

# LIVE VIRTUAL COMMITTEE MEETING

\*The Committee meeting will be held following the Board of Retirement meeting scheduled prior.



TO VIEW VIA WEB



TO PROVIDE PUBLIC COMMENT

You may submit a request to speak during Public Comment or provide a written comment by emailing [PublicComment@lacera.com](mailto:PublicComment@lacera.com). If you are requesting to speak, please include your contact information, agenda item, and meeting date in your request.

**Attention:** Public comment requests must be submitted via email to [PublicComment@lacera.com](mailto:PublicComment@lacera.com) no later than 5:00 p.m. the day before the scheduled meeting.

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION  
300 N. LAKE AVENUE, SUITE 650, PASADENA, CA

**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., THURSDAY, DECEMBER 10, 2020 \*\***

This meeting will be conducted by the Disability Procedures and Services Committee  
by teleconference under the Governor's Executive Order No. N-29-20.

Any person may view the meeting online at  
[https://members.lacera.com/lmpublic/live\\_stream.xhtml](https://members.lacera.com/lmpublic/live_stream.xhtml).

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

COMMITTEE TRUSTEES:

JP Harris, Chair  
Herman B. Santos, Vice Chair  
Ronald A. Okum  
Gina Zapanta  
William Pryor, Alternate

- I. CALL TO ORDER
- II. APPROVAL OF THE MINUTES
  - A. Approval of the minutes of the regular meeting of September 10, 2020
- III. PUBLIC COMMENT
- IV. FOR INFORMATION ONLY
  - A. Discussion Regarding the Usual Duties of Management Positions Within the Sheriff's Department (Memo dated November 23, 2020)

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 trustee of the Board to attend a standing committee meeting open to the public. In the event five (5) or more trustees of the Board of Retirement (including trustees appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Trustees of the Board of Retirement who are not trustees 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 trustees 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

THURSDAY, SEPTEMBER 10, 2020

This meeting was conducted by the Board of Retirement by teleconference under the Governor's  
Executive Order No. N-29-20.

**COMMITTEE TRUSTEES**

PRESENT: JP Harris, Chair  
Herman B. Santos, Vice Chair  
Ronald A. Okum  
William Pryor, Alternate

ABSENT: Gina Zapanta

**ALSO IN ATTENDANCE:**

**BOARD TRUSTEES AT LARGE**

Thomas Walsh  
Vivian Gray  
Keith Knox  
Wayne Moore  
Shawn Kehoe

**STAFF, ADVISORS, PARTICIPANTS**

Tamara Caldwell, Disability Retirement Services Supervisor  
Hernan Barrientos, Disability Retirement Services Supervisor  
Francis J. Boyd, Senior Staff Counsel  
Rick Albert, President, First Medical Experts  
Martin Schlusserberg, M.D., Esq., Presenter

I. CALL TO ORDER

The Meeting was called to order by Chair Harris at 10:36 a.m., in the Board Room of  
Gateway Plaza.

II. APPROVAL OF THE MINUTES

A. Approval of the minutes of the regular meeting of February 13, 2020

Mr. Okum made a motion, Mr. Santos seconded, to approve the minutes of the regular meeting of February 13, 2020. The motion passed unanimously.

III. PUBLIC COMMENT

There were no requests from the public to speak.

IV. ACTION ITEMS

A. Consider Application of Martin Schlusberg, M.D., Esq., as a LACERA Panel Physician.

(This item was held after IV. A.) (Mr. Okum and Mr. Pryor left the meeting prior to the end of the presentation.)

Mr. Santos made a motion, Mr. Harris seconded, to approve this item; however, due to a lack of a quorum it will be agendaized on the next Board of Retirement meeting.

V. FOR INFORMATION ONLY

A. COVID-19  
Presentation by Martin Schlusberg, M.D., Esq.

Dr. Schlusberg provided a presentation and answered questions from the trustees.

VI. ITEMS FOR STAFF REVIEW

There was nothing to report.

VII. GOOD OF THE ORDER

Suggestion was made by Committee trustees for staff to abstain from adding a panel physician to the Committee agenda if the physician is scheduled to do a presentation for the Committee on the same day.

VIII. ADJOURNMENT

With no further business to come before the Disability Procedures and Services Committee, the meeting was adjourned at 12:25 p.m.

**FOR INFORMATION ONLY**

November 23, 2020

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

FROM: Francis J. Boyd   
Senior Staff Counsel

FOR: December 10, 2020, Disability Procedures & Services Committee Meeting

**SUBJECT: USUAL DUTIES OF MANAGEMENT POSITIONS WITHIN THE SHERIFF'S DEPARTMENT**

**INTRODUCTION**

Committee Chair J.P. Harris requested a discussion regarding Disability Retirement Services' practices for determining the usual duties of management positions within the Sheriff's Department. This memo is being prepared to facilitate the discussion on this topic.

**A. Permanent incapacity is established when a member is unable to substantially perform his or her usual duties. Usual duties are "normal" or "common," not remote.**

The definition of "incapacity" was established in the case of *Mansperger v. Public Employees' Retirement System*,<sup>1</sup> a Public Employee Retirement Law (PERL) case, and was then adopted in *Harmon v. Board of Retirement of San Mateo*,<sup>2</sup> a County Employee Retirement Law (CERL) case.

Mansperger was a state fish and game warden who sustained injury to his right arm while arresting a suspect. As a warden, Mansperger was a peace officer and was required to be able to shoot a gun, arrest suspects, move animals, and perform other duties typically associated with public safety occupations.

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<sup>1</sup> *Mansperger v. Public Employees' Retirement System* (1976) 6 Cal.App.3d 873, 866-877.

<sup>2</sup> *Harmon v. Board of Retirement of San Mateo* (1976) 62 Cal.App.3d 689, 694-696.

An examining orthopedic surgeon determined that Mansperger could not engage in heavy lifting or carrying, but opined that he was not incapacitated for his usual and customary duties because it did not appear that he normally performed heavy lifting and carrying. In addition, Mansperger had returned to work and had demonstrated his ability to perform his duties. The Court of Appeal ruled:

. . . . We hold that to be "incapacitated for the performance of duty" within section 21022 means the substantial inability of the applicant to perform his usual duties.

While it is clear that petitioner's disability incapacitated him from lifting or carrying heavy objects, evidence shows that the petitioner could substantially carry out the normal duties of a fish and game warden. The necessity that a fish and game warden carry off a heavy object alone is a remote occurrence. Also, although the need for physical arrests do occur in petitioner's job, they are not a common occurrence for a fish and game warden. A fish and game warden generally supervises the hunting and fishing of ordinary citizens. Petitioner testified that, since his accident, he was able to perform all his required duties except lifting a deer or lifting a lobster trap out of kelp.<sup>3</sup>

**B. A member's "usual duties" is a factual issue to be determined by the Board or Retirement**

The Board of Retirement, in its role as the trier of fact, weighs the evidence presented and determines what duties are usual and what duties are remote.

**C. Disability Retirement Services' investigation process for obtaining a description of a member's usual duties**

Every Disability Retirement Evaluation Report (DRER) provided to the Board of Retirement contains a description of the member's usual duties. The duties performed are described as are the physical demands required to carry out the duties. This description is sent to the evaluating panel physician and is used as a basis for determining incapacity.

Initially, staff interviews the member to obtain a description of the usual duties of his or her last job. This description is compared with the Class Specification for the position and then confirmed with the department—usually the member's last supervisor. Whenever there is a discrepancy between the member's and department's description of the job, staff obtains a job-analysis report from a third-party vendor.

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<sup>3</sup> Footnote omitted. *Mansperger*, pp. 876-877.



## **1. Captain and Commander in the Sheriff's Department**

Captain and Commander are Physical Class 3-Moderate positions in the Sheriff's Department. The physical requirements of Class 3-Moderate positions are described as follows:

This class requires that the incumbent stand or walk most of the time with bending, stooping, squatting, twisting, reaching, working on irregular surfaces, occasional lifting of objects weighing over 25 pounds; and frequent lifting 10-25 pounds.

The above description differs from the Class 4-Arduous description in that it describes "*occasional* lifting" of objects weighing over 25 pounds while a Class 4-Arduous position involves "*frequent* heavy lifting over 25 pounds." (Italics added.) In addition, a Class 4-Arduous position contains the following language that is not included in the Class 3-Moderate description:

It includes those positions which occasionally demand *extraordinary physical activity* such as those in safety positions. (Italics added.)

However, the Job Classification alone should not be used as a basis for determining the physicality of the member's position.

Though Captain and Commander positions are Class 3-Moderate, the physicality of the positions can vary based on the assignment location and, because of the nature of law enforcement, may at times involve physical activity exceeding the description contained in the job classification. For this reason, it is important to evaluate these positions on a case-by-case basis. Oftentimes a job analysis is necessary.

## **2. Chief, Assistant Sheriff, Undersheriff, and Sheriff**

The positions of Chief, Assistant Sheriff, Undersheriff, and Sheriff do not have a job classification describing the duties or physical requirements of each job. For this reason, a job analysis-report will be obtained for an application involving these upper-management positions.

## **3. Fact-finding Information**

As noted above, the physicality of all the above described positions can differ depending on the individual responsibilities of the position. A job-analysis report is helpful in clarifying the physicality of the member's position. Another tool available to DRS staff is the Sheriff's Department's Performance Recording & Monitoring System (PRMS) report which documents use-of-force incidents in

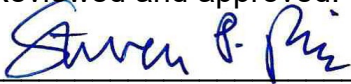
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which the member is involved. In the past, staff has obtained a PRMS report to confirm the members' description regarding the use of physical force.

### **CONCLUSION**

It is staff's hope that this memorandum describing Disability Retirement Services' investigation process in connection with the summarization of the law in regard to "usual duties" helps facilitate the Committee's discussion on this subject.

Reviewed and approved.

A handwritten signature in blue ink, appearing to read "Steven P. Rice", is written over a horizontal line.

Steven P. Rice, Chief Counsel

FJB: is