H. Gray, Chair  
William de la Garza, Vice Chair  
William R. Pryor  
Les Robbins  
Yves Chery, Alternate

#### **I. APPROVAL OF THE MINUTES**

A. Approval of the minutes of the regular meeting of November 4, 2015

#### **II. PUBLIC COMMENT**

#### **III. ACTION ITEMS**

#### **IV. FOR INFORMATION**

A. Transcript Request for Disability Retirement Appeals

#### **V. GOOD OF THE ORDER**

(For information purposes only)

#### **VI. ADJOURNMENT**

**\*The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.**

**\*\*Although the meeting is scheduled for 9:00 a.m., it can start anytime thereafter, depending on the length of the Board of Retirement meeting. Please be on call.**

**Assistive Listening Devices are available upon request. American Sign Language (ASL) Interpreters are available with at least three (3) business days notice before the meeting date.**

**Any documents subject to public disclosure that relate to an agenda item for an open session of the Committee, that are distributed to members of the Committee less than 72 hours prior to the meeting, will be available for public inspection at the time they are distributed to a majority of the Committee, at LACERA's offices at 300 North Lake Avenue, suite 820, Pasadena, California during normal business hours from 9:00 a.m. to 5:00 p.m. Monday through Friday.**

**Persons requiring an alternative format of this agenda pursuant to Section 202 of the Americans with Disabilities Act of 1990 may request one by calling the Disability Retirement Services Division at 626-564-2419 from 7:30 a.m. to 5:00 p.m. Monday through Friday, but no later than 48 hours prior to the time the meeting is to commence.**

MINUTES OF THE MEETING OF THE  
DISABILITY PROCEDURES AND SERVICES COMMITTEE  
and  
Board of Retirement\*\*

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION  
GATEWAY PLAZA - 300 N. LAKE AVENUE, SUITE 810, PASADENA, CA 91101

Wednesday, November 4, 2015, 1:32 P.M. – 1:52 P.M.

**COMMITTEE MEMBERS**

PRESENT: Vivian H. Gray, Chair  
William de la Garza, Vice Chair  
William R. Pryor  
Les Robbins  
Yves Chery, Alternate

ABSENT: Alan Bernstein  
Shawn R. Kehoe

**ALSO ATTENDING:**

BOARD MEMBERS AT LARGE

David L. Muir  
Ronald A. Okum  
Anthony Bravo  
Vito M. Campese, M.D.

STAFF, ADVISORS, PARTICIPANTS

Gregg Rademacher	Ricki Contreras
Steven Rice	Tamara Caldwell
Vincent Lim	Kerri Wilson
Eugenia Der	Debbie Semannian
Allison E. Barrett	Sandra Cortez
Frank Boyd	Angie Guererro

ATTORNEYS  
Thomas J. Wicke  
Michael Treger

GUEST SPEAKER  
None

The meeting was called to order by Chair Gray at 1:32 p.m.

I. APPROVAL OF THE MINUTES

A. Approval of minutes of the regular meeting of October 7, 2015

Mr. de la Garza made a motion, Ms. Gray seconded, to approve the minutes of the regular meeting of October 7, 2015. The motion passed unanimously.

II. PUBLIC COMMENT

III. ACTION ITEMS

A. Follow up on Performance Review – Michael Mahdad, M.D., Board Certified Neurologist

At the committee request, Dr. Campese reviewed Dr. Mahdad's medical reports. Dr. Campese found the reports to be sloppy, inconsistent, and conclusionary.

Ms. Gray advised staff not to send members to Dr. Mahdad and have staff produce a policy. Outlining the process to remove physicians from the LACERA panel of examining physicians.

Ms. Contreras agreed to draw up a staff level policy that includes sending a termination notice.

B. Transcript Request for Disability Retirement Appeals

Ms. Gray approved the motion to hold this item over to the next Disability Procedures and Services Committee Meeting to permit Mr. Bernstein to be present as he initially requested the item be placed on the agenda.

IV. FOR INFORMATION

V. GOOD OF THE ORDER

Mr. de la Garza thanked Dr. Campese for evaluating Dr. Mahdad's reports.

VI. ADJOURNMENT

With no further business to come before the Disability Procedures and Services Committee, the meeting was adjourned at 1:52 p.m.

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October 19, 2015

TO: Disability Procedures and Services Committee  
Vivian H. Gray, Chair  
William de la Garza, Vice Chair  
William R. Pryor  
Les Robbins  
Yves Chery, Alternate

FROM: Francis J. Boyd,   
Senior Staff Counsel

FOR: December 2, 2015 Disability Procedures and Services Committee Meeting

SUBJECT: **TRANSCRIPT REQUEST FOR DISABILITY RETIREMENT APPEALS**

At the October 7, 2015 Board of Retirement meeting, Mr. Bernstein requested a discussion regarding the Board's ordering of transcripts when addressing disability retirement appeals. The following is an outline of the Board's authority to either adopt or reject a referee's recommended decision. The purpose of this memorandum is to help facilitate the committee's discussion on this issue.

## I. Statutory Authority

- **Appointment of a referee**

Government Code section 31533 gives your Board the authority to hire a member of the State Bar of California as a referee to hold a hearing and prepare a proposed findings of fact and recommended decision in regard to an appeal of a disability retirement application denial.

- **Board of Retirement's options upon receipt of referee's recommended decision**

Section 31534 states that the referee's decision shall be served on the parties who then have an opportunity to submit written objections which shall be incorporated into the record to be considered by the Board. Upon receiving the recommended decision, the statute gives the Board the following four options:

- (a) Approve and adopt the proposed findings of fact and the recommendations of the referee;
- (b) Require a transcript or summary of all the testimony, **plus all other evidence received by the referee**. Upon receipt thereof the board

shall take such action as in its opinion is indicated by such evidence, or

- (c) Refer the matter back with or without instructions to the referee for further proceedings, or
- (d) Set the matter for hearing before itself. At such hearing the board shall hear and decide the matter as if it had not been referred to the referee. (Emphasis added.)

## **II. LACERA Procedures for Disability Retirement Hearings**

Your Board has adopted hearing procedure rules which are to be followed by all the parties.

- **Rule 28** essentially incorporates the above quoted four options included in Government Code section 31534.
- **Rule 30** states the following:

### **Board's Decision After Review of The Record:**

In any case where the Board makes a decision based upon a transcript or summary of all the testimony, *plus all other evidence* received by the referee, or where the Board sets the matter for hearing before itself, the Board may approve and adopt proposed findings and recommendations of the referee; otherwise, the Board shall direct the prevailing party to prepare proposed findings of fact and conclusions of law consistent with its tentative decision. The proposed findings of fact and conclusions of law shall be served on the unsuccessful party who shall have 10 days after such service to serve and file written objections thereto. Thereafter, the Board shall consider such written objections, if any, and shall adopt such findings of fact and conclusions of law as it deems appropriate. (Emphasis added.)

## **III. The Board of Retirement is required to receive the entire administrative record before it can overturn the referee's recommended decision.**

Government Code section 31534 and Rules 28 and 30 of LACERA's Procedures for Disability Retirement Hearings require that the Board receive the entire administrative record before it can overturn a referee's recommended decision—this includes the testimony transcript(s) and all the other evidence received by the referee.

If, after hearing the oral arguments from the parties, the Board exercises its option to review the hearing transcript and all evidence considered by the referee, Disability Retirement Services copies the entire administrative record for each Board member. Because the administrative record is normally quite voluminous, the matter is reset for the following month's agenda so that Board members have time to read the entire record.

#### **IV. Parties are required to provide a summary explaining why they are asking the Board to request a transcript.**

On April 1, 2009, the Board of Retirement adopted the following procedure that was recommended by the Disability Procedures and Services Committee:

That the Board of Retirement instruct staff to notify the attorneys that they will need to clearly state why they are asking the board to request a transcript when they are presenting oral arguments, and staff will include a summary of that statement when it is sent to the board members.

The purpose of this procedure is to assist Board members as they read through all of the evidence. It is not meant to relieve Board members from their duty to review the entire administrative record before voting to reject a referee's recommended decision.

#### **V. Conclusion**

LACERA disability retirement appeals are assigned to a Board-approved referee who listens to the testimony of the witness, reviews all of the evidence, analyzes the law, and prepares proposed findings of fact and a recommended decision. A request for a transcript should be reserved for cases where the Board believes that the decision contains a material mistake in fact or an error in law. A decision to act contrary to the referee's recommended decision should occur only after the Board has reviewed all the testimony and evidence and is then convinced that the preponderance of evidence does not support the referee's recommended decision.