SENATE . . . . . No. 2079

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

COMMUNICATION

FROM THE

PUBLIC EMPLOYEE RETIREMENT

ADMINISTRATION COMMISSION (PERAC)

RELATIVE TO AMENDMENTS TO THE

RULES AND REGULATIONS GOVERNING

RETIREMENT OF PUBLIC EMPLOYEES

IN MASSACHUSETTS

(840 CMR 10.00)

(pursuant to Section 50 of Chapter 7 of the General Laws)

December 15, 2015

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William F. Welch, Senate Clerk
Office of the Clerk of the Senate
State House, Room 335
Boston, MA 02133

Dear Mr. Welch:

In accordance with the provisions of Chapter 7, Section 50 of the General Laws, I am pleased on behalf of the Public Employee Retirement Administration Commission (PERAC), to file amendments to the rules and regulations governing retirement of public employees in Massachusetts (840 CMR 10.00).

These regulatory amendments are necessary to regulate the disability retirement system. The regulations mandate the process to be used by retirement boards when a member files for disability retirement. They also detail the process for continued medical evaluations of disability recipients and the process for return disabled members to service.

Pursuant to the provisions of G.L. c. 7, § 50, the clerks shall refer this matter to the appropriate standing committee of the General Court. If the General Court takes no final action relative to the regulations within forty-five days of the date said regulations are referred to the appropriate committee, the General Court not having prorogued within said forty-five days, the regulations shall be deemed to be approved. Within fifteen days of receipt of any recommendations, the committee shall transmit in writing to PERAC its suggestions, if any, for modifications in recommended regulations. Within fifteen days of receipt of the committee's suggestions, PERAC shall resubmit the regulations to the committee, together with any modifications made to them.

If you have questions or need additional information, please feel free to contact me.

Sincerely,

Joseph E. Connarton
Executive Director

Enclosure

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840 CMR 10.00: STANDARD RULES FOR DISABILITY

RETIREMENT Section

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840 CMR 10.00 is the standard rules for disability retirement promulgated by the Public Employee Retirement Administration Commission (PERAC) under the authority of M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 6 and 21. Except as may otherwise be provided by PERAC, or by supplementary rules of a particular retirement board approved by PERAC, 840 CMR 10.00 shall govern the following disability proceedings and procedures commenced by or before any retirement board after January 1, 2016.

(1) Proceedings for ordinary and accidental disability retirement;

(2) Proceedings for restoration to active service of members retired for disability;

(3) Proceedings for modification of the retirement allowance of members retired for disability;

(4) Procedures for medical examinations by medical panels on applications for disability retirement

(5) Procedures for re-examination, evaluation and rehabilitation of members retired for disability;
and

(6) Procedures for annual reporting of earnings and refunds under M.G.L. c. 32, § 91A by members retired for disability.

10.01: Definitions

Unless a different meaning is plainly required by the context, words and phrases used in 840
CMR 10.00 shall have the meanings assigned them by M.G.L. c. 32 and PERAC's regulations (840 CMR 1.00 *et seq.)* and if no meaning is so assigned, they shall have their ordinary meanings.

10.02: Purpose of Standard Rules: Retirement Board Policy

The purpose of 840 CMR 10.00 is to establish uniform standards and procedures to be applied by retirement boards in ordinary and accidental disability retirement proceedings and procedures under M.G.L. c. 32, §§ 6, 7, 8 and 91A. It shall be the policy of the retirement board to make every reasonable effort to assist retirement system members to exercise all rights and obtain all benefits to which entitled and as authorized by the laws governing ordinary and accidental disability retirement, while protecting the retirement system and the public against claims and payments for disability retirement not authorized by law. In situations where a member is not receiving his/her salary, worker's compensation or injured in the line of duty benefits the retirement board should make every reasonable effort to expedite consideration of the disability application.

10.03: Supplementary Rules: Approval by PERAC

Any retirement board may promulgate supplementary rules for disability retirement but supplementary rules shall be consistent with 840 CMR 10.00, shall conform to the standard for decision set forth in 840 CMR 10.04 and shall take effect only as approved by PERAC pursuant to 840 CMR 14.02.

10.04: Standard For Decision, Findings of Fact

(1) No retirement for ordinary or accidental disability shall be allowed unless the retirement board, based upon substantial evidence, makes findings of the facts upon which it relied in making its decision. The board must find that:

(a) The member is unable to perform the essential duties of his position; and

(b) The inability is likely to be permanent; and

(c) If the application is for accidental disability retirement, that the incapacity is the natural and proximate result of a personal injury sustained or hazard undergone while in the performance of the member's duties at some definite place and some definite time without serious and willful misconduct on the member's part; and

(d) The member should be retired.

(2) In making the finding required by 840 CMR 10.04(1)(b) the retirement board shall consider, but not be limited to, the following factors:

(a) Whether the nature of the condition or injury is such that it can be expected to improve over a reasonable period of time;

(b) Whether the nature of the condition or injury is such that it could be expected to improve if the member were willing to undergo reasonable medical treatment or rehabilitation

(3) In making the finding required by 840 CMR 10.04(1)(c) the retirement board shall apply the following presumptions:

(a) The retirement board shall presume that any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a member as described in M.G.L. c. 32, § 94 was suffered in the line of duty unless the contrary is shown by competent evidence.

(b) The retirement board shall presume that any condition of impairment of health caused by any disease of the lungs or respiratory tract, resulting in total disability or death to a member described in M.G.L. c. 32, § 94A was suffered in the line of duty, as a result of the inhalation of noxious fumes or poisonous gases, unless the contrary is shown by competent evidence.

(c) The retirement board shall presume that any condition of cancer affecting the skin or central nervous system, lymphatic, digestive, hematological, urinary, skeletal, oral or prostate systems, or lung or respiratory tract resulting in disability or death to a member described in M.G.L. c. 32,
§ 94B was suffered in the line of duty unless it is shown by a preponderance of the evidence that non-service connected risk factors or non-service connected accidents or hazards undergone caused such incapacity.

(4) In making the finding required by 840 CMR 10.04(1)(c) the retirement board shall determine:

(a) Whether the presumptions set forth in 840 CMR 10.04(4)(a), (b) or (c) apply. If one of the presumptions applies to the application:

1. Whether the applicant successfully passed a physical examination upon entry to service or subsequent thereto which failed to reveal any evidence of such condition; and

2. Whether in the line of duty an applicant claiming the presumption contained in

M.G.L. c. 32, § 94A responded to calls that would have involved the inhalation of or exposure to noxious fumes or poisonous gasses; and

3. Whether an applicant claiming the presumption contained in M.G.L. c. 32, § 94B served in a position that renders him or her eligible for the application of the presumption for at least five years and regularly responded to calls of fire during some portion of his or her service; and

4. Whether an applicant who left active service and is claiming the presumption contained in M.G.L. c. 32, § 94B first discovered the condition, even if not formally diagnosed, for which retirement is sought within five years of the last date that he or she actively served in a position described in M.G.L. c. 32, § 94B.

5. Whether any contrary evidence is sufficient to overcome the applicable presumption

(b) Whether other causal factors related to the member's physical or mental condition might have contributed to the disability claimed; and

(c) Whether any event other than the accident or hazard upon which the disability retirement is claimed might have contributed to the disability claimed.

10.05: Proceedings; Parties; Representation; Record

(1) Proceedings. Disability proceedings include proceedings:

(a) For ordinary and accidental disability retirement of members in service; (b) For rehabilitation of members retired for disability;

(c) For restoration to active service of members retired for disability; and

(d) For modification of the retirement allowance of members retired for disability.

(2) Parties. Parties to a proceeding for ordinary or accidental disability retirement include the member who files the application as well as the employer. If the application is filed by the employer, the employer and the member who is the subject of the application shall be parties to the application. The party to a proceeding for modification of the retirement allowance of a member retired for disability is the member who is the subject of the proceeding. Parties to a proceeding for restoration to active service of a member retired for disability include the retired member and the member's employer. Any person authorized by the retirement board to intervene or otherwise authorized by law to participate as a party in any proceeding shall be a party to that proceeding for purposes of 840 CMR 10.00.

(3) Representation. A party may appear in his or her own behalf or may be accompanied, represented and advised by an authorized representative who may be an attorney, legal guardian or other person authorized to represent the party in the proceedings. Any authorized representative shall file with the retirement board a written appearance which shall contain the representative's name, address and telephone number and the name of the party represented.

(4) Record. All evidence, whether documentary, testimonial, or in other form, offered by a party, the retirement board or any other person or entity in a disability proceeding and any issue, contention or argument raised with respect thereto, shall be included in the record of the proceeding.

10.06: Proceedings for Ordinary or Accidental Disability Retirement; Applications; Additional Information

Proceedings for ordinary or accidental disability retirement may be brought by filing an application with the retirement board and with the employer. The application shall consist of the forms prescribed by 840 CMR 10.06, and shall be considered filed as of the date upon which the applicant completes and submits all the required forms to the retirement board.. If the retirement board or PERAC believes any part of the application contains false, fictitious or fraudulent information, the board or P E R A C shall notify the Attorney General or the appropriate district attorney.

(1) Voluntary Retirement. Any member in service who becomes totally and permanently unable to perform the essential duties of his or her job under the circumstances described in M.G.L. c. 32, § 6 (relating to ordinary disability) or § 7 (relating to accidental disability) may file an application for retirement. Every member-applicant shall also file:

(a) A sworn statement indicating the member's intent to retire;

(b) A certificate from a licensed medical doctor;

(c) A written statement authorizing release of information from the Federal Internal Revenue Service and the Department of Revenue relative to the annual gross earned income of the member in accordance with M.G.L. c. 32, §§ 6(1) and 7(1);

(d) If the application is for accidental disability retirement, a sworn statement of the circumstances of the event or hazard undergone from which the personal injury was sustained upon which the disability retirement allowance is claimed;

(e) The member's sworn statement of the member's duties of employment and the specific duties the member is now unable to perform as a result of the disability claimed:

(f) A statement of the member's education and training, employment history and off-duty physical activities:

(g) Authorizations on such other form as may be required by a person, institution or other agency having custody of the member's records, for release of medical or insurance records relating to the member as follows:

1. records of the member's personal physicians and of the physician submitting the certificate described in 840 CMR 10.06(1)(b);
2. records of all physicians or medical institutions examining or treating the member for the condition or personal injury upon which the application is based;
3. records of all physical examinations performed within the five year period prior to the application or, if none are available for that period, the most recent;
4. the member's workers' compensation records or, if applicable, any records in connection with application for or receipt of benefits pursuant to M.G.L. c, 41, § 111F;
5. the member's medical records for the last five years;

6. the accident or claim reports for the last five years of any insurer in connection with the personal injury sustained or the hazard undergone upon which the application is based;

(h) Authorizations permitting the physicians and medical institutions described in 840 CMR 10.06(1)(g)(2) to further explain the records, treatment performed, or statement or prognosis.

(2) Involuntary Retirement. The department head of any member in service who becomes totally and permanently unable to perform the essential duties of his or her job under the circumstances described in M.G.L. c. 32, § 6 (relating to ordinary disability) or § 7 (relating to accidental disability) may file an application for retirement. Department head applicants shall also file the statements by the department head or employer described in 840 CMR 10.07 and any medical information available to the department head or employer on which the application is based.

10.07: Information to be Obtained From Member's Department Head or Employer

Except as provided in 840 CMR 10.09, upon receipt of an application by a member for ordinary or accidental disability retirement, the retirement board shall request the statements required by 840 CMR 10.07 from the member's department head or employer. If the department head does not supervise the member, the department head's statement required by 840 CMR 10.07(1) shall be prepared by the member's direct supervisor and shall be counter-signed by the department head. The department head's statement shall be filed with the retirement board within 15 days of the date that the department head receives it.

(1) Department Head's or Employer's Statement. The retirement board shall request a statement from the member's department head or employer.

(a) Providing a job description for the member's job and describing the member's duties and responsibilities;

(b) Specifically identifying the essential duties of the position;

(c) Describing any particular physical or mental requirements prescribed for the position; (d) Providing any medical records in the member's personnel file relating to the member's physical condition at the time of the member's employment or thereafter, which shall include any record of a pre-employment physical, any record relating to in-service physical examinations and all medical records relating to the disability claimed;

(e) Providing any records of the member's education and training or of the member's qualifications;

(f) Describing the specific duties the member cannot or may not be able to perform as a result of the disability or incapacity claimed;

(g) Stating whether, in the department head's or employer's opinion the member may be able to perform the essential duties of the member's job.

(h) If the application is for an accidental disability retirement, describing the event, accident or hazard undergone upon which the disability is being claimed, attaching copies of any and all injury or incident reports, and the statements of any witnesses to the injury or incident and providing any other information which may bear upon the cause of the member's claimed disability;
(i) Stating whether the position is classified under civil service;
(j) Stating whether the member's claimed disability is a result of any misconduct on the part of the member.

10.08: Medical Panel, Formation and Instruction to Panel

(1) Except as provided in 840 CMR 10.09, upon receiving a completed application for disability retirement as defined by 840 CMR 10.06, the retirement board shall petition PERAC to schedule a medical examination of the member by a regional medical panel.

(2) If a medical panel is requested by the retirement board as a result of a decision of the Division of Administrative Law Appeals or the Contributory Retirement Appeal Board a copy of the decision must be forwarded to PERAC along with the request for the appointment of a medical panel request.

(3) Such regional medical panel shall consist of three physicians who shall not be associated as defined in M.G.L. c. 32, § 6(3), who shall be selected for the purpose of examining the member whose retirement is under consideration and shall, so far as practicable, be skilled in the particular branch of medicine or surgery involved in the case. PERAC shall appoint one of the three physicians as Medical Panel Coordinator to facilitate panel proceedings.

(4) Such regional medical panel shall meet within 60 days after appointment by PERAC to conduct its examination. If the panel fails to meet within 60 days, PERAC shall require the three physicians to conduct such examinations separately. If PERAC determines that it is unlikely the medical panel will be able to meet within 60 days, PERAC may authorize separate examinations.

(5) Upon request of a member, PERAC shall schedule separate examinations as soon as practicable thereafter. A request for separate examinations may be filed at any time. A request for separate examinations will not ordinarily be considered, however, if received by PERAC less than 48 hours prior to a scheduled examination by a regional medical panel unless the request is filed pursuant to the provisions of 840 CMR 10.10(5). PERAC shall so far as practicable schedule separate examinations with the same three physicians who were appointed to the regional medical panel unless the request is filed pursuant to the provisions of 840 CMR 10.10(5).

(6) Upon designation of the regional medical panel, the retirement board shall send to each panel physician, prior to the examination, all information obtained pursuant to 840 CMR 10.09(1), and advise the panel of the availability and location of any other medical data or reports known to the retirement board. The retirement board shall also provide the medical

panel with copies of all documents in the member's file that may be of assistance to the panel, including, without limitation, the following:

(a) The statement of the member's physician; (b) The member's statement of duties;
(c) The member's statement of background, qualifications and physical activities; (d) The department head's or employer's statement;
(e) For accidental disability claims, the member's statement of circumstances of personal injury or hazard undergone;
(f) For accidental disability claims, copies of any injury reports filed with the retirement board or the applicant's employer.

(7) The medical panel shall not be provided with copies of the certificates and narratives of medical panels which previously examined the member or with copies of decisions by the Division of Administrative Law Appeals or the Contributory Retirement Appeal Board involving the member.

(8) The applicant shall be responsible for providing X-Rays, EKG tracings and other records that cannot readily be photocopied to the Medical Panel Coordinator designated by PERAC who shall forward such information to the other two panel physicians. The applicant is responsible for making the necessary arrangements for the return of these materials to the proper facility or treating physician.

10.09: Investigation of Facts; Denial of Certain Applications; Appeal

(1) The retirement board shall obtain any pertinent information known to exist without regard to the five year time periods stated in 840 CMR 10.06(1)(g)(3), (5) and (6), including any record listed in 840 CMR 10.06(1)(g) relating to an application for ordinary or accidental disability retirement and shall conduct such investigation as may be necessary to determine the facts.

(2) At any stage of a proceeding on an ordinary or accidental disability retirement application the retirement board may terminate the proceeding and deny the application if it determines that the member cannot be retired as a matter of law.

(3) If the retirement board decides to deny an application under 840 CMR 10.09, notice of the decision, basis for the board's decision, and right to appeal shall be sent to all parties as provided by 840 CMR 10.13(3).

10.10: Examination by Medical Panel

(1) Notice. In proceedings for disability retirement PERAC shall give all parties at least 14 days notice of the medical panel examination. An applicant may waive his or her right to 14 days notice by filing a written waiver with PERAC. Examinations shall be held at a reasonably convenient time and place for all parties.

(2) Examination. A physical examination and/or psychiatric evaluation of the member shall be conducted by the regional medical panel. If fewer than three physicians are present at a regional medical panel examination, and the member consents in writing, the physician or physicians present shall conduct the examination and any physicians not present shall conduct a separate examination.

(3) Medical Tests. The medical panel may suggest any "non-invasive" medical test which the panel considers necessary to render an opinion of the member's medical condition. PERAC shall assume the cost of any non-invasive test suggested by the medical panel up to an amount that PERAC shall determine annually. This annual determination will be communicated to all retirement boards during the month of January. No test the cost of which exceeds the annual amount determined by P E R A C shall be ordered or required by the medical panel without the advance approval of PERAC.

(4) Representation. At the election of the member and employer respectively, the member's physician and employer's physician, may be present and may answer questions from the panel during the decision making process of the panel. In the case of separate examinations, the member's physician and the employer's physician shall have the opportunity to attend each examination. Either physician may disagree with the findings of the panel or, in the case of separate examinations, with any of the three physicians by filing a written statement with PERAC within ten days following issuance of the medical panel's decision. Neither physician shall otherwise participate in the decision making process of the panel. At the discretion of the member and his or her legal counsel and the employer and its legal counsel, said legal counsels may be present during the decision making process of the panel; provided, however, that neither counsel shall have a vote in the final determination of the panel.

(5) Rescheduling of Examination. If a member is unable to attend a scheduled medical panel examination, or in the case of single exams any one of the three separate examinations, the member shall notify PERAC and may request that the examination be rescheduled. PERAC will ordinarily grant requests for rescheduling only for extenuating circumstances such as death in the family or hospitalization or serious illness of the member, provided that appropriate documentation of such is provided to PERAC. If a request for rescheduling is denied by PERAC, and the applicant fails to appear at the originally scheduled examination, the retirement board may deny the application and notice of the decision and right to appeal shall be sent to all parties as provided by 840 CMR 10.13(1)(c).

(6) Failure to Appear. If a member fails to appear at a scheduled examination without having been granted a request for rescheduling by PERAC the member shall reimburse PERAC for the costs of that examination before a new examination shall be scheduled. If the application is for involuntary retirement under the provisions of M.G.L. c. 32, § 16, the employer shall be responsible for reimbursement to PERAC if the employee fails to appear at a scheduled examination. Reimbursement may be waived if PERAC finds that there was just cause for the member's failure to appear.

(7) Confidentiality. Since the principal purpose of the examination is to discuss and evaluate the physical condition or mental health of the member, attendance at the examination shall be limited to the member and the medical panel physician(s), the member's physician and the employer's physician. The member's attorney and the employer's attorney may attend the examination. The member may permit the presence of other individuals, provided that their presence will not disrupt the examination. No document received during the examination shall be made available to the public except as may be required by other laws and regulations applicable to such records.

(8) Documents Submitted to the Medical Panel. Any documents that are submitted to the medical panel by anyone other than the retirement board will be transmitted to PERAC by the panel. PERAC will provide copies of the documents to the retirement board. Neither a member nor an employer may offer and the medical panel may not receive any medical records from anyone other than the retirement board.

(9) Certification of Panel Findings. The medical panel, or in the case of separate examinations each medical panel physician, shall report their findings and recommendations to the retirement board through PERAC on certificates supplied by PERAC within 60 days after completing their examinations. The panel or physician, as the case may be, shall forward the report to PERAC for approval for payment of medical panel services. Within five days of receiving a properly completed medical panel or physician report, PERAC shall forward the report to the retirement board. The medical panel physicians shall certify whether the member is unable to perform the essential duties of his job, whether the inability is likely to be permanent and, if the application is for accidental disability, whether the disability is such as might be the natural and proximate result of the accident or hazard undergone on account of which the retirement is claimed. The physician designated by PERAC as Medical Panel Coordinator or, in the case of separate examinations, each medical panel physician, shall also file a narrative statement describing in detail the findings and recommendations of the report. The names and addresses of all persons attending the medical panel examination, a listing of all documents presented to the medical panel at the examination and all medical tests and/or X-Rays ordered by the medical panel shall be listed in the space provided on the Medical Panel Certificate.

10.11: Notice of Medical Panel Findings; Further Examination by Medical Panel; Denial of Application; When Hearing Shall be held by the Retirement Board

(1) Within 30 days of receipt of a medical panel report by the retirement board or, in the case of separate examinations, 30 days of receipt of the last of the three separate reports, the retirement board shall notify the parties of the panel's findings, and provide the parties with a copy of all certificates and documents completed by the medical panel physicians.

(2) If upon review of a medical panel report by the retirement board, or in the case of separate examinations, any individual report, the retirement board determines that additional information or further clarification is needed from the medical panel, the board shall request such information from PERAC, who shall forward such request to the medical panel. The medical panel shall provide the

clarification within 60 days of receipt of the request. At the request of the retirement board, PERAC shall assist the retirement board in obtaining whatever information is deemed necessary. Following this initial request for clarification, PERAC shall decide whether any further board requests for clarification are warranted and, if further clarification is denied, PERAC shall notify the board in writing of the reasons therefore.

(3) If the medical panel findings preclude retirement for the disability claimed, the retirement board shall either deny the application or, if it determines that further examination by a medical panel may be warranted, the retirement board shall petition PERAC to schedule a new examination by a medical panel, stating the circumstances warranting a new examination. If PERAC grants a request for a new medical panel, the retirement board shall proceed as provided in 840 CMR 10.08(6). If PERAC declines to schedule a new examination, it shall so notify the retirement board and the retirement board shall deny the application. Notice of the decision and right to appeal shall be sent to all parties as provided by 840 CMR 10.13(1)(c).

(4) If the medical panel findings permit retirement for the disability claimed, the retirement board shall determine whether or not to approve the application. A hearing may be held on any disability retirement application and shall be held upon request of the member. The retirement board shall hold a hearing on any involuntary disability retirement application where a hearing is timely requested by the member. If a hearing is held notice shall be given and the hearing shall be held as provided in 840 CMR 10.12.

10.12: Hearing by Retirement Board

(1) Notice. The retirement board shall give all parties at least 30 days notice of the time and place for the hearing and of the issues involved in the hearing. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statements, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare and present evidence and argument respecting the issues.

(2) Discovery. Any party and any authorized representative shall, at any time after a hearing has been requested or ordered and after reasonable notice to the retirement board, be permitted to examine and copy or photocopy, at cost and during normal business hours, any document in the case file pertaining to the member's file or the record of the hearing. All other discovery shall be at the discretion of the retirement board. A request for discovery may be made by any party at any time after a hearing has been requested or ordered.

(3) Conduct of Hearing. Hearings shall be conducted in an informal manner that affords all parties an opportunity to present all information and argument relevant to the proceeding.

(a) Presiding Officer. The chairperson of the retirement board, any other member of the board acting as chairperson, or any individual designated by the board, shall be the presiding officer and shall assure parties the right to call and question witnesses and introduce exhibits, and to present argument, relevant to the proceeding. The presiding officer shall assure an orderly presentation of the evidence and argument and that a record is made of the hearing.

(b) Continuances. The presiding officer may change the date, time or place of the hearing on his own motion or on the request of any party, upon due notice to all other parties, and may continue the hearing to a subsequent date to permit any party to present additional evidence, witnesses or other materials. At any time prior to decision, the presiding officer may reconvene the hearing for any purpose upon ten days written notice to all parties, stating therein the purposes for reconvening, and the date, time and place of the reconvened hearing.

(c) Oaths; Rulings; Briefs. The presiding officer shall administer the oath or affirmation to witnesses, shall rule upon the admissibility of evidence and upon any requests for rulings, and may order that written briefs be submitted by the parties.

(d) The Record. All proceedings in connection with the hearing shall be recorded by electronic or stenographic means and such record shall be maintained as part of the hearing record. Transcripts or duplicate tapes of the proceedings shall be supplied to any party, upon request, at that party's expense. At the discretion of the presiding officer, any party may be permitted to maintain a record so long as this does not interfere with the conduct of the proceedings. All documents and other evidence received shall also become part of the record.

(e) Executive Session. Since the principal purpose of a hearing on a disability retirement application is to discuss and evaluate the physical condition or mental health of the member, the hearing shall be held in executive session unless the member requests that the meeting be open. In such executive session only the retirement board, the secretary and the retirement board's counsel, the parties and their authorized representatives and such other persons as the presiding officer shall deem necessary for the conduct of the hearing shall be permitted to be present. In emotional disability cases the hearing officer shall have discretion to limit attendance during the proceedings. No executive session shall be held until the retirement board has first convened in open session for which notice has been given, a majority of the members of the board have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has stated the purpose for an executive session, and has stated before the executive session if the board will reconvene after the executive session. The records of the hearing in executive session shall not be made available to the public except in accordance with the board's regulations on privacy and confidentiality and such other laws or regulations as may be applicable to such records.

(f) Evidence.

1. General. The retirement board need not observe the rules of evidence observed by courts but shall observe the rules of privilege recognized by law. Evidence shall be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Unduly repetitious evidence may be excluded.

2. Testimony; Stipulation. Witnesses shall testify under oath or affirmation and shall be available for questions by all parties. In cases involving a claim for emotional disability the hearing officer may require that questions by the parties be directed through the hearing officer to the witness. If a witness cannot, as a practical matter, be available in person the witness shall be available and testify by telephone conference call, or by any other reasonable means ordered by the presiding officer. Stipulations by the parties as to any fact or as to the testimony that would be given by an absent witness may be offered and received as evidence.

3. Documentary Evidence. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference in the discretion of the presiding officer.

4. Taking Notice of Facts. The retirement board may take notice of any fact which may be judicially noticed by the courts, and any fact within the retirement board's specialized knowledge. Parties shall be notified and afforded an opportunity to contest any facts so noticed.

5. Evidence to be Part of Record. All evidence, including any records, reports and documents of the retirement board, to be considered in making a decision shall be offered and made a part of the record of the proceeding and the record shall at all times be open for inspection by any party or authorized representative during business hours. The retirement board may, with notice to all parties, require any party to submit additional evidence for the record and shall afford parties an opportunity to submit rebuttal evidence.

(g) Subpoenas.

1. Issuance. The presiding officer shall, within five days of a written request of a party, issue a subpoena requiring the attendance and testimony of a witness or the production of any evidence including books, records, correspondence or documents relating to any matter in question at a hearing on a disability application.

2. Request to Vacate. Any person subpoenaed may file a written request requesting the presiding officer to vacate or modify the subpoena.

3. Decision on Request to Vacate or Modify Subpoena. The presiding officer shall notify all parties of the request to vacate or modify the subpoena and afford parties a reasonable time to respond. The presiding officer shall grant the request to vacate or modify the subpoena if the testimony or evidence subpoenaed does not relate with reasonable directness to any matter at issue in the proceeding or if the subpoena is otherwise unreasonable or oppressive.

(h) If any person fails to comply with a properly issued subpoena, the retirement board or the party requesting the issuance of the subpoena may petition the superior court for an order requiring compliance.

10.13: Decision

In all disability proceedings the decision of the retirement board shall be based exclusively on the record of the hearing or, if there is no hearing, on the record of the proceeding. A written decision shall be made as soon as administratively feasible and copies of the decision shall be sent to all parties as provided in 840 CMR 10.13.

(1) Proceedings for Disability Retirement. In proceedings for disability retirement the retirement board shall determine whether the member is eligible for disability retirement under M.G.L. c. 32, §§ 6 or 7, or under another section of general or special law, and under the standard set forth in 840 CMR 10.04. In no event shall the decision be later than 180 days after the completed application for disability retirement is filed pursuant to 840 CMR 10.06, unless an extension is granted by PERAC under M.G.L. c. 32, § 6(4) or § 7(6).

(a) Decision to Grant Application: Information to be Sent to PERAC. If the retirement board decides to grant an application for disability retirement, a copy of the decision approved and signed by the voting members of the board shall be sent to PERAC on the appropriate form together with a statement of the facts found by the retirement board and all of the documentary evidence in the record that may be of assistance to PERAC including, without limitation, the following:

1. The certificate of the member's physician;
2. For accidental disability claims, copies of any injury reports filed with the retirement board or the member's employer;
3. All descriptions of the member's duties;
4. All documents prepared by the member in connection with the application, including the member's statement of background, qualifications and physical activities;
5. All documents prepared by the employer in connection with the application, including the employer's statement;
6. For accidental disability claims, the member's statement of circumstances of personal injury or hazard undergone;
7. All documents prepared by the retirement board in connection with the application;
8. The certificate(s) of the medical panel, including any and all correspondence from the medical panel.

(b) When a Board Member is the Applicant: In circumstances when the applicant is a member of the retirement board, that board member shall not be permitted to participate as a board member or approve his or her own application.

(c) Decision to Deny Application. If the retirement board decides to deny an application for disability retirement the board shall notify PERAC and notice of the decision and right to appeal shall be sent to all parties within three business days of the decision. A copy of M.G.L. c. 32, §§ 16(3) and (4) shall be included with the notice of decision and, upon request, the retirement board shall assist the applicant or retired member, as the case may be, in filing of the appeal.

10.14: Comprehensive Medical Evaluation

After a public employee retires for accidental or ordinary disability retirement, that member must participate in an evaluation once per year during the first two years after retirement and once every three years thereafter. This evaluation shall consist of PERAC's review of the retiree's medical records and all information submitted by the retiree's retirement board to determine whether the retiree is permanently or currently unable to perform the essential duties of the position from which he or she retired. In making this determination for municipal public safety personnel, PERAC shall utilize and apply the most recent Regulations for the Initial Medical and Physical Fitness Standards Test for Municipal Public Safety Personnel promulgated by the Human Resources Division of the Commonwealth.

Following review, PERAC may determine that:

(1) Retiree is Permanently Disabled: In the event PERAC determines that the retiree is permanently unable to perform the essential duties of the position from which he or she retired because of the catastrophic nature of his or her medical condition, the retiree will not be scheduled for a comprehensive medical evaluation.
(2) Retiree is Currently Disabled: In the event PERAC determines that the retiree is currently unable to perform the essential duties of the position from which he or she retired, the retiree will not be scheduled for a comprehensive medical evaluation, but he or she may be subject to future evaluations.
(3) Further Information Needed: In the event PERAC determines that further information is needed to determine whether the retiree should be restored to service, PERAC may request that the retiree furnish PERAC with copies of all medical records from the date of retirement or from the date of the member's most recent CME, whichever last occurs. If a retiree does not submit additional medical records to PERAC, PERAC may schedule the retiree for a comprehensive medical evaluation with a physician. A retiree's failure to respond at all to PERAC may result in the suspension of the retiree's retirement allowance until brought into compliance.

(a) In the event that further information is provided, PERAC will review the information submitted and will determine whether the retiree is still permanently or currently disabled, or whether the case will proceed to a comprehensive medical evaluation.

(i) If the retiree is deemed permanently or currently disabled, the provisions of 10.14 (1) and (2), respectively, shall apply.
(ii) If it is determined that the case should proceed, PERAC will schedule a comprehensive medical evaluation for the retiree so that all aspects of the

retiree's health can be considered when making a decision as to his or her ability to perform the essential duties of the position from which he or she retired. The referral for the comprehensive medical evaluation is made to a single physician, but the examination may also involve consultations with other physicians as well as various medical tests, pursuant to M.G.L. c. 32, § 8. Upon completion of the comprehensive medical evaluation, the physician examiner will complete a narrative report, wherein the physician will comment on each of the consultations and tests included in the evaluation process.

(b) If it is determined, based upon the comprehensive medical evaluation, that a retiree is able to perform the essential duties of the position from which he or she retired, or a similar position within the same department for which he or she is qualified, the retiree will enter the restoration to service phase of the disability process.

10.15: Restoration to Service

(1) The examination of a member previously retired for disability shall consist of the following:

(a) If after an evaluation pursuant to M.G.L. c. 32, § 8 and 840 CMR 10.14 it is determined that a retired member is able to perform the essential duties of the position from which he or she retired or a similar job within the same department for which he or she is qualified without a medical or vocational rehabilitation program, or after the completion of a rehabilitation program as provided in 840 CMR 10.19, PERAC shall appoint a medical panel of three physicians to examine the member separately to determine the scope of the member's mental physical capabilities and whether the member is able to perform the essential duties of his job or the essential duties of a similar job within the same department given the member's condition.

(b) The panel shall consist of a physician skilled in the particular branch of medicine or surgery that would encompass the condition for which the member retired and such other physicians as PERAC determines necessary to determine the scope of the member's capabilities and whether the member is able to perform the essential duties of his or her job or the essential duties of a similar job within the same department given the member's condition.

(c) All proceedings related to the return to service examination – including, but not limited to, notice of the return to service examination, medical tests to be performed thereat, attendance, rescheduling, confidentiality and certification of panel findings – shall be done in accordance with and pursuant to 840 CMR 10.10, 10.11 and 10.14.

(d) Re-evaluation of Retiree Able to Perform the Essential Duties of His or Her Position. When a retiree is found able to perform the essential duties of the position from which he or she retired, PERAC will notify the retiree, the retirement board, the employer, and the Commonwealth's Division of Human

Resources. Some time may pass before a position becomes available and the retiree is actually restored to service. In the interim, a PERAC case manager and a physician selected by PERAC will monitor the retiree's medical status. Every six months, the retiree will be asked to complete and return a health questionnaire to PERAC. The retiree may also be re-evaluated by a comprehensive medical evaluation physician upon any significant change in his or her medical condition and before returning to work. The goal is to assess the retiree's medical readiness to return to work and to minimize the possibility of missing a retraining opportunity.

(2) Restoration of a Member Who Was Retired for Disability to Active Service. In the event that a member who was retired for disability is found able to perform the essential duties of the position from which he or she retired pursuant to M.G.L. c. 32, § 8 and 840 CMR 10.15(1), the following shall occur:

(a) If, within two years of the date that a member retired under section 6 or 7, a medical panel convened pursuant to M.G.L. c 32, § 8 unanimously finds that the member is able to perform the essential duties of the position from which he or she retired or so finds following completion of a rehabilitation program the member shall be returned to such position if it is vacant or a similar job within the same department for which he or she is qualified and his or her disability retirement shall be revoked. If such position is not vacant, the last person appointed to that rank or position shall be reduced in rank or position to create a vacancy and the person who was reduced in rank or position shall be placed at the top of the list to fill such rank or position for a two year period. The retirement board shall notify the member, the employer and the State Human Resources Division of the panel's determination. A copy of this notification shall be sent to PERAC.

(b) If, after two years of the date that a member is retired under section 6 or 7, a medical panel unanimously determines that the disability retiree is qualified for and able to perform the essential duties of the position from which he or she retired or a similar position within the same department, as determined by the State Human Resources Division, the member shall be returned to said position, provided the position is vacant. If a vacancy exists, the member shall be restored to active service in the position from which he or she retired. If no vacancy exists, the member shall be granted a preference for the next available position or similar position for which he or she is so qualified. The retirement board shall notify the member, the employer and the State Human Resources Division of the panel's determination. A copy of this notification shall be sent to PERAC.

(c) If a retiree is found able to return to his or her position as provided in 840 CMR 10.15(2)(b), and if no vacancy exists in the same or in a similar position, the retiree shall continue to receive his or her retirement allowance until reinstatement takes place or until the member's pension is reduced or revoked as a result of the submission of earnings information under M.G.L. c. 32, § 91A.

(d) If a member refuses to return to service or to file such information as the retirement board or PERAC shall require, the retirement board shall suspend his or her retirement allowance.

(e) If any member is restored to active service, his or her retirement allowance shall cease and the individual shall again become a member in service and regular deductions shall again be taken from regular compensation.

(f) Any creditable service in effect at the time of the member's retirement for disability shall thereupon be restored to full force and effect and, upon subsequent retirement, the member shall be entitled to a normal yearly allowance computed as though such disability retirement had not taken place. No additional contributions shall be required for receiving such creditable service. The amount of creditable service to be granted for the period during which the member received a disability retirement allowance shall be based on the average amount of creditable service earned by the member for the 24 months immediately preceding the last day for which the member received regular compensation.

(g) The provisions of 840 CMR 10.14 and 10.15(2) shall not apply to any person who upon restoration to service would be classified in Group 3.

(3) Restoration to Service of Sworn Members of the State Police. The restoration to service process for sworn members of the State Police is provided for in M.G.L. c. 32, §26. Retirees who would be restored to positions of sworn State Police Officers are to be evaluated once each year during the first two years after retirement, once every three years thereafter, or at any time upon written request. Any retiree who has been retired for disability under the provisions of M.G.L. c. 32, §§ 6, 7, or 26 for more than ten years, and has during such time complied with the evaluation requirements, shall not be required to participate in any further evaluations. PERAC's comprehensive medical evaluation and restoration to service process may involve examinations by four physicians. A single physician may examine the retired State Police Officer in the comprehensive medical evaluation process and three physicians in the restoration to service process. Two of the three physicians in the restoration to service examination will be selected by PERAC and the third physician will be the State Police Surgeon. All physicians involved in the process must consider the Massachusetts State Police Officer's Medical Fitness Standards and Essential Task List, the Massachusetts State Police Academy Physical Fitness and Preparation Guide, and Physical Training Protocol when determining if a retire is able to meet all of the Massachusetts State Police requirements.

If the retiree completes PERAC's restoration to service process and is unanimously found able to perform the essential duties of his or her job, the medical reports are forwarded to the member, the Retirement Board and the Colonel of the State Police. The Colonel of the State Police makes the final determination with regard to a retiree's restoration to service.

10.16: Annual Statement of Earnings; Definition of Earnings From Earned Income; Refunds and Modifications Based on Earnings Information

(1) The retirement board shall provide such information as PERAC shall require to assist it in performing its responsibilities pursuant to M.G.L. c. 32, §§ 91A and 91B.

(2) Upon receipt of notice from PERAC that a disability retiree has failed to file the Annual Statement of Earnings required by M.G.L. 32, § 91A, the retirement board shall review all information received and shall suspend the member's rights in and to the disability retirement allowance until the member has complied with the reporting requirements under M.G.L. 32, § 91A. Prior to any suspension of benefits, the member shall be given a written notice and an opportunity to be heard by the retirement board and, upon such termination or reduction of benefits, shall have the right to appeal such action to the Contributory Retirement Appeal Board.

(3) Upon receipt of notice from PERAC that a disability retiree has had earnings in excess of the amount allowed by M.G.L. 32, § 91A, the board shall request the member to refund the retirement allowance for that year or a portion thereof equal to such excess, as the case may be. Initial notice of a request for refund shall include the calculation on which the request is based and shall state that the member may, within 15 days, file a written request for a hearing to show cause why the disability retirement allowances should not be suspended or terminated or why no refund is due. If a retiree files a request for hearing, such hearing shall be held within 90 days of such request for hearing. The board shall notify the member of its decision, including a final request for refund, if any, within 30 days of the hearing. If the member is to be required to refund an amount to the board, the notice of the board's decision shall include notification that the member's allowance shall be withheld until the refund is made. The member shall also be notified that if the refund is not made, payment of the retirement allowance shall be resumed only when the amounts withheld are sufficient to pay the amount of the refund. A copy of M.G.L. c. 32, § 16(4) shall be included with the notice of decision and, upon request, the retirement board shall advise and assist the applicant or retired member, as the case may be, in the filing of the appeal.

(4) The term "earnings from earned income" as used in G.L. c. 32, § 91A shall mean income that implies some labor, management or supervision in the production thereof, not income derived from ownership of property. For purposes of G.L. c. 32, § 91A, if an individual operates a business for profit, individually or through an agent, that individual does not have the option of classifying such income as dividends as opposed to wages. Profits derived from the operation of a business through some labor, management or supervision of such profits are earned income, regardless of how a retiree categorized such income for income tax or other purposes.

(5) PERAC may waive the requirement that all disability retires must file an Annual Statement of Earnings if a retiree shall have been retired for more than 20 years, has not reported any earnings for the prior 10 years and signs an affidavit under the pains and penalties of perjury indicating that should the member realize any earned income in the future the member will forthwith notify PERAC of that fact and again report an Annual Statement of Earnings.

10.17: Modification of Retirement Allowance and Fair Amount of Outside Earnings and Potential Earnings

Pursuant to M.G.L. c. 32, § 8(3)

(1) For purposes of 840 CMR 10.17, "regular compensation" means, compensation received exclusively as wages by an employee for services performed in the course of employment for his or her employer, which would have been payable during the preceding year had the member continued in service in the grade held by him or her at the time he or she was retired.

(2) For purposes of 840 CMR 10.00, "potential earnings" shall mean:

(a) For a disability retiree who has been found able to return to his or her position, the amount that would have been received had he or she been reinstated to active service.

(b) For a disability retiree who has completed a rehabilitation program, an amount that the member can potentially earn will be determined as a part of the rehabilitation program, after consideration of a disability retiree's functional capacity, age, education, and experience.

(3) PERAC shall review all medical panel reports filed with respect to disability retirees, all earnings information submitted under M.G.L. c. 32, § 91A, and all reports submitted as the result of the completion of a rehabilitation program.

(4) If PERAC finds that:

(a) a retired member is engaged or is able to engage in gainful occupation, and

(b) that the annual rate of his or her actual or potential earnings is less than his or her regular compensation as defined in this subdivision, but is more than the difference between such regular compensation plus the sum of $15,000, and the normal yearly amount of his or her retirement allowance, the yearly amount of his or her pension shall be reduced, and if his or her actual or potential earnings are more than such regular compensation, his or her pension shall be suspended.

(5) If PERAC finds that a member has submitted earnings information pursuant to M.G.L. c. 32, § 91A indicating earnings in excess of regular compensation as defined by this regulation, the member's pension shall be reduced or suspended and shall not be reinstated or increased for a period of one year unless a report of a medical panel finds that the mental or physical condition of such member has deteriorated. If the annual rate of his or her earnings should later be changed, the yearly amount of his or her pension shall be further modified by reinstating, increasing, reducing, or suspending it, as the case may be.

6) For purposes of 840 CMR 10.00 and M.G.L. c. 32, § 8(3) the fair amount that a member retired for disability pursuant to M.G.L. c. 32, § 6 or 7 may earn or may

potentially earn shall be annually adjusted for inflation. To accomplish this, PERAC will determine the increase in the consumer price index in the same manner as determined for purposes of M.G.L. c. 32, § 102 and shall increase by that amount the $15,000 referred to in 840 CMR 10.17(4) be used in calculating the modification of a disability retiree's allowance pursuant to M.G.L. c. 32, § 8(3). Any increases applied to the$15,000 shall be permanent and any future increases will be applied to the permanent amount from the prior year.

10.18: Evaluation For Rehabilitation Pursuant to M.G.L. c. 32, § 8(1)(a)

(1) PERAC, may require any member retired for disability under the provisions of M.G.L. c. 32, §§ 6 and 7 to participate in an evaluation to determine whether such member's return to his or her former or similar job within the same department would likely be expedited by participation in a medical or vocational rehabilitation program. The retirement board shall provide such information as PERAC shall require to assist it in determining whether a member shall be required to participate in a rehabilitation evaluation.

(2) PERAC may require an evaluation once per year during the first two year period next succeeding the date of retirement and once in each three year period thereafter, or at any time upon the written request by any disability retiree. PERAC may excuse a member from an evaluation if it determines that such examination is unwarranted based on the catastrophic nature of the member's illness or injury. Any such determination must be in writing. No member will be evaluated more frequently than once in any 12 month period.

(3) If PERAC determines that a retiree's return to active service might be expedited by participation in a medical or physical rehabilitation program, the retiree will be required to participate in a rehabilitation evaluation. PERAC shall schedule an appointment or appointments with rehabilitation evaluation specialists. The member shall be given 14 days notice of the time(s) and place(s) of the evaluation(s). Notice shall also be given to the retirement board.

(4) A rehabilitation evaluation may include mental or physical examinations, vocational testing, meetings, and consultations with medical professionals, including the member's treating physician and vocational rehabilitation counselors as determined necessary by the rehabilitation evaluation specialist.

(5) If a retired member refuses, without good cause to submit to any evaluation, PERAC shall notify the appropriate retirement board and that member's rights in and to the pension provided for in M.G.L. c. 32, §§ 6or 7 shall promptly be terminated by the board. The member shall first be given written notice and an opportunity to be heard by the board with respect to such termination.

10.19: Rehabilitation Pursuant to M.G.L. c. 32, § 8

(1) If following a rehabilitation evaluation pursuant to 840 CMR 10.18, PERAC determines that a retired member may benefit from rehabilitation program and that such a program is cost effective, PERAC shall advise the retirement board of its determination.

(2) The board shall provide the member with a rehabilitation program consisting of services appearing on a list of services approved by PERAC. All rehabilitation programs will include a determination of the member's potential earnings, taking into account the member's functional capacity, age, education, and experience. The retirement board shall pay the costs of the program (less any amounts payable under insurance policies of the member and less any scholarships or grants otherwise available).

(3) Any member who is unreasonably denied access to such program may appeal such denial to the
Contributory Retirement
Appeal Board.

(4) If a retired member fails to complete a rehabilitation program without good cause, his or her rights in and to the pension provided for in M.G.L. c. 32, § 6 or 7 shall immediately be suspended.

(5) Upon completion of the rehabilitation program PERAC will notify the retirement board that a medical panel examination will be scheduled to determine if the member can perform the essential duties of the position from which he or she retired.

(6) PERAC will appoint a medical panel to examine the member to determine the scope of the member's physical capabilities in light of the completed rehabilitation program and whether the member is able to perform the essential duties of his or her job or the essential duties of a similar job within the same department given the member's condition.

(7) If a member fails to appear at any required examination without good cause, all his or her rights in and to the retirement allowance provided for in M.G.L. c. 32, § 6 or 7 shall be terminated by the board. The member shall first be given written notice and an opportunity to be heard by the board with respect to such termination.

10.20: Rehabilitation Pursuant to M.G.L. c. 32, § 21

(1) Voluntary rehabilitation programs for disability retirees shall be developed in cooperation with the State Human Resources Division and the Industrial Accident Board and made available to any disability retiree seeking rehabilitation.

(2) Upon receipt of a request for rehabilitation from a disability retiree, PERAC shall provide an evaluation to determine whether the member might

benefit from a medical or vocational rehabilitation program approved by PERAC. PERAC may require any such member to be examined and evaluated by a physician qualified to render rehabilitation services and/or by a vocational counselor selected by PERAC. The physician and/or both shall recommend the need for and nature of any such rehabilitation program. If PERAC determines that such member might benefit from any such program, it shall so notify such member and the retirement board.

(3) The board shall provide the member with a rehabilitation program consisting of services appearing on a list approved by P E R A C of public or private rehabilitation agency(ies) having rehabilitation programs suitable for such member. The member shall meet with the agency selected and shall cooperate in the design of a suitable rehabilitation program. All rehabilitation programs will include a determination of the member's potential earnings, taking into account the member's functional capacity, age, education, and experience.

(4) If the board determines that the retired member may benefit from such rehabilitation program, and that the program is reasonable in its terms and cost, the board shall approve and offer to provide and pay for such program (less any amounts payable under insurance policies of the member and less any scholarships or grants otherwise available.) The retirement board shall submit the rehabilitation program designed for the member, including detailed cost estimates, to PERAC for review.

(5) If the board determines that the retired member shall be denied access to a rehabilitation program, the board shall so advise the member in writing, detailing its reasons for the denial. The member may appeal the board's denial to PERAC. The appeal must be in writing and must be filed with PERAC within 15 days of the board's denial. PERAC shall review the matter and make its determination within 60 days of receipt of the member's appeal. If after review PERAC determines that such member might benefit from such rehabilitation program, PERAC shall approve and offer to provide and pay for such program.

(6) If PERAC approves the rehabilitation program offered by the board, PERAC shall reimburse the board for the costs of the program.

(7) The retirement allowance of a member participating in a rehabilitation program approved by PERAC shall be not be reduced or modified pursuant to M.G.L. c. 32, § 8(3) or § 91A on account of actual or potential earnings arising out of such rehabilitation program.

10.21: Essential Duties

In connection with all applications for disability retirement and evaluations, re-evaluations or re- examination of disability retirees in connection with restoration to active service or participation in a rehabilitation program, a determination of the essential duties of the relevant job or position shall be made. The determination of

what constitutes an essential duty of a job or position is to be made by the employer, based on all relevant facts and circumstances and after consideration of a number of factors. The employer will identify and delineate the duties the employer deems to be essential to the job or position under consideration. 840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

The term "essential duties" as used in M.G.L. c. 32 and in all regulations promulgated by PERAC shall mean those duties or functions of a job or position which must necessarily be performed by an employee to accomplish the principal object(s) of the job or position. The essential duties of a position are those which bear more than a marginal relationship to the position. In making the determination as to whether a function or duty is essential, the employer shall consider and provide documentation to include, but not be limited to:

(a) The nature of the employer's operation and the organizational structure of the employer; (b) Current written job descriptions;
(c) Whether the employer requires all employees in a particular position to be prepared to perform a specific duty;
(d) The number of employees available, if any, among whom the performance of the job function can be distributed;
(e) The amount of time that employees spend performing the function;
(f) Whether the function is so highly specialized that the person in the position was hired for his or her special ability to perform the function;
(g) The consequences of not requiring the employee to perform the function;
(h) The actual experience of those persons who hold and have held the position or similar position; and
(i) Collective bargaining agreements.

If the State Human Resources Division has promulgated or promulgates a list or description of essential duties for a position that is consistent with those of the member's position, the employer shall submit such list or description as the essential duties for the position in question.

10.22: Failure to Provide Information or Documents, Violation of Regulations

If a member of the retirement system willfully fails to provide information or documents required by the provisions of M.G.L. c. 32 or by 840 CMR 10.00, his or her allowance may be suspended until such information or documents are provided. Failure to provide information or documents required by 840 CMR 10.00 by any person, employer, governmental unit, retirement board, retirement board member or other entity shall be considered a violation of 840 CMR
10.00.

10.23: Disability Application of a PERAC Employee

In the event that an employee of PERAC files an application for termination retirement, accidental disability retirement, or ordinary disability retirement the State Retirement Board shall follow the following procedures for processing said application.

(1) No electronic submissions in regard to the PERAC Employee should be sent to PERAC at any point in this process.

(2) PERAC will act solely as the Employer, with no more or less rights than any other Employer. No documents should be sent to PERAC which would not be sent to any other Employer.

Medical Panels for Disability. The State Board of Retirement ("SBR") should process the disability application and determine whether or not to request a medical panel. The medical panel request should not be forwarded to PERAC. The SBR should request that the Department of Industrial Accidents or the Human Resources Division assemble the Panel from a list of doctors contained in PERAC's vendor list. The completed Medical Panel Reports should be sent directly to the SBR and not to PERAC. PERAC will be entitled to see the Medical Panel Reports only to the extent that it requests to do so in its role as the Employer. The Medical Panel Doctors shall be notified by the SBR not to involve PERAC in this process. If clarification is needed it should be requested directly by the SBR. If a new panel is necessary the same process should be followed.

Disability Review Process. In PERAC's own section 21 (1)(d) review process, two attorneys must approve each application. PERAC will agree to cede its Section 21 (1)(d) review authority to two attorneys chosen by the SBR. The two attorneys should not be employees of the State Treasurer but should be attorneys familiar with the retirement system. The Executive Director of PERAC will write a letter ceding PERAC's authority for review to the two attorneys selected by the SBR.

Records. PERAC is required to maintain a database of all disability retirees in the Commonwealth, to process overearnings statements and to conduct Comprehensive Medical Evaluations (CMEs). If a retirement is granted, PERAC shall, as soon as the benefit has been finally approved, be provided a paper copy of the PERAC employee's case file from the SBR for 91A and CME purposes. The member's disability file shall not be stored electronically, except that limited information, sufficient to permit the tracking of 91A matters and the scheduling of future CMEs, shall be added to the database.

In the event a retirement allowance is not granted, PERAC shall be provided a paper copy of the file from the SBR in order to fulfill its duty to maintain records of all disability applicants in the Commonwealth.

The PERAC employee's file shall be maintained only in paper form until 25 years have passed or until the death of the PERAC employee, whichever event shall first occur. Any documentation generated by PERAC as a result of the 91A or CME process will also be maintained in paper form. Upon the passage of 25 years from the date of receipt of the documents or the death of the PERAC employee, whichever event shall first occur, the employee's file, and all subsequent documents generated shall be put into the PERAC database.

REGULATORY AUTHORITY

840 CMR 10.00: M.G.L. c. 7, § 50; c. 32, §§ 6, 8 and 21.