

# 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, JULY 3, 2019 \*\*

*The Committee may take action on any item on the agenda,  
and agenda items may be taken out of order.*

#### COMMITTEE MEMBERS:

James P. Harris, Chair  
Herman B. Santos, Vice Chair  
Ronald A. Okum  
Gina Zapanta-Murphy  
William Pryor, Alternate

- I. CALL TO ORDER
- II. APPROVAL OF THE MINUTES
  - A. Approval of the minutes of the regular meeting of June 5, 2019
- III. PUBLIC COMMENT
- IV. FOR INFORMATION ONLY
  - A. Government Code Sections 31726 and 31726.5 and the Intemperate use of Alcohol or Drugs (Memo dated June 19, 2019)
- V. ITEMS FOR STAFF REVIEW
- VI. GOOD OF THE ORDER  
(For information purposes only)
- VII. 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, make a motion, or second 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.**

**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 Board Offices at (626) 564-6000, Ext. 4401/4402 from 8:30 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. 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.**

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, JUNE 5, 2019

**COMMITTEE MEMBERS**

**PRESENT:**

James P. Harris, Chair  
Herman B. Santos, Vice Chair  
Ronald A. Okum  
Gina Zapanta-Murphy  
William Pryor, Alternate

**ALSO ATTENDING:**

BOARD MEMBERS AT LARGE

Thomas Walsh  
Vivian Gray  
Les Robbins  
Alan Bernstein  
Joseph Kelly

STAFF, ADVISORS, PARTICIPANTS

Ricki Contreras, Disability Retirement Services Division Manager  
Francis J. Boyd, Senior Staff Counsel  
Tamara Caldwell, Disability Retirement Specialist Supervisor

The Meeting was called to order by Chair Harris at 10:55 a.m., in the Board Room of Gateway Plaza.

I. APPROVAL OF THE MINUTES

A. Approval of the minutes of the regular meeting of May 1, 2019.

Mr. Santos made a motion, Ms. Zapanta-Murphy seconded, to approve the minutes of the regular meeting of May 1, 2019. The motion passed unanimously.

II. PUBLIC COMMENT

There were no requests from the public to speak.

III. REPORTS

- A. That the Committee discuss the process of the disability retirement applications when the member has been terminated for cause by the County of Los Angeles (Memo dated May 28, 2019)

Ms. Contreras and Mr. Boyd were present to answer any questions from the Board or Committee members.

IV. ITEMS FOR STAFF REVIEW

Committee members requested a presentation regarding implicit bias training.

The Disability Procedures and Services Committee directed staff to refer item IV. A., regarding Termination for Cause, to the Board of Retirement and to recommend including information to the panel physician as to whether the member was terminated but not include the reason for termination.

V. GOOD OF THE ORDER

VI. ADJOURNMENT

With no further business to come before the Disability Procedures and Services Committee, the meeting was adjourned at 11:30 a.m.

**FOR INFORMATION ONLY**

June 19, 2019

To: Disability Procedures & Services Committee  
J.P. Harris, Chair  
Herman Santos, Vice Chair  
Ronald A. Okum  
Gina Zapanta-Murphy  
William Pryor, Alternate

From: Francis J. Boyd,   
Senior Staff Counsel

For: July 3, 2019, Disability Procedures & Services Committee Meeting

Subject: **GOVERNMENT CODE SECTIONS 31726 and 31726.5 AND THE  
INTEMPERATE USE OF ALCOHOL OR DRUGS**

**INTRODUCTION**

Several Board members have requested that the Legal Office provide a legal opinion in regard to the application of Government Code sections 31726 and 31726.5 when determining whether or not a member's nonservice-connected incapacity is related to the intemperate use of alcohol or drugs. The Board is particularly interested in how to apply these statutes when there are multiple factors leading to a member's incapacity. The purpose of this memorandum is to explain the application of these two statutes.

**RULE**

Government Code section 31726 applies to general members under age 65, and Section 31726.5 applies to safety members under age 55. Members whose nonservice-connected incapacity is the **exclusive** result of the members' intemperate use of alcohol or drugs are restricted to an annuity based on the members' own contributions instead of a nonservice-connected disability retirement.

**LAW AND ANALYSIS****Sections 31726 and 31726.5**

There are two statutes in the Government Code that apply when a member is found incapacitated for a nonservice-connected disability involving the intemperate use of alcohol or drugs. Section 31726 applies to general members and Section 31726.5 applies to safety members. These two statutes are almost identical in language with the exception of the age applicability for general versus safety members. Section 31726

applies to general members under age 65, while Section 31726.5 applies to safety members under age 55. Both statutes restrict the member to an annuity based on the member's own contributions instead of a nonservice-connected disability retirement when the incapacity is due to the intemperate use of alcohol and drugs, willful misconduct, or violation of law.<sup>1</sup> The restriction in each statute is found in subsection (b)(2) which states the following in pertinent part:

Every member . . . shall receive a disability retirement allowance which shall be the greater of the following:

- (a) The sum to which he or she would be entitled as service retirement.
- (b) A sum which shall consist of any of the following:
  - (1) An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.
  - (2) If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

### **Legislative History is Not Necessary to Interpret Section 31726 and 31726.5**

Government Code section 31726 was enacted in 1947 and Section 31726.5 was enacted in 1951. The Legal Office's electronic library resources, Lexis Nexis and Westlaw, do not have legislative history available this far back in time. However, in 1990, the Third District Court of Appeal issued a decision that addresses Section 31726.5, *Keith v. San Bernardino Retirement Bd.*<sup>2</sup> wherein the court based its decision on the plain meaning of the statute and provided a discussion of the policy objective behind the law. This decision provides the Board sufficient information as to how to apply Sections 31726 and 31726.5, so no further attempts were made to obtain the legislative history.

### ***Keith v. San Bernardino Retirement Bd.***

*Keith v. San Bernardino Retirement Bd.*<sup>3</sup> is the only court decision that addresses Section 31726.5. Keith was a county deputy marshal who sustained permanently incapacitating injuries in an off-duty motorcycle accident. The Board of Retirement found that the accident was due to Keith's intemperate use of alcohol.

In its interpretation of the statute, the court stated the following:

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<sup>1</sup> This memorandum will only address the intemperate use of alcohol and drugs.

<sup>2</sup> *Keith v. San Bernardino County Ret. Bd.* (1990) 222 Cal.App.3d 411.

<sup>3</sup> *Keith v. San Bernardino County Ret. Bd.*, *supra*, 222 Cal.App.3d 411.

We conclude that the Legislature meant nothing more than what it said: an applicant, such as Keith, may receive a retirement pension paid for with county contributions 'if, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor.'<sup>4</sup>

Keith argued that Section 31726.5 did not apply to him because the phrase "intemperate use of alcoholic liquor" meant "habitual intemperance," not the intemperate use of alcohol on a particular occasion. In addressing this argument, the court first addressed the plain meaning of the statute and then discussed the policy objectives behind the statute.

- **Plain meaning**

The *Keith* court concluded that the plain meaning of the statute was clear and that "[t]he intemperate use of alcohol on even a single occasion is such an 'intemperate use' if the words of the statute are given their 'usual, ordinary import.'"<sup>5</sup>

- **Policy Objective**

The *Keith* court then went on to discuss the policy objective behind Section 31726.5 and stated the following:

The Legislature has determined that certain categories of public employees, because of the nature of their public employment and service, should receive disability pensions paid for with public funds even though the disability is not job related. Where, however, the disability is not only not job related, **but also is exclusively the result of the public employee's own excessive, illegal or willfully improper conduct**, no public benefit is obtained by requiring the public to 'pick up the tab.'<sup>6</sup>

The above language from the *Keith* decision limits the application of Section 31726.5, and Section 31726 *in pari materia*,<sup>7</sup> to circumstances where the incapacity is the exclusive result of the members' intemperate use of alcohol or drugs. If the members' nonservice-connected permanent incapacity is not *exclusively* the result of alcohol or drug abuse, Government Code section 31726(b)(2) is not applicable.

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<sup>4</sup> *Id.* at 416-417.

<sup>5</sup> *Id.* at 417.

<sup>6</sup> *Id.* at 417 (Emphasis added.)

<sup>7</sup> *In pari materia*: "on like subject matter. Statutes or document provisions that are 'in pari materia' are those that relate to the same person or subject." (Barron's Law Dict. (3<sup>rd</sup> ed.1991) p. 239, col. 2.)

Re: Intemperate Use of Alcohol and Drugs

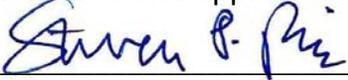
June 19, 2019

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## CONCLUSION

Government Code section 31726 applies to general members under age 65, and Section 31726.5 applies to safety members under age 55. Members whose nonservice-connected incapacity is the **exclusive** result of the members' intemperate use of alcohol or drugs are restricted to an annuity based on the members' own contributions instead of a nonservice-connected disability retirement.

Reviewed and approved.



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Steven P. Rice, Chief Counsel

c: Each Member, Board of Retirement