# DALA WEB DECISION INDEX BY SUBJECT, WITH KEYWORD AND PHRASE DIGEST

### ORGANIZATION

AGRICULTURAL RESOURCES

Animal Shelter, Rescue and Adoption Operations

-Unapproved or Unregistered Operations

**Enforcement and Civil Penalties** 

-Animal Quarantine Violations

**Enforcement and Civil Penalties** 

Pesticide Program

-Herbicide Application-Right of Way Management

Vegetation Management Plan Approval

**WIC Farmers' Market Nutrition Program** 

-Farmers' Market Coupon Program Violations

**Enforcement and Civil Penalties** 

# CERTIFIED NURSE AIDE / HOME HEALTH AIDE DISCIPLINE

<u>Abuse</u>

<u>Neglect</u>

**Property Misappropriation** 

CIVIL SERVICE

**Jurisdiction** 

—Discipline Appeals

EDUCATOR LICENSE REVOCATION

Dismissal of Appeal

# EMERGENCY MEDICAL TECHNICIAN CERTIFICATION

**Revocation and Suspension of EMT Certification** 

<u>EVIDENCE</u>

**Briefs and Memoranda** 

-Citations and References, and their Omission

Burden of Proof

—Family Child Care Provider License Revocation Appeals

-Retirement Appeals

Accidental Disability Retirement

Creditable Service - Prior Service Ineligible for Purchase

### **Credibility**

—Generally

-Retirement Appeals

Accidental Disability Retirement

-Wage and Hours Appeals

Failure to Make Timely Wage Payments

**Inferences** 

**Presumptions** 

## EXPEDITED PERMITTING - M.G.L. c. 43D

**Constructively-Granted Permit** 

## FAMILY CHILD CARE LICENSING

### **Original Family Child Care Provider License Denied**

—Generally

—Insufficient Grounds for Denying Family Child Care License

-Sufficient Grounds for Denying Family Child Care License

History of Child Neglect

Misleading or False Statement on License Application

Prior Provision of Unlicensed Child Care

### **Renewal of Family Child Care Provider License Denied**

—Generally

—Grounds

Disqualifying Background of Family Member

### **Revocation of Family Child Care Provider License**

—Generally

---Insufficient Basis for Revoking License

-Sufficient Basis for Revoking License

### Suspension of Family Child Care Provider License

—Generally

—Insufficient Basis for Suspending License

-Sufficient Basis for Suspending License

Unlicensed Child Care Provided to Unrelated Children

—Insufficient Evidence of Violation

# LEAD INSPECTOR LICENSING

**Denial of License Renewal** 

—Dismissal of Appeal

# MEDICAL MARIJUANA

Medical Marijuana Certification

-Authority to Issue, and Delegation of Authority

### **Dispensary Agent Registration**

—Temporary Revocation

## PHYSICIAN DISCIPLINE

**Conduct Placing Into Question Competence to Practice Medicine** 

**Conduct Undermining Public Confidence in Integrity of Medical Profession** 

Failure to Meet Standard of Care

**Gross Misconduct in Practice of Medicine** 

### **Malpractice**

-Order of Default

### Misconduct in Practice of Medicine

-Mitigating Factors

-Order of Default

### Practicing Medicine While Ability to Practice is Impaired by Alcohol or Drugs

-Order of Default

### Sexual Misconduct

—Insufficient Evidence

## <u>Summary Suspension of Physician as Immediate and Serious Threat to Public</u> <u>Health, Safety or Welfare</u>

—Generally

—Insufficient Evidence

## PRACTICE AND PROCEDURE

### **Decision Upon Written Submissions**

### **Default Decision**

-Availability and Legal Basis

-Default Decision Issued or Recommended

### **Directed Decision**

-Granted as "Summary Decision" Following Hearing

**Physician Discipline Proceedings** 

**Retirement Appeals - Accidental Disability Retirement** 

**Retirement Appeals - Group Classification for Retirement Purposes** 

#### **Discovery**

#### -Document Requests

Motion to Compel Production of Documents

Motion to Serve Record-Keeper Subpoena

**Remedies for Failure to Produce Documents** 

-Interrogatories

Generally

**Retirement** Appeals

#### <u>Dismissal</u>

—Dismissal as Discovery-Related Sanction
—Dismissal for Lack of Jurisdiction
Failure to State a Claim for Relief
Lack of Standing
Mootness
Untimeliness
Untimeliness

—Dismissal for Lack of Prosecution

Family Child Care Licensing Appeals
Physician Discipline Proceedings
Retirement Appeals
Educator License Revocation Appeals
Veterans' Benefits Appeals
Wage and Hour Laws Appeals

#### **Jurisdiction**

-Constitutional Claims

-Equitable Remedies

-Statutory Invalidity Claim

—Timely or Untimely Appeals

Generally

**Timely Appeals** 

#### **Untimely** Appeals

#### Orders / Actions "Not Inconsistent with Law" or Standard Rules

-Availability and Grounds, Generally

-Default Decisions

## **Reconsideration of Final Decisions**

-Availability and Grounds, Generally

-EMT Certification Revocation Proceedings

-Physician Discipline Proceedings

-Retirement Appeals

### **Reopening the Record**

-Availability and Grounds, Generally

-Retirement Appeals

#### **Subpoenas**

-Records-Only Subpoena

-Subpoena Duces Tecum

**Record-Keeper Subpoena** 

### **Summary Decision**

—Availability and Grounds, Generally

-EMT Certification Revocation Proceedings

- -Family Child Care Provider License Denial Appeals
- -Expedited Permit Appeals (M.G.L. c. 43D)

-Physician Discipline Proceedings

-Retirement Appeals

Accidental Disability Retirement Benefits

-Veterans' Benefits Appeals

-Wage and Hour Laws Appeals

-Watershed Protection Act Variance Appeals

#### <u>RETIREMENT</u>

#### <u>Accidental Death Benefits</u>

—Generally

-Retiree's Death as a Result of Condition for Which He or She was Retired

-Suicide of Retirement System Member

-Termination and Restoration of Accidental Death Benefits

Remarriage - Repeal of "Remarriage Penalty" - Retroactivity of Benefits Restoration

#### Accidental Disability Retirement Benefits

-Eligibility to Claim Benefits

-Grounds to be Proved

Causation (Causal Nexus Between Work-Related Injury and Disability), Generally

**Causation - Insufficient Proof** 

**Causation - Sufficient Proof** 

Disability (Disabling Injury or Hazard Sustained While in Performance of Duties), Generally

Disability (Disabling Injury or Hazard Sustained While in Performance of Duties) -Insufficient Proof

Disability (Disabling Injury or Hazard Sustained While in Performance of Duties) -Sufficient Proof

Permanence of Disabling Work-Related Injury

"Without Serious or Willful Misconduct" on Applicant's Part

-Medical Panel Review

Generally

Initial Panel Review

**Review by New Medical Panel** 

-Panel Affirmative as to Disability, Permanence, or Work-Related Causation

Majority Affirmative Panel

**Unanimous** Affirmative Panel

-Panel Negative as to Disability, Permanence, or Work-Related Causation

Generally

Majority Negative Panel

**Unanimous** Negative Panel

-Procedural Requirements

Notice of Injury to Retirement Board Within 90 Days Following Injury or Hazard Undergone (M.G.L. c. 32, § 7(a)1)

Occurrence of Injury or Hazard Undergone More Than Two Years Prior to Accidental Disability Retirement Application

-Psychological or Emotional Injury

Generally

Insufficient Proof; Accidental Disability Retirement Benefits Denial Affirmed

Sufficient Proof; Accidental Disability Retirement Benefits Denial Reversed

-Statutory Presumptions

**Cancer Presumption** 

Heart Law Presumption

### **Beneficiaries of Retirement Contributions**

—Benefits

Limitations, Overpayments, and Discretionary Waiver of Recoupment or Repayment

-Designation of Beneficiaries

Generally

Insufficient Beneficiary Designation

Sufficient Beneficiary Designation

**Buyback of Previously-Refunded Retirement Contributions** 

### **Computation of Retirement Benefits**

-Benefits to Former Spouse Under Domestic Relations Order (DRO) or Qualified Domestic Relations Order (QDRO)

-Retirement Allowance Computation

"Anti-Spiking" Provisions

Superannuation Retirement Allowance

-Regular Compensation - Service or Amounts Included

-Regular Compensation - Service or Amounts Not Included

Compensation that is <u>Not</u> Ordinary, Normal, Recurrent, Repeated and of Indefinite Duration

Extraordinary, Ad Hoc or One-Time Bonus Payment

Longevity Payment or Career Incentive Payment

Payment for Work Performed During Summer Months That Position and Annual Contract Did Not Require

Payment or Stipend for Additional Service Not Specified in Collective Bargaining Agreement

Payment That Was Not Remuneration for Performing Required Service

Stipend, Bonus or Retroactive Raise Paid in Contemplation of Retirement

### Creditable Service

—Discovery Related to Creditable Service Purchase Denial Appeal

**Document Requests** 

Interrogatories

**Record-keeper Subpoenas** 

-Interest on Purchase (Buyback) of Creditable Service

- —Prior Service Eligible for Creditable Service Purchase
- —Prior Service Ineligible for Creditable Service Purchase

Application to Purchase Prior Service by Inactive Retirement System Member

Contract Employment Paid Through Commonwealth's 03 Subsidiary Account

**Employer Funded by Federal Job-Training Programs** 

Full-Time Prior Contract Service (M.G.L. c. 32, § 4(1)(s))

Part-Time Prior Contract Service

Prior Non-Teaching Service in Charter School (M.G.L. c. 71, § 89(y) and M.G.L. c. 32, § 3(5) ).

Prior Out-of-State Public School Teaching Service, But Eligible to Receive, or Received, a Benefit Based in Whole or Part Upon Employer Contributions (M.G.L. c.  $32, \S 3(4)$  and  $807 \text{ C.M.R.} \S 19.04(2)$ ).

Prior Service in Non-Public School, But Not Engaged in Teaching Pupils, or Tuition of All Pupils in Non-Public School Not Financed in Part or in Full by the Commonwealth (M.G.L. c. 32, § 4(1)(p))

Prior Service in School System for Less Than Half-Time as Teacher

Unpaid Leave

Untimely Creditable Service Purchase Application

### **Early Retirement Incentive Program (ERIP)**

—Eligibility for ERIP, Generally

—Eligible to Participate in ERIP

—Ineligible to Participate in ERIP

### **Group Classification for Retirement Purposes**

-Pro-Rating Group Classification

-Reclassification from Group 1 to Group 2

Generally

**Reclassification Denied - Group 1 to Group 2** 

**Reclassification Granted - Group 1 to Group 2** 

-Reclassification from Group 1 to Group 4

Generally

**Reclassification Denied - Group 1 to Group 4** 

**Reclassification Granted - Group 1 to Group 4** 

"Killed in the Line of Duty" Benefit (Pension - M.G.L. c. 32, § 100)

—Generally

-Benefit Awarded

-Benefit Denied

-Medical Panel Review

"Killed in the Line of Duty" Benefit (One-Time Award - M.G.L. c. 32, § 100A)

—Generally

-Benefit Awarded

-Benefit Denied

### **Pension Forfeiture**

### Post-Retirement Earnings Limitations

-Exceptions

### **Retirement Contributions, Deductions and Refunds**

-Refund of Excess Retirement Contributions

Interest on Refund of Excess Retirement Contributions

### Retirement Plus (Enhanced Alternative Superannuation Retirement) Program

—Eligibility

—Ineligibility

-Teachers Hired Before July 1, 2001

Failure to Elect RetirementPlus before Statutory Deadline

### Retirement Systems

-Membership

Local Retirement System

Massachusetts Teachers' Retirement System

-Rescission, Revocation or Termination of Membership

-Retirement Board Regulations

### **Termination Retirement Benefits**

—Ineligibility

## VETERANS' BENEFITS

## **Benefits Under M.G.L. c. 115 and DVS Regulations, Generally**

### **Determination of Benefits**

-Calculating an Applicant's Needs-Based "Budget"

Applicant's Financial Need, Generally Applicant Living Alone Applicant and Spouse Institutional and Transitional Housing Residents "Medical Only" Benefits

## Dismissal of Veterans' Benefits Appeals

—Failure to Produce Documents

—Lack of Prosecution

## Eligibility for Chapter 115 Veterans' Benefits

—Ineligible Service

Active Duty Training as Reservist in Any Branch of Armed Forces

—"Medical Only" Benefits

-Ordinary Benefits

**Overpayment of Benefits - "Refund Status"** 

**Termination of Benefits** 

# WAGE AND HOUR LAWS VIOLATIONS

# **Civil Penalties**

—Intentional Violations

-Non-intentional Violations

Failure to Pay Wages Timely

Failure to Pay Overtime Wages

Failure to Pay Prevailing Wages on Public Works Projects

Failure to Produce Payroll and Other Records

**Other Violations** 

# WATERSHED PROTECTION ACT VARIANCES

Applicability of Variance Requirement

Prerequisites for Variance

**Standards and Presumptions** 

Variance Denial

-Summary Decision Denied